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**Trade Policy Review Body**

**TRADE POLICY REVIEW**

REPORT BY THE SECRETARIAT

EUROPEAN UNION

This report, prepared for the fourteenth Trade Policy Review of the European Union, has been drawn up by the WTO Secretariat on its own responsibility. The Secretariat has, as required by the Agreement establishing the Trade Policy Review Mechanism (Annex 3 of the Marrakesh Agreement Establishing the World Trade Organization), sought clarification from the European Union on its trade policies and practices.

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## SUMMARY

1. This 14<sup>th</sup> Trade Policy Review report of the European Union (EU) covers developments in EU trade policy during the period March 2017-September 2019. "EU" in this connection means the EU-28.

2. Real GDP growth in the EU was relatively strong in 2017-18, but slowed somewhat in the second half of 2018 due to several factors, including weakness in the manufacturing sector, escalating trade tensions, and the prospect of the United Kingdom's withdrawal from the EU. Annual GDP growth is expected to decline from 2.0% in 2018 to 1.4% in 2019 and to increase to 1.6% in 2020. Significant progress has been made in recent years regarding the reduction of unemployment and poverty, the correction of macroeconomic imbalances, and the improvement of the fiscal positions of EU member States. While discussions on an EU digital services tax regime were suspended, several EU member States introduced such a tax at the national level. The relatively positive recent growth performance of the EU economy provides an opportunity to focus on certain long-term challenges that need to be addressed to support stronger and more inclusive growth by improving productivity and boosting investment. In this regard, recent policy initiatives aim to better exploit the potential of the EU's single market, which remains fragmented, especially in services, energy and the digital economy.

3. Extra-EU trade in goods and services as a share of EU-GDP was nearly 35% in 2018. The share of the EU in world trade in goods and services was 16.7% in 2017-18 and has been on a declining trend during the last two decades. The EU remains the most important trading partner for some 80 economies. While EU merchandise trade with third countries continued to grow, the merchandise trade balance recorded a deficit in 2018 mainly due to the large deficit in fuel products. The United States, China and Switzerland continued to be the main destinations of EU merchandise exports. The EU was a net exporter of services, and its surplus in services trade increased during the review period. The United States and China are the EU's main partners in services trade.

4. The scope of the EU's exclusive competence to conclude international trade agreements was clarified by an opinion of the Court of Justice of the EU (CJEU). In light of this opinion, the exclusive EU competence to conclude international trade agreements is now understood to cover the following matters: trade in goods; trade in services, including all transport services other than air transport; trade-related aspects of intellectual property; public procurement; market access and investment protection in relation to foreign direct investment (FDI); and the termination of member State bilateral investment agreements for the parts concerning exclusive competence.

5. In March 2017, the United Kingdom notified its intention to withdraw from the EU under Article 50 of the Treaty on European Union on 31 March 2019. While negotiations under Article 50 have resulted in an agreement on the terms of the withdrawal, this agreement had not yet been ratified at the time of the circulation of this report. On 29 October 2019, the European Council, in agreement with the United Kingdom, decided on an additional extension of the period provided for in Article 50(3), until 31 January 2020.

6. The EU pursues "a balanced and progressive trade policy to harness globalisation", premised on the idea that global trade is a key contributor to a competitive and prosperous EU but needs to be proactively shaped and managed to ensure that it is fair, projects values and remains firmly anchored in a rules-based system. The first main objective of this policy is to conclude new trade partnerships to build progressive rules for global trade and to use trade policy to promote universal values regarding environmental, social and labour protection and fundamental rights, and preserve the right to regulate in the public interest. Aside from the negotiation and conclusion of bilateral trade agreements, a noteworthy development relating to this first objective is that gender issues have begun to figure more prominently in EU trade policy. In addition, an Action Plan was adopted to improve the implementation and effectiveness of provisions on sustainable development in the EU's free trade agreements (FTAs).

7. A second main objective of the balanced and progressive trade policy is to protect EU interests and ensure fairness through a robust trade and investment policy. This was reflected in, *inter alia*, reforms of the EU's trade remedies' instruments, discussion and proposals on the need to combat unfair subsidy practices, discrimination and lack of reciprocity in government procurement, and the adoption of a new mechanism for the screening of FDI from third countries. A third main objective

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is to deliver effective agreements through a transparent and inclusive negotiation process. In this regard, the EU institutions took steps to enhance transparency in the negotiation of trade agreements, such as by publishing texts of (draft) negotiating directives. The EU also adopted a new approach to the architecture of bilateral trade agreements. This approach envisages the negotiation of two separate agreements: an FTA which will cover matters within the exclusive competence of the EU and which will be concluded only by the EU, and an Investment Protection Agreement which will include both matters in which the EU has exclusive competence and matters in which the EU and its member States share competences and which will be concluded by the EU and the member States.

8. In light of recent challenges facing the multilateral trading system, the EU emphasized the importance of preserving an open, rules-based multilateral trading system, with the WTO at its core, and the need for comprehensive reform of the WTO. The EU made numerous notifications during the review period in areas such as agriculture, trade remedies, technical regulations, regional trade agreements and preferential rules of origin. It was a complainant in five new dispute settlement cases and a respondent in one new case.

9. As at 30 September 2019, the EU had 41 FTAs in force with 72 countries. The largest FTA partners, based on data on trade in goods, were Switzerland, Turkey and Norway. During the review period, the FTA with Canada was applied provisionally; the FTA with Japan entered into force; FTAs and Investment Protection Agreements with Singapore and Viet Nam were completed; FTA negotiations were concluded at a political level with Mexico and with Mercosur; negotiations were launched on the modernization of the existing agreement with Chile; and negotiations on comprehensive FTAs were launched with Australia and New Zealand. Aside from the economic opportunities, the EU considers that these FTAs have strategic benefits in an international trading environment that has become more uncertain and unstable.

10. The EU adopted a Joint Statement with the United States in July 2018 in which they agreed, *inter alia*, to work towards the elimination of tariffs, non-tariff barriers, and subsidies on non-auto industrial goods, and towards the reduction of barriers to trade in services, chemicals, pharmaceuticals, medical products and soybeans.

11. The EU Generalized Scheme of Preferences (GSP) provides a general GSP arrangement and two special arrangements. As at 30 September 2019, there were 15 beneficiaries of the EU's general GSP arrangement, 8 beneficiaries of the EU's GSP + arrangement, and 48 beneficiaries of the EU's Everything But Arms arrangement. A mid-term review of the GSP scheme concluded in 2018 that there was no need to amend the GSP Regulation before its expiry on 31 December 2023 but that measures should be taken to improve transparency and inclusiveness in GSP monitoring, both in the EU and in the beneficiary countries, and to promote greater awareness of GSP in beneficiary countries.

12. New EU legislation on the screening of FDI into the EU from third countries was adopted in 2019, against the background of growing concerns regarding the impact on the strategic interests of the EU or its member States of certain types of FDI, especially in cases involving state-owned enterprises and strategic sectors. It provides for a framework for the screening by member States of FDI into the EU on the grounds of security or public order, and establishes a mechanism for cooperation between member States, and between member States and the Commission, regarding FDI from third countries likely to affect security or public order. It does not create a centralized mechanism at EU level for the screening of FDI.

13. The EU's Union Customs Code (UCC) for customs procedures at the border was implemented in 2016, although the application of several elements remain ongoing pending the full functioning of several electronic systems, some of which have faced delays. The EU's single window initiative continues to be gradually implemented. New provisions for low-value consignments are expected to be introduced in 2021.

14. The EU's applied tariff structure did not change significantly since the last Review, and the rates remain nearly identical. The simple average MFN tariff rate remains at 6.3%. MFN applied rates are generally identical, or close, to the WTO bound rates. The agricultural sector continues to stand out in the tariff analysis due to significantly higher rates (14.2% on average), the wide tariff range, and the significant use of non-*ad valorem* rates and tariff quotas. For non-agricultural products, the

fish and fishery products (11.8% simple average) and clothing (11.6%) sectors stand out as the ones with the highest tariff protection among an overall low average of 4.2%.

15. The EU maintains different categories of tariff rate quotas (TRQs) for both agricultural and non-agricultural products. As at 1 January 2019, there were 712 preferential TRQs in place pursuant to FTAs with 26 trading partners, mainly with respect to agricultural products, and 257 conventional TRQs, including WTO TRQs, and about 120 tariff lines for TRQs providing autonomous access. The EU adopted regulations on the apportionment of WTO TRQs quotas between the EU and the United Kingdom, in anticipation of the latter's eventual withdrawal from the EU. In this regard, negotiations under Article XXVIII of the GATT 1994 were initiated.

16. The EU continues to have several preferential regimes, both reciprocal and unilateral, which offer preferential duties upon importation into the EU. Based on the 2019 preferential duty rates, most partners or recipients receive duty-free access on a large percentage of their exports to the EU. Like the situation with MFN tariffs, access was greater on non-agricultural goods than on agricultural goods. In general, the percentage of duty-free lines increased since the last Review, due to the staged implementation of some agreements and new improved agreements with certain partners. At the same time, the simple average tariff rate slightly decreased for many agreements for the same reason. The share of imports under preferential tariff regimes in total EU imports is relatively low, with unilateral preferential regimes accounting for 3.8% of total imports in 2018, and preferential FTAs accounting for 13%.

17. There were several important legislative developments with respect to the EU's value-added tax (VAT) regime. For example, one set of amendments to the VAT Directive of 2006, which aims to simplify VAT for e-commerce transactions, entails the removal of the VAT threshold of EUR 22, which means that all commercial goods entering the EU will be subject to VAT from 1 January 2021. The amendments also introduce two alternative VAT collection mechanisms.

18. The EU continues to apply several prohibitions, restrictions and licensing requirements on imports which have increased in number over the review period. New or expanded prohibitions or restrictions on imports that took effect during the review period concerned measures on mercury, invasive alien species, certain persistent organic pollutants and cultural goods, for example. A directive on the single use of plastics adopted in 2019 must be transposed by member States by July 2021. A regulation on conflict minerals, adopted in 2017, requires importers of tin, tungsten, tantalum and gold to comply with certain supply chain due diligence requirements as of 1 January 2021.

19. The EU basic anti-dumping and anti-subsidy regulations were amended by two new regulations. The first, adopted in 2017, allows for the use of alternative methods of determining normal value where there are state-induced distortions in the exporting country. The amendments made by the second regulation, adopted in 2018 as part of a comprehensive modernization of EU trade remedy legislation, are more numerous and diverse and concern both procedural aspects, such as the duration of provisional measures, and substantive aspects, such as the calculation of an injury margin. The EU continues to be a significant user of trade remedies, although the number of new anti-dumping and anti-subsidy initiations steadily declined between 2016 and 2018. The steel surveillance measure continued to be in place, followed by the introduction of the steel safeguard measure replacing this measure for certain steel categories in 2018-19. A similar surveillance measure on aluminium was put in place in 2018, citing the vulnerable position of the EU industry.

20. The EU does not impose taxes, charges or levies on exports. It maintains prohibitions or restrictions on the export of about 11 categories of products, many of which are applied pursuant to international agreements, such as CITES and the Montreal Protocol. The scope of export restrictions on mercury was expanded, regulations on certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment were replaced and codified into a new regulation, and more stringent measures were put in place for raw ivory. A ban on exports of certain plastic waste to non-EU countries will apply from 2021. The EU continues to regulate the export of certain products, pursuant to its export control legislation on dual-use goods. The EU export control regulation was amended twice during the review period, mainly to update the annexes to reflect certain changes to the international agreements on which it is based. Based on a proposal made by the Commission in 2016, a legislative process is under way to upgrade the EU's export control regime.

21. Export or trade promotion activities are generally within the realms of the EU member States. In addition, most member States also have some form of officially supported export financing, credits, insurance or guarantees. The EU has several provisions on export credit, insurance and guarantee instruments but does not have any all-encompassing legislation, except on short-term official export credits. EU rules on capital requirements were amended during the review period to provide that EU financial institutions subject to these rules are no longer required to include export credits in their leverage ratios.

22. The EU provides incentives in the form of subsidies and state aid, granted both out of the EU budget and by member States. At the EU level, the two largest areas of expenditure during the 2017-18 period were agriculture, and structural operations, mainly through the European Structural and Investment Funds (ESIF). The ESIF amount to EUR 644 billion during 2014-20, of which 71.6% is EU financing (EUR 461 billion) and 28.4% is EU co-financing (EUR 183 billion). The ESIF comprise six funds: the European Regional Development Fund (43.3% of the total ESIF budget); the European Agricultural Fund for Rural Development (23.5%); the European Social Fund (18.7%); the Cohesion Fund (11.6%); the European Maritime and Fisheries Fund (2.0%); and the Youth Employment Initiative (1%). The European Commission is currently evaluating most of the state aid rules in order to take stock of the results of the reforms implemented since 2012 pursuant to the State Aid Modernization initiative. The total amount of state aid (excluding transport and agriculture) provided by member States increased from EUR 91 billion in 2014 to almost EUR 111 billion in 2017, largely due to an increase in aid for environmental protection (including energy saving).

23. Some important changes were made during the review period to the basic legislative framework regarding technical requirements, standards, conformity assessment and accreditation. Firstly, a new regulation was adopted in 2019 which aims to improve the application of the principle of the mutual recognition of goods. It provides, in particular, that member States that use existing technical regulations to restrict market access for products lawfully marketed in another member State must justify their position with technical and scientific evidence, and must grant the economic operators affected an opportunity to provide comments. Secondly, another regulation adopted in 2019 aims to enhance cooperation between national market surveillance authorities by providing for information-sharing mechanisms between them regarding illegal products and ongoing investigations.

24. Regarding sanitary and phytosanitary measures, a new regulation was adopted in 2017 on official controls on products of animal origin intended for human consumption. It includes rules for the performance of official controls and other control activities by the competent authorities of the member States, sets out the requirements to be fulfilled for the entry into the EU of consignments of animals and goods from third countries, and empowers the Commission to adopt delegated acts concerning those requirements. The Animal Health Law of 2016 is to become applicable on 21 April 2021, and the Plant Health Law of 2016 on 14 December 2019, except for certain provisions relating to a phytosanitary certificate for exports.

25. In the area of competition policy, the main legislative development during the review period was the adoption of a directive that strengthens the competences of national competition authorities in the enforcement of EU competition law. The Commission commenced the review of the Vertical Block Exemption Regulation, which will expire in May 2022. In relation to anti-competitive agreements and abuse of dominant position, the Commission adopted several decisions concerning large firms in the digital services market, and took action to ensure competition in gas supply markets. It also adopted several important decisions in merger cases.

26. One of the main developments in the area of government procurement was the adoption by the Commission, in October 2017, of a public procurement strategy which aims at further improving EU public procurement practices by working with public authorities and other stakeholders and which includes three initiatives: (i) a mechanism for large infrastructure projects, to provide clarity and guidance to public authorities on public procurement; (ii) a recommendation to professionalize public buyers; and (iii) a consultation on guidance on public procurement of innovation. To harmonize procedures and processes, the Commission introduced the European Single Procurement Document.

27. Regarding intellectual property, several legislative measures were put in place during the review period, notably with respect to copyrights and related rights: (i) the Directive on copyright in the Digital Single Market; (ii) the Directive on television and radio programmes; (iii) the Regulation on cross-border portability of online content services in the internal market; and (iv) the Directive

and Regulation to implement the Marrakesh Treaty, aimed at giving blind and visually impaired or otherwise print-disabled people better access to printed materials. The unitary patent package has not yet entered into force. In May 2019, the EU adopted amendments to its rules on supplementary protection certificates for medicinal products. Various measures were taken during the review period to implement substantive reforms to EU trademark legislation, based on a regulation modernizing the EU legal framework for EU trademarks and a directive further harmonizing national trademark laws, adopted in 2015. Given the importance of geographical indications (GI) for the EU's external trade, the EU has sought to include a comprehensive section on GI protection for agricultural products, in addition to wines and spirits, in the more recent generation of FTAs. Regarding undisclosed information, nearly all EU member States adopted legislation to implement the Trade Secrets Directive adopted in June 2016.

28. In agriculture, the 2013 reforms of the Common Agricultural Policy (CAP) have been fully applied since 2015, and the structure of the agricultural policies has remained the same: the European Agriculture Guarantee Fund (EAGF) covers direct payments and market measures (Pillar I) and the European Agricultural Fund for Rural Development (EAFRD) finances the EU contribution to rural development programmes (Pillar II). The main legislative change during the review period was the Omnibus Agricultural Provisions Regulation, adopted in December 2017, which made certain technical amendments to the four Basic Acts of the CAP on direct payments, rural development, common market organization, and horizontal regulation (financing, management and monitoring of the CAP). Legislative proposals for the reform of the CAP beyond 2020 were submitted by the Commission in 2018 and are currently under discussion. These include proposals relating to the general and specific objectives to be pursued through support funded under the EAGF and the EAFRD. No export subsidies were provided during the review period, and, as part of the broader revised EU-28 Schedule certification exercise, the EU submitted the changes to its WTO commitments to revise its export subsidy commitment levels pursuant to the Nairobi Ministerial Conference Decision. There were no substantial changes during the review period regarding market access for imports of agricultural products into the EU.

29. Regarding fisheries, there were no significant changes during the review period in the management of fisheries under the reformed Common Fisheries Policy (CFP), which has been in effect since 2014. The Commission conducted a comprehensive assessment of the implementation of the CFP, considering the CFP's objective of restoring and maintaining fish stocks at sustainable levels by 2020. While tariff protection on an MFN basis is relatively high, the EU grants preferences on a reciprocal or unilateral basis, to major fishery suppliers. The EU adopted a new regulation in December 2017 on the sustainable management of external fishing fleets. Regarding international cooperation, it signed ocean partnership agreements with China and Canada and, together with nine other countries, signed an Agreement to Prevent Unregulated Commercial Fishing on the High Seas in the Central Arctic Ocean. As at October 2019, the EU had 12 Sustainable Fisheries Partnerships Agreements with partner countries, in addition to the Northern Agreements with Norway, Iceland and the Faroe Islands.

30. Key objectives of the EU's energy policy, as defined in the Energy Union Package adopted in 2015, are: improving security of energy supply; completing the internal energy market; boosting energy efficiency; decarbonizing the economy and becoming the world leader in renewable energy; and promoting research, innovation and competitiveness. New legislation adopted during the review period relating to these objectives includes new rules on the security of gas supply and electricity risk preparedness, a revision of the gas Directive, a regulation and a directive on the internal market for electricity, amendments to the Energy Efficiency Directive, and a directive on the promotion of the use of energy from renewable sources. The 2030 Climate and Energy Policy Framework, adopted in 2014, has the following targets for 2030: reduce greenhouse gas emissions domestically by at least 40% compared to 1990 levels; reach a share of at least 32% in renewable energy; and increase energy efficiency by at least 32.5% at EU level. In 2018-19, the EU adopted a new comprehensive legislative framework for energy and climate change policies.

31. With respect to manufacturing, apart from developments relating to specific sectors (automobiles, chemicals, and steel) a notable development during the review period was the growing interest in the role of industrial policy. In September 2017, the EU formulated a renewed Industrial Policy Strategy, "Investing in a smart, innovative and sustainable industry", which aims to integrate all existing and new horizontal and sector-specific industrial policy initiatives into one comprehensive strategy. The Strategy proposed measures relating to: cybersecurity; the free flow of non-personal data; the circular economy; modernization of the intellectual property rights framework;

improvement of the functioning of public procurement markets; extension of the skills agenda to new key industry sectors; sustainable finance; a balanced and progressive trade policy and a EU framework for the screening of FDI; the secure, sustainable and affordable supply of critical raw materials; clean, competitive and connected mobility; and the exploitation of key enabling technologies. Many of the measures envisaged in this Strategy were adopted in 2018-19. In March 2019, the European Council invited the Commission to present, by the end of 2019, a long term-vision for the EU's industrial future.

32. In financial services, regulatory developments during the review period fell into four categories. Firstly, the EU took steps to reduce risk and enhance the resilience of the banking sector. In May 2019, it adopted a banking reform package which amends core provisions of the Single Rulebook, namely the Capital Requirements Regulation and Directive and the Bank Recovery Resolution Directive, considering international standards. The EU also introduced new measures regarding non-performing loans, which have been on a declining trend in recent years. Secondly, the first two pillars of the Banking Union (the Single Supervisory Mechanism and the Single Resolution Mechanism) are operational; the third pillar (the European Deposit Insurance Scheme), has yet to be established. Thirdly, most of the legislative proposals submitted by the Commission on core aspects of the Capital Markets Union, which aims to develop deeper and more integrated capital markets across the EU, were adopted during the review period. Finally, the Commission issued a communication, setting out its overall approach to equivalence in the area of financial services, and adopted several equivalence decisions with respect to third countries.

33. Regarding construction services, a sector being examined for the first time, the EU is the world's largest trader of construction services (intra- and extra-EU trade), and took several steps in recent years towards regulatory simplification and improving the internal market for the construction sector. The main legislation applicable to this sector is the 2006 Services Directive. Several other EU rules are also relevant to the construction sector, for example the 1996 Directive on the posting of workers in the framework of the provision of services, which was amended in 2018. One recent development is a proposed Directive and Regulation on a services e-card to enhance cooperation in member States but it is currently on hold. The EU has taken GATS commitments for cross-border services in the construction sector and also has made generally improved commitments in its FTAs. According to information from the OECD on services' trade restrictiveness, EU member States were ranked relatively open compared to OECD peers for construction services.

34. During the review period, the EU adopted legislative measures under the first pillar of the Digital Single Market (DSM) Strategy launched in 2015 that address different types of barriers to the growth of cross-border e-commerce. These measures deal with: cross-border portability of online content subscriptions; cooperation between national consumer protection agencies; VAT aspects of e-commerce; unjustified geoblocking; cross-border parcel delivery services; copyright in the DSM; copyright and related rights applicable to certain online transmissions of broadcasting organizations and retransmissions of television and radio programmes; contracts for the supply of digital content and services; and contracts for the sale of goods.

35. The second pillar of the DSM Strategy resulted in a major reform of EU rules on telecommunications infrastructure and services markets with the adoption, in December 2018, of a new European Electronic Communications Code (recast) (EECC). The EECC, which member States are required to transpose by 21 December 2020, amends the four Directives that constitute the current EU telecoms regulatory framework and integrates them into a single legal instrument. It expands the scope of application of EU telecoms regulation in various respects, in line with the principle of technological neutrality and to keep pace with technological developments. It aims to contribute to the creation of the additional capacity in high-speed broadband networks necessary to achieve the strategic Internet connectivity objectives set by the Commission in 2016. The EECC also contains provisions aimed at increasing the coordination and coherence of radio spectrum management, significantly alters the scope of universal service obligations, strengthens consumer protection rights, and reinforces the role of national regulatory authorities. The EECC was accompanied by the adoption of new rules on the role of the Body of European Regulators for Telecommunications.

36. Other measures adopted under the second pillar of the DSM Strategy, include a non-binding Commission Recommendation of 1 March 2018 on measures to effectively tackle illegal content online and a Regulation, adopted in June 2019, on rules to improve the fairness and transparency of online platforms. This Regulation aims to address potential friction arising from the growing

dependence of business users on providers of intermediation services. In June 2019, the EU Cybersecurity Act entered into force. It reinforces the role of the EU Agency for Cybersecurity, and establishes a European cybersecurity certification framework.

37. In audiovisual services, the Audiovisual Media Services Directive was the subject of a comprehensive set of amendments in 2018. The main changes reinforce the country of origin principle, reinforce the existing rules on hate speech and prohibit provocations to commit terrorist acts, introduce additional protections for children, extend certain rules for audiovisual media services to video-sharing platforms, establish rules on the promotion of European content in respect of on-demand audiovisual service providers, introduce more flexibility regarding restrictions on television advertising, and require member States to establish national regulatory authorities or bodies.

## 1 ECONOMIC ENVIRONMENT

### 1.1 Main Features of the Economy

1.1. In 2018, EU's gross domestic product (GDP) stood at EUR 15.8 trillion, up from EUR 14.7 trillion in 2015. Services are the main contributors to GDP, accounting for nearly three quarters of the output. Cyprus, Luxembourg, and Malta are the most services-oriented economies, with over 80% of their total output (Table 1.1). Industry accounts for some 25% of GDP, also with noticeable disparities among member States. Ireland, Poland, the Czech Republic, and the Slovak Republic record the highest share of industry in their national output.

1.2. The EU is the world's largest trading bloc and the world's largest trader of manufactured goods and services.<sup>1</sup> Intra-EU trade is an important part of its member States' trade. More than two thirds of EU countries' total trade is with other EU member States.

### 1.2 Recent Economic Developments

1.3. The EU's economy has moved from recovery mode to an upturn in recent years. Since 2015, GDP growth rates averaged more than 2%. However, increasing global and domestic uncertainties, trade tensions between major global trading entities and the prospect of the United Kingdom leaving the EU, together with weakness in the manufacturing sector, led to a slowdown in the second half of 2018.<sup>2</sup>

1.4. During the review period, from 2017 to 2018 (the latest year for which data are available), economic growth was relatively strong. All member States contributed to the strong expansion, albeit to different degrees (Table 1.1). Among the five largest economies, only Spain recorded an annual growth rate over 2% in 2018. Italy had the lowest growth performance (0.8%). Ireland, Malta and Poland grew by more than 5%. According to the European Commission (the Commission), the recent economic performance suggests an ongoing economic convergence, as higher growth rates are mostly recorded in member States with lower levels of GDP per capita.<sup>3</sup>

**Table 1.1 Selected indicators, 2015-18**

	GDP at current prices (2018) EUR billion	Real GDP growth (%)				GDP per capita (2018)		Share in gross value added, % (2018)		
		2015	2016	2017	2018	EUR at current prices	PPS <sup>a</sup>	Agri-culture, forestry and fishing	Industry <sup>b</sup>	Services
EU-28	15,898.3	2.3	2.0	2.6	2.0	30,960	30,960	1.6	24.6	73.7
Austria	385.7	1.0	2.1	2.5	2.4	43,640	39,320	1.3	28.8	69.9
Belgium	459.8	2.0	1.5	2.0	1.5	40,320	36,470	0.6	21.4	78.0
Bulgaria	56.1	4.0	3.8	3.5	3.1	7,980 <sup>c</sup>	15,810 <sup>c</sup>	3.9	25.8	70.3
Croatia	51.6	2.4	3.5	3.1	2.6	12,560	19,450	3.5	24.8	71.8
Cyprus	21.1 <sup>c</sup>	3.4	6.7	4.4	4.1 <sup>c</sup>	24,290 <sup>c</sup>	27,280 <sup>c</sup>	2.3 <sup>c</sup>	14.1 <sup>c</sup>	83.6 <sup>c</sup>
Czech Republic	207.8	5.3	2.5	4.4	3.0	19,550	28,150	2.2	35.8	62.0
Denmark	298.3	2.3	2.4	2.3	1.5	51,480	39,050	1.2	23.8	75.0
Estonia	26.0	1.8	2.6	5.7	4.8	19,740	25,510	3.1	27.7	69.2
Finland	234.5	0.6	2.6	3.1	1.7	42,500	34,300	2.8	28.4	68.8
France	2,353.1 <sup>c</sup>	1.1	1.1	2.3 <sup>c</sup>	1.7 <sup>c</sup>	34,980 <sup>c</sup>	31,980 <sup>c</sup>	1.8 <sup>c</sup>	19.0 <sup>c</sup>	79.2 <sup>c</sup>
Germany	3,344.4	1.7	2.2	2.5	1.5	40,340	37,600	0.9	30.5	68.7
Greece <sup>c</sup>	184.7	-0.4	-0.2	1.5	1.9	17,220	20,960	4.3	17.5	78.2
Hungary	133.8	3.8	2.2	4.3	5.1	13,690	22,010	4.2	30.1	65.7

<sup>1</sup> European Commission, *the economy*. Viewed at: [https://europa.eu/european-union/about-eu/figures/economy\\_en](https://europa.eu/european-union/about-eu/figures/economy_en).

<sup>2</sup> European Commission, *European Economic Forecast (spring and summer editions)*. Viewed at: [https://ec.europa.eu/info/sites/info/files/economy-finance/ip108\\_en.pdf](https://ec.europa.eu/info/sites/info/files/economy-finance/ip108_en.pdf), and [https://ec.europa.eu/info/sites/info/files/economy-finance/ip102\\_en.pdf](https://ec.europa.eu/info/sites/info/files/economy-finance/ip102_en.pdf).

<sup>3</sup> European Commission, *Annual Growth Survey 2019: For a stronger Europe in the face of global uncertainty*. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1547650919951&uri=CELEX%3A52018DC0770>.



	GDP at current prices (2018) EUR billion	Real GDP growth (%)				GDP per capita (2018)		Share in gross value added, % (2018)		
		2015	2016	2017	2018	EUR at current prices	PPS <sup>a</sup>	Agri-culture, forestry and fishing	Industry <sup>b</sup>	Services
Ireland	324.0	25.2	3.7	8.1	8.2	66,670	58,840	1.0	39.3	59.7
Italy	1,765.4	0.8	1.3	1.7	0.8	29,220	29,630	2.2	23.9	74.0
Latvia	29.2	3.3	1.8	3.8	4.6	15,130	21,470	4.1	22.5	73.4
Lithuania	45.3	2.0	2.6	4.2	3.6	16,160	25,010	3.2	28.4	68.4
Luxembourg	60.1	4.3	4.6	1.8	3.1	98,640	80,130	0.3	13.0	86.7
Malta	12.3	10.8	5.7	6.7	6.8	25,560	30,250	1.0	13.7	85.3
Netherlands	774.0 <sup>c</sup>	2.0	2.2	2.9	2.6 <sup>c</sup>	44,920 <sup>c</sup>	39,890 <sup>c</sup>	1.8 <sup>c</sup>	20.0 <sup>c</sup>	78.1 <sup>c</sup>
Poland	496.4	3.8	3.1	4.9	5.1	12,920	21,940	2.4	32.7	64.9
Portugal	203.9 <sup>c</sup>	1.8	2.0	3.5	2.4 <sup>c</sup>	19,830 <sup>c</sup>	23,660 <sup>c</sup>	2.4 <sup>c</sup>	22.2 <sup>c</sup>	75.5 <sup>c</sup>
Romania	202.9 <sup>c</sup>	3.9	4.8	7.1	4.0 <sup>c</sup>	10,420 <sup>c</sup>	19,980 <sup>c</sup>	4.8 <sup>c</sup>	32.0 <sup>c</sup>	63.2 <sup>c</sup>
Slovak Republic	89.7	4.8	2.1	3.0	4.0	16,470	23,900	2.6	33.6	63.8
Slovenia	45.8	2.2	3.1	4.8	4.1	22,080	26,890	2.4	32.7	64.9
Spain	1,202.2 <sup>c</sup>	3.8	3.0	2.9 <sup>c</sup>	2.4 <sup>c</sup>	25,730 <sup>c</sup>	28,130 <sup>c</sup>	3.1 <sup>c</sup>	22.1 <sup>c</sup>	74.8 <sup>c</sup>
Sweden	471.2	4.4	2.4	2.4	2.3	46,310	37,710	1.6	25.5	73.0
United Kingdom	2,419.2	2.4	1.9	1.9	1.4	36,410	32,590	0.7	19.6	79.7

a In euro, measured on the basis of purchasing power standards (PPS).

b Including construction.

c Provisional.

Source: Eurostat, *National Accounts (including GDP), (nama\_10\_gdp), (nama\_10\_pc), and (nama\_10\_a10)*. Viewed at: <https://ec.europa.eu/eurostat/web/national-accounts/data/database>.

1.5. While domestic demand's contribution to growth remained important, buoyant external trade played an important part in the 2017 acceleration (Chart 1.1). Exports growth on average surpassed imports growth.

1.6. Economic impulses from abroad were particularly explanatory of Germany's economic performance in 2017. In contrast, the expansion in France, Italy and the United Kingdom was largely internally driven, and marginally supported by gradual labour market and tax reforms in France. Both internal and external factors contributed to growth in Spain. In Italy, economic performance continued to be affected by its still vulnerable financial sector and weak lending. EU-wide, strong jobs creation supported household income and consumer spending, while stronger confidence and improved profit margins supported business investments. At the same time, according to the Commission, strong demand from trading partners and progress in structural reforms helped to improve competitiveness and support export growth.<sup>4</sup>

1.7. GDP growth slowed in 2018, as the German economy contracted in 2018 Q3. The downturn in the automotive market contributed to the slowdown. This was partly the consequence of the introduction of new emissions standards<sup>5</sup>, the Worldwide Harmonized Light Vehicles Test Procedure, with higher requirements for the reduction of CO<sub>2</sub> emissions, and the so-called Dieseltgate scandal disclosed in September 2015. The negative effects were also felt in EU countries having industrial connections with the German automotive industry. Furthermore, foreign demand declined markedly in 2018, on the back of global trade tensions and uncertainties in connection with the United Kingdom's withdrawal from the EU. Weaker global trade growth, due to escalating trade tensions around the world and elevated political tensions, affected business confidence in 2018.

1.8. In the context of fading export performance, domestic demand remained the bedrock of the EU's economy. Improving labour markets and low interest rates continued to boost incomes and private consumption. Investments returned to their pre-crisis level in 2017, and gross fixed capital formation continued to firm up in 2018, sustained by buoyant business sentiment, rising profits and favourable financing conditions (Chart 1.2). This is also partly attributed to the Investment Plan for

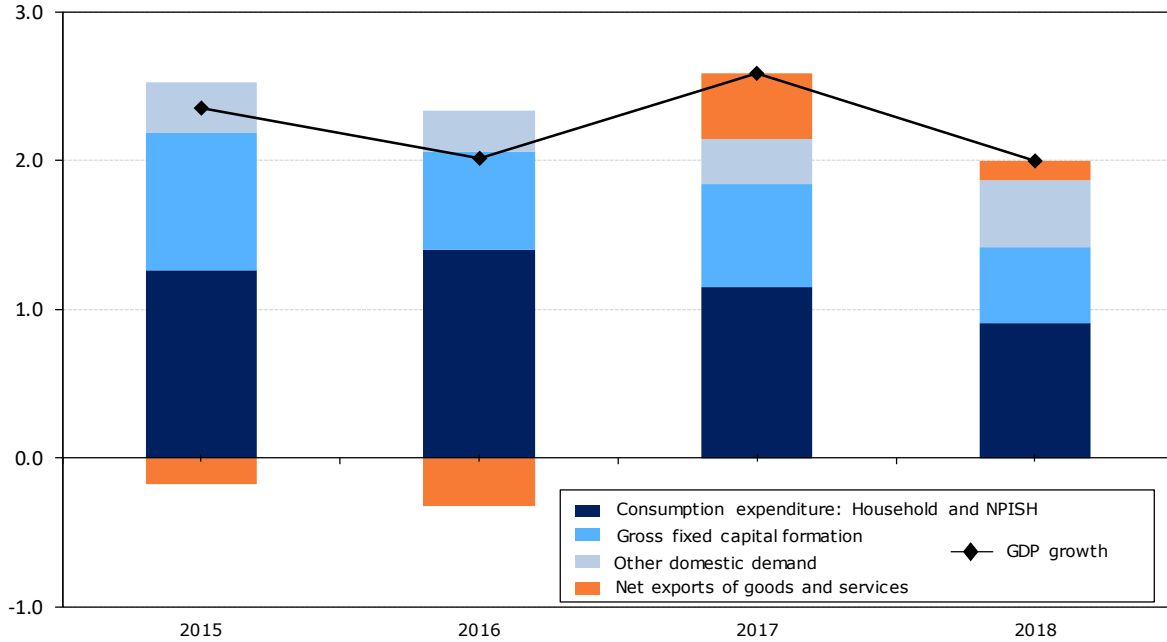
<sup>4</sup> European Commission, *Annual Growth Survey 2019*.

<sup>5</sup> European Commission, *European Economic Forecast - Spring 2019*. Viewed at: [https://ec.europa.eu/info/sites/info/files/economy-finance/ip102\\_en.pdf](https://ec.europa.eu/info/sites/info/files/economy-finance/ip102_en.pdf).

Europe, launched in November 2014. The Plan was set to inject EUR 500 billion in additional investment across the EU, create 1.4 million jobs, and add 1.3% to the EU's GDP by 2020.

**Chart 1.1 Contribution to GDP growth, 2015-18**

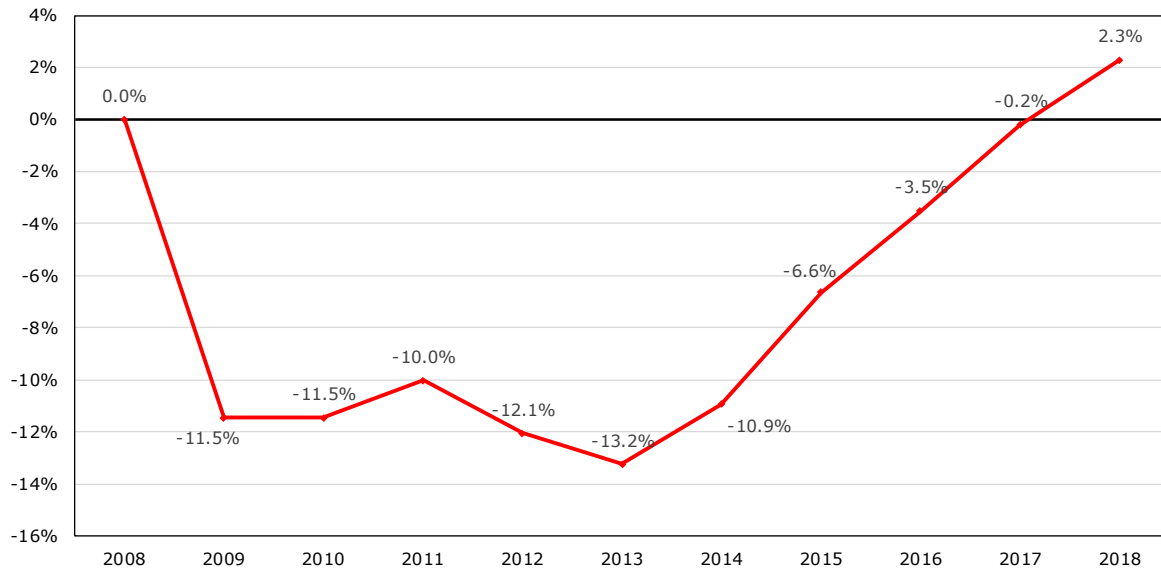
(Percentage point)



Source: Eurostat, *National Accounts (including GDP), (nama\_10\_gdp)*. Viewed at: <https://ec.europa.eu/eurostat/web/national-accounts/data/database>.

**Chart 1.2 Gross fixed capital formation (investments)**

(Percentage change in the level of investment compared to 2008, at chained linked volume)



Source: Eurostat, *National Accounts (including GDP), (nama\_10\_gdp)*. Viewed at: <https://ec.europa.eu/eurostat/web/national-accounts/data/database>.

1.9. In the first quarter of 2019, GDP growth was estimated at 0.5%, driven by domestic demand and, in particular, private consumption and investment.<sup>6</sup> This represented the 24<sup>th</sup> consecutive quarter of expansion. In Germany, growth turned positive after two quarters of either contraction or stagnation, and Italy left the technical recession in which it had been over the second half of 2018. Broadly, this performance reflects a number of factors including booming construction activities, particularly in Germany; a rebound in car sales following the decrease in the second half of 2018; and the substantial increase in goods exports to the United Kingdom, in preparation for the original Brexit date.<sup>7</sup>

1.10. The relatively strong growth in 2019-Q1 proved to be temporary, as it was followed by renewed weaknesses. Most recent data from the summer edition of the European Economic Forecast suggests that, at mid-year 2019, the EU's economy showed resilience regarding domestic demand, but export-oriented activities were subdued, reflecting persistent policy uncertainties and weakness in global trade growth, as trade tensions had recently escalated.

1.11. Economic growth in the EU led to a noticeable improvement in the labour market situation everywhere, which was accompanied by a significant drop in unemployment rates in all member States. The rate at the EU level fell from 9.4% in 2015 to 6.8% in 2018. However, significant disparities persisted, with rates ranging from 19.3% in Greece to 2.2% in the Czech Republic (Table A1.1). While still too high in a number of member States, unemployment is at its lowest level EU-wide in a decade.

1.12. Inflation, as measured by the Harmonised Index of Consumer Prices (HICP), followed an increasing trajectory from 0.1% in 2015 and 0.2% in 2016, to 1.7 in 2017, before culminating at 1.9% in 2018. This development was mainly due to energy price effects. Wage growth does not seem to have resulted in inflationary pressure.<sup>8</sup>

### **1.2.1 Balance of payments**

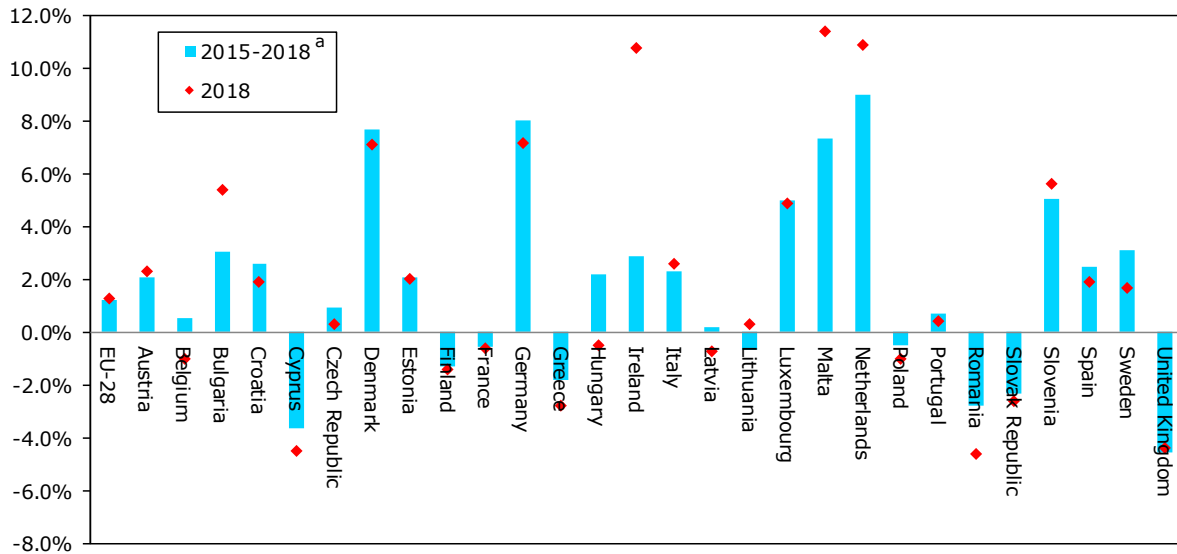
1.13. The EU's current account remained in surplus during the review period. As a percentage of GDP, the surplus remained stable, at 1.3% in 2017 and 2018. It increased from 0.9% in 2015 to 1.4% in 2016. Current account imbalances continued within the EU during the review period, but to a lesser extent than in 2008. In recent years, EU countries with high and persistent current account deficits (mainly Portugal and Spain) saw noticeable improvement, reflecting moderated domestic demand and more competitive economies. At the same time, countries such as Germany, the Netherlands and Denmark continued to post elevated current account surpluses (Chart 1.3 and Table A1.1).

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<sup>6</sup> European Commission, *Eurostat online database*. Viewed at: <http://ec.europa.eu/eurostat/web/main/home>.

<sup>7</sup> European Commission, *European Economic Forecast -Summer 2019 (Interim)*. Viewed at: [https://ec.europa.eu/info/sites/info/files/economy-finance/ip108\\_en.pdf](https://ec.europa.eu/info/sites/info/files/economy-finance/ip108_en.pdf).

<sup>8</sup> European Commission, *European Economic Forecast -Summer 2019 (Interim)*.

**Chart 1.3 Current account balance as % of GDP**

Note: EU-28 *vis-à-vis* extra-EU-28. Each member State with the rest of the world (including other EU members).

a The average is for the 2015-18 period.

Source: Eurostat, *Balance of Payments (bop\_gdp6\_q)*. Viewed at: <https://ec.europa.eu/eurostat/web/balance-of-payments/data/database>.

### 1.2.2 Fiscal governance and performance

1.14. On fiscal governance, significant progress was made in recent years, through the "Six Pack" and "Two Pack" regulations, to ensure that the EU's public finances are sound, sustainable, and capable of absorbing future shocks.<sup>9</sup> In 2018, only Spain was in the Excessive Deficit Procedure under the Stability and Growth Pact, down from 24 member States in 2011. On 14 June 2019, the Procedure was abrogated for Spain. The Commission also addressed a warning to Hungary and Romania that a significant deviation was observed in 2018, and invited the Council to recommend they correct it.<sup>10</sup> The Commission also adopted reports for Belgium, France, Italy and Cyprus, in which it reviews their compliance with the deficit and debt criteria under Article 126(3) of the Treaty on the Functioning of the European Union (TFEU).

1.15. The Commission warned Belgium about its public finances, particularly the high level of its debt, which has not been significantly reduced. However, it did not propose to open an Excessive Deficit Procedure on the country. With respect to Italy, the Commission's report examined the budgetary outturn in 2018 and the fiscal forecasts for 2019 and 2020, and concluded that a Procedure was warranted. However, on 1 July, the Italian Government adopted its mid-year budget for 2019 and a decree-law, which included a correction for 2019 amounting to EUR 7.6 billion, or 0.42% of GDP in nominal terms. In addition, the Italian Government reiterated its commitment to achieving a structural improvement in 2020, notably through, *inter alia*, a new spending review and revision of tax expenditures. Consequently, the Commission concluded that a Procedure is no longer warranted for Italy.<sup>11</sup>

1.16. There are ongoing efforts to rationalize expenditures by shifting resources from the common agricultural and cohesion policies to areas such as research and innovation, young people, the digital economy, migration, and climate objectives. There are also other tax-related developments at the

<sup>9</sup> See WTO document WT/TPR/S/317/Rev.1, 21 October 2015, for information on the Six Pack and Two Pack regulations.

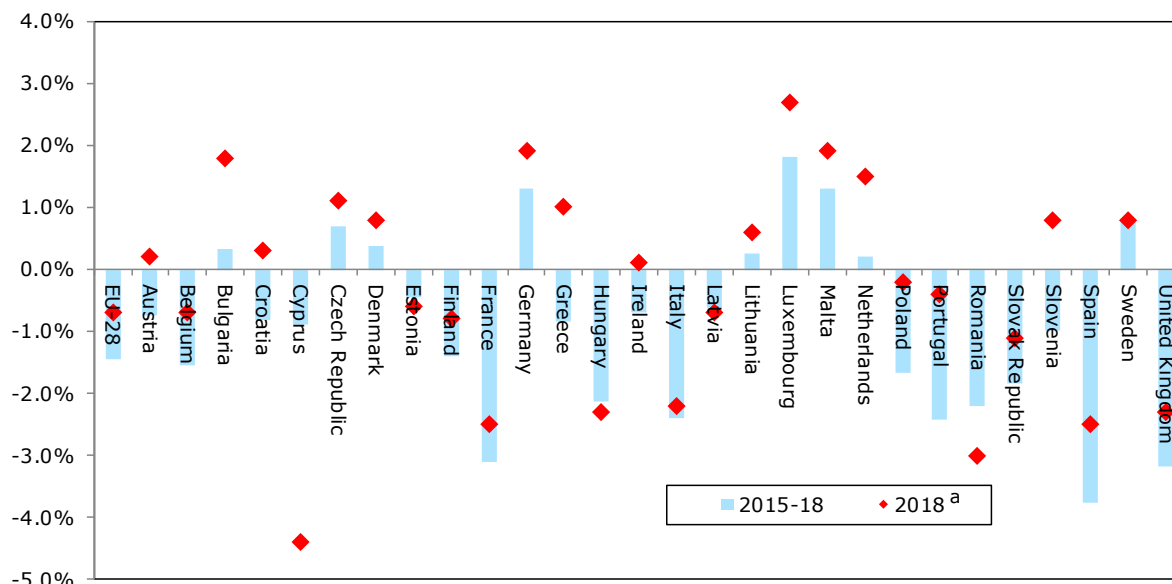
<sup>10</sup> European Commission, *Excessive deficit procedures – overview*. Viewed at: [https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/eu-economic-governance-monitoring-prevention-correction/stability-and-growth-pact/corrective-arm-excessive-deficit-procedure/excessive-deficit-procedures-overview\\_en](https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/eu-economic-governance-monitoring-prevention-correction/stability-and-growth-pact/corrective-arm-excessive-deficit-procedure/excessive-deficit-procedures-overview_en).

<sup>11</sup> European Commission, *Commission concludes that an Excessive Deficit Procedure is no longer warranted for Italy at this stage*. Viewed at: [https://europa.eu/rapid/press-release\\_IP-19-3569\\_en.htm](https://europa.eu/rapid/press-release_IP-19-3569_en.htm).

EU level and in some member States. The proposal to apply a rate of 3% to the new Common Consolidated Corporate Tax Base (CCCTB) seems to have beneficial features, as it reduces opportunities to shift profits within the EU. According to the International Monetary Fund (IMF), tax competition remains an issue. Proposals for a "digital services tax" have been suspended until 2020. However, some member States, including Austria, France, Italy, and Spain, have taken steps for their own versions of such a tax.<sup>12</sup>

1.17. During the review period, the improvement in public deficit was mainly attributed to favourable cyclical conditions, notably increased revenues, supported by higher economic growth and lower interest payments due to historically low interest rates. Government deficit decreased steadily from 2.4% in 2015 to 0.7% in 2018 (Table A1.1 and Chart 1.4). However, as expenditure efforts seemed to have weakened in 2018 and 2019 in most of the member States, assuming full implementation by member States of their budget plans, the EU's aggregate deficit is projected to rise to 0.9% in 2019, before decreasing in the following years (0.4% in 2022).<sup>13</sup> Government debt is also on a downward path. The ratio of government debt to GDP fell from 84.9% in 2015 to 80.4% in 2018.

**Chart 1.4 General government deficit/surplus as % of GDP**



a The average is for the 2015-18 period.

Source: Eurostat, *General government deficit/surplus (tec00127)*. Viewed at: <http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=tec00127&lang=en>.

### 1.2.3 Monetary and exchange rate developments

1.18. The European Central Bank (ECB) and the national central banks of the euro-area countries, which together make up the Eurosystem, are responsible for monetary policy for the euro area. Monetary decisions in the euro area can only be taken by the Governing Council of the ECB, made up of the governors of the national central banks of the euro-area countries (the members of the ECB's executive board).

1.19. The ECB's mission is to ensure price stability within the euro area. It aims to keep inflation below, but close to, 2% over the medium term, which is considered optimal for promoting growth and employment.

<sup>12</sup> IMF, *Euro Area Policies: 2019 Article IV Consultation*. Viewed at: <https://www.imf.org/en/Publications/CR/Issues/2019/07/10/Euro-Area-Policies-2019-Article-IV-Consultation-Press-Release-Staff-Report-and-Statement-by-47101>.

<sup>13</sup> European Commission, *The 2019 Stability & Convergence Programmes*. Viewed at: [https://ec.europa.eu/info/sites/info/files/economy-finance/ip110\\_en.pdf](https://ec.europa.eu/info/sites/info/files/economy-finance/ip110_en.pdf).

1.20. Of the 28 member States, 19 are using the euro, 2 have their currencies pegged to the euro, and the remaining 7 have free or managed-floating currencies. The Eurosystem can conduct foreign exchange interventions, and holds and manages the euro area's foreign currency reserves. The ECB intervened in the foreign exchange market in 2000 and 2011. The latest ECB intervention, in 2011, was a coordinated intervention with other major central banks to weaken the Japanese yen after a major earthquake.<sup>14</sup> It is also possible for the Economic and Financial Affairs (ECOFIN) Council to conclude formal exchange rate agreements. For EU member States not using the euro, the Exchange Rate Mechanism (ERM II) ensures that currency rate fluctuations do not impact economic stability by fixing the exchange rate with the euro within set limits. Currently, the ERM II only includes the currency of Denmark. The Danish kroner joined the ERM II on 1 January 1999, and observes a central rate of 7.46038 to the euro, with a fluctuation band of  $\pm 2.25\%$ .<sup>15</sup>

1.21. During the review period, the nominal exchange rate of the euro appreciated, on average, against the US dollar. The same movement was observed in terms of the effective exchange rate against its major trading partners' currencies. On average, in 2017-18, the euro appreciated by 2% against a basket of 19 currencies. Furthermore, it appreciated by 4.2% against a basket of currencies representing its 38 main trading partners.<sup>16</sup>

1.22. Monetary policy continued to ensure favourable financing conditions and support economic expansion during the review period. While the ECB ended its net asset purchases programme in December 2018, the ECB monetary policy remained highly accommodative since the beginning of this year, with a new easing package announced in September. The latest measures were considered necessary in light of further downward revisions in the ECB Governing Council's inflation outlook. Most notably, the latest package included a 10 basis point (bps) cut in the deposit facility rate (DFR) to -0.5%. The interest rate on the main refinancing operations and the rate on the marginal lending facility remained unchanged, at 0.00% and 0.25%, respectively. In addition, open-ended net asset purchases at a pace of EUR 20 billion per month were due to restart from 1 November 2019. The duration of the purchases was not set in advance, with the Governing Council expecting them "to end shortly before it starts raising the key ECB interest rates".<sup>17</sup>

1.23. To further improve the borrowing conditions of the euro-area private sector, the forward guidance on policy rates was also changed. The new forward guidance no longer includes the date-based leg ("at least through the first half of 2020") and becomes entirely state-based, with a first rate hike now linked to a sufficient convergence of the inflation outlook to the ECB's objective over the ECB projection horizon that should be "consistently reflected in underlying inflation dynamics". As a complement to the other monetary policy-easing measures, the modalities of the new series of Targeted Longer-Term Refinancing Operations (TLTROs), announced in June 2019, were also changed, making it possible for banks to access longer-term funding at lower rates with a longer maturity. Finally, it was also decided that a two-tier system for reserve remuneration is being introduced in November 2019, in order to safeguard bank-based policy transmission. According to this new system, part of banks' holdings of excess liquidity will be exempt from the negative deposit facility.

#### 1.2.4 Outlook

1.24. The EU's economic outlook is mainly subject to domestic policy uncertainty and rising protectionism in trade and investment. According to the Organization for Economic Co-operation and Development (OECD), the United Kingdom's withdrawal from the EU is not a major threat to the EU's overall economic performance; however, countries with the closest trade links to the United Kingdom (e.g. Ireland) could be severely impacted if the United Kingdom left the EU without a withdrawal agreement. While the detrimental effect of a "hard" Brexit on the United Kingdom's economy would reduce its GDP by some 3.3% by 2020, it would reduce the EU-27 GDP by around

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<sup>14</sup> ECB, *Press release: ECB enhances reporting on FX interventions*. Viewed at: [https://www.ecb.europa.eu/press/pr/date/2019/html/ecb.pr190927\\_1~fcdcb74515.en.html](https://www.ecb.europa.eu/press/pr/date/2019/html/ecb.pr190927_1~fcdcb74515.en.html).

<sup>15</sup> European Commission, *ERM II – the EU's Exchange Rate Mechanism*. Viewed at: [https://ec.europa.eu/info/business-economy-euro/euro-area/enlargement-euro-area/introducing-euro/adoption-fixed-euro-conversion-rate/erm-ii-eus-exchange-rate-mechanism\\_en](https://ec.europa.eu/info/business-economy-euro/euro-area/enlargement-euro-area/introducing-euro/adoption-fixed-euro-conversion-rate/erm-ii-eus-exchange-rate-mechanism_en).

<sup>16</sup> ECB. Viewed at: [http://sdw.ecb.europa.eu/quickview.do?SERIES\\_KEY=120.EXR.A.USD.EUR.SP00.A](http://sdw.ecb.europa.eu/quickview.do?SERIES_KEY=120.EXR.A.USD.EUR.SP00.A).

<sup>17</sup> ECB, *Monetary policy decisions*. Viewed at: <https://www.ecb.europa.eu/press/pr/date/2019/html/ecb.mp190912~08de50b4d2.en.html>.

1%.<sup>18</sup> According to the Summer 2019 edition of the European Economic Forecast (to be updated in November 2019 and February 2020), in spite of global challenges, the EU is expected to continue growing in the next two years, with annual growth forecast to slow from 2.0% (1.9% in the euro area) in 2018 to 1.4% in 2019 (1.2% in the euro area), as the German economy slipped into negative territory in 2019 Q2 and it continued to show signs of weak exports. However, the EU economy is set to firm up at 1.6% in 2020 (1.4% in the euro area), as adverse domestic factors are expected to fade and economic activity outside the EU to rebound. The labour market situation is expected to continue improving but at a slower pace.<sup>19</sup>

1.25. Inflation is expected to ease in 2019 (1.5%), driven by low energy prices, before picking up slightly in 2020 (1.6%). The core inflation rates are not expected to increase significantly despite the positive development in the EU labour markets.

### 1.2.5 Main challenges and policy response

1.26. The Europe 2020 Strategy is the EU's agenda for growth and jobs for the current decade. It emphasizes smart, sustainable and inclusive growth as a way to overcome the structural weaknesses in the economy, improve competitiveness and productivity, and underpin a sustainable social market economy. The final objective is to deliver high levels of employment, productivity and social cohesion in the member States, while reducing the impact on the environment. The Commission set five targets under the strategy: (i) 75% employment level for people aged 20-64; (ii) 3% of GDP invested in research and development (R&D); (iii) greenhouse gas emissions 20% lower than 1990 levels, 20% of energy coming from renewables, and a 20% increase in energy efficiency; (iv) reduction of early school leavers to below 10%, and at least 40% of 30-34 year-olds having completed higher education; and (v) lifting at least 20 million people out of the risk of poverty and social exclusion.<sup>20</sup> These targets were translated into national targets, as defined in the National Reform Programmes (NRPs). The NRPs represent the set of policies EU member States plan to implement to promote economic growth and job creation and prevent/correct imbalances.<sup>21</sup>

1.27. Given the decreasing trend in investments and with the view to creating jobs in the spirit of the Europe 2020 Strategy, in 2014, the Investment Plan for Europe of which the Capital Markets Union is a main pillar (Section 4.4.1.3), was launched. It aims to reverse the downward trend of low levels of investment and put Europe on the path to economic recovery. The Plan consists of three pillars: (i) the European Fund for Strategic Investments (EFSI), which provides an EU guarantee to mobilize private investment. The European Commission works jointly with the European Investment Bank (EIB) on this pillar; (ii) the European Investment Advisory Hub and the European Investment Project Portal, that focus on providing technical assistance and greater visibility of investment opportunities for international investors; and (iii) measures to further improve the EU's investment climate by increasing regulatory predictability and eliminating obstacles for investments.

1.28. Estimates from the EIB suggest that the EFSI has already supported more than 750,000 jobs, with the figure set to rise to 1.4 million jobs by 2020 compared to the baseline scenario. In addition, calculations show that the Investment Plan for Europe has already increased EU GDP by 0.6%, and it is set to increase it by 1.3% by 2020.<sup>22</sup>

1.29. At the EU level, structural reforms aim to promote growth and employment in line with the Europe 2020 Strategy, while fiscal policies focus on ensuring sustainability of public finances in line with the Stability and Growth Pact, and the prevention of excessive macroeconomic imbalances. In

<sup>18</sup> OECD, *Economic Surveys – European Union*. Viewed at: <https://www.oecd.org/eco/surveys/European-union-2018-OECD-economic-survey-overview.pdf>.

<sup>19</sup> European Commission, *European Economic Forecast -Summer 2019*. Viewed at: [https://ec.europa.eu/info/publications/european-economic-forecast-summer-2019\\_en](https://ec.europa.eu/info/publications/european-economic-forecast-summer-2019_en).

<sup>20</sup> European Commission, *Europe 2020: A European strategy for smart, sustainable and inclusive growth*. Viewed at: <https://ec.europa.eu/eu2020/pdf/COMPLET%20EN%20BARROSO%20%20%20007%20-%20Europe%202020%20-%20EN%20version.pdf>.

<sup>21</sup> European Commission, *National Reform Programmes and Stability/Convergence Programmes*. Viewed at: [https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/eu-economic-governance-monitoring-prevention-correction/european-semester/european-semester-timeline/national-reform-programmes-and-stability-convergence-programmes\\_en](https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/eu-economic-governance-monitoring-prevention-correction/european-semester/european-semester-timeline/national-reform-programmes-and-stability-convergence-programmes_en).

<sup>22</sup> European Commission, *Juncker Plan exceeds original €315 billion investment target*. Viewed at: [https://ec.europa.eu/commission/news/juncker-plan-exceeds-original-eu315-billion-investment-target-2018-jul-18-0\\_en](https://ec.europa.eu/commission/news/juncker-plan-exceeds-original-eu315-billion-investment-target-2018-jul-18-0_en).

recent years, under the European Semester<sup>23</sup>, the EU made significant progress towards promoting structural reforms and ensuring sound fiscal policies in member States.

1.30. The reforms and other policy measures led to inclusive growth, facilitated the reduction of macroeconomic imbalances, better fiscal positions of member States, and reduced debt levels, and stimulated high-quality public spending. Furthermore, efforts are ongoing in areas like services, as progress was made towards establishing a Digital Single Market, a Banking Union, a Capital Market Union, good quality infrastructure, broadband, energy, transport, and a circular economy, with a view to creating new opportunities for inclusive economic growth (Section 4). In the framework of the European Semester, the European Pillar of Social Rights aims to support inclusive economic growth, by improving labour market conditions for all EU citizens.<sup>24</sup> The recent economic and labour market recovery led to a decrease in the number of people at risk of poverty or social exclusion. In 2017, the latest available figures, more than 5 million people exited from the risk of poverty or social exclusion. With the current trend, the Commission sees the EU on track to meet the Europe 2020 target of a 75% employment rate of people aged 20-64 in 2020. The number of people at risk of poverty has dropped considerably.<sup>25</sup> However, the risk of poverty or social exclusion remains a challenge for groups such as children, people with disabilities and people with a migrant background.<sup>26</sup>

1.31. The relatively positive recent growth performance of the EU economy provides an opportunity to focus on certain important long-term challenges that need to be addressed to support stronger and more inclusive growth. Of particular importance, in this regard, are measures to improve productivity and boost investment in order to increase the EU's potential growth, which has fallen significantly since the financial crisis. The single market, which is the main asset for spurring productivity and economic growth, remains fragmented in several areas, such as services, energy and the digital economy, and thereby fails to fulfil its potential.<sup>27</sup> Measures are also necessary to better harness digital technologies to adapt to rapid technological change and to create inclusive labour markets to raise living standards and potential growth.<sup>28</sup>

1.32. Similarly, the European Commission's Annual Growth Survey 2019 calls for decisive and concerted policy action by the EU and its member States to deliver on the promise of inclusive and sustainable growth, especially in the context of rising global uncertainty, and to increase the EU's growth potential and economic and social resilience.<sup>29</sup> It identifies the main risks and challenges facing the EU as follows:

- persisting vulnerabilities: low productivity growth; persisting income inequality and slow reduction in poverty; regional and territorial disparities; high public and private debt; and other remaining macroeconomic imbalances, notably within the euro area;
- short-term challenges: rising protectionism and geo-political tensions affecting trade relations; instability in emerging markets; skills mismatches and emerging labour shortages in some countries and sectors; migration; slow diffusion of new digital

<sup>23</sup> The European Semester refers to a cycle of coordination, through which member States align their budgetary and economic policies with the objectives and rules agreed at the EU level.

<sup>24</sup> European Commission, *European Pillar of Social Rights: Building a more inclusive and fairer European Union*. Viewed at: [https://ec.europa.eu/commission/priorities/deeper-and-fairer-economic-and-monetary-union/european-pillar-social-rights\\_en](https://ec.europa.eu/commission/priorities/deeper-and-fairer-economic-and-monetary-union/european-pillar-social-rights_en).

<sup>25</sup> European Commission, *Annual Growth Survey 2019*. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1547650919951&uri=CELEX%3A52018DC0770>.

<sup>26</sup> Council of the European Union, *Joint Employment Report 2019*. Viewed at: <https://data.consilium.europa.eu/doc/document/ST-6167-2019-INIT/en/pdf>.

<sup>27</sup> The European Commission issued a communication in November 2018 on the significant untapped potential of the Single Market. *The Single Market in a changing world. A unique asset in need of renewed political commitment*. Viewed at: <https://ec.europa.eu/transparency/reqdoc/rep/1/2018/EN/COM-2018-772-F1-EN-MAIN-PART-1.PDF>. See also Copenhagen Economics, *Making EU Trade in Services Work for All. Enhancing innovation and competitiveness throughout the EU economy*. Viewed at: <https://www.copenhageneconomics.com/publications/publication/making-eu-trade-in-services-work-for-all>. This study notes (p.8) that "[f]rom a business perspective, the reality of the Single Market for services falls short of expectations. The Single Market has on average reduced trade costs by 20 per cent for goods but only 7 per cent for services. Trade cost reductions have been particularly small for some of the services sectors that account for a large share of EU value added (e.g. wholesale & retail trade and construction)".

<sup>28</sup> OECD, *Economic Surveys. European Union*, June 2018.

<sup>29</sup> European Commission, *Annual Growth Survey 2019*.



technologies; gradual withdrawal of central bank stimulus; and loss of reform momentum/risks of reform reversals and aggravation of fiscal imbalances; and

- medium/long-term challenges: tapping the growth potential of digitization; the impacts of technological transformations on workers and specific sectors; the impacts of demographic changes and the role of migration; mitigation of and adaptation to climate change; and sustainable use of natural resources.<sup>30</sup>

### 1.3 Developments in Trade and Investment

#### 1.3.1 Trends and patterns in merchandise and services trade

1.33. International trade remains an important driver of economic performance in the EU. In 2018, trade in goods and services accounted for about 35% of GDP.<sup>31</sup> The EU's economic growth was supported by external demand (Chart 1.1). In addition, the EU's economy plays a key role in the global economy, as it is a top market for some 80 economies in the world.<sup>32</sup> The EU's share of world trade in goods and services remained somewhat stable during the review period, but has been on a declining trend for two decades. Trade in goods and services accounted for 16.7% of world trade in 2017 and 2018, a decrease from 18.9% in 2008 and 17.1% in 2011.

1.34. The EU's merchandise trade (imports and exports) with the rest of the world continued to grow in 2017 and 2018. However, exports stagnated slightly between 2015 and 2016 (Table A1.2). The merchandise trade surplus turned into a deficit in 2018, mainly driven by the large deficit in trade of fuel products, which further widened during the review period. However, this was partly offset by trade surpluses in machinery and transport equipment, and chemicals.

1.35. Regarding the composition of merchandise trade, EU exports were dominated by manufactured goods. However, their share decreased steadily from 81.9% in 2016 to 80.4% in 2018. The leading manufacturing exports continued to be transport equipment and chemicals. The share of agricultural products in total exports was somewhat volatile during the review period (Chart 1.5 and Table A1.2).

1.36. The EU's major export destinations remained unchanged during the review period. The United States continued to be the biggest market for exports, accounting for 20.8% of merchandise exports in 2018. However, the share dropped slightly from 20.8% in 2016 to 20.0% in 2017. China and Switzerland were, respectively, the second and third largest destinations. Asia remained the largest regional market for EU goods, with a steady growth in exports from 28.7% in 2016 to 29.8% in 2018 (Table A1.3 and Chart 1.6).

1.37. In terms of merchandise imports, products are also concentrated in manufactured products (64.3% in 2018), dominated by machinery and transport equipment, which account for more than half of the total. Imports of fuels (20.8 in 2018) grew significantly during the review period (Chart 1.5 and Table A1.4)

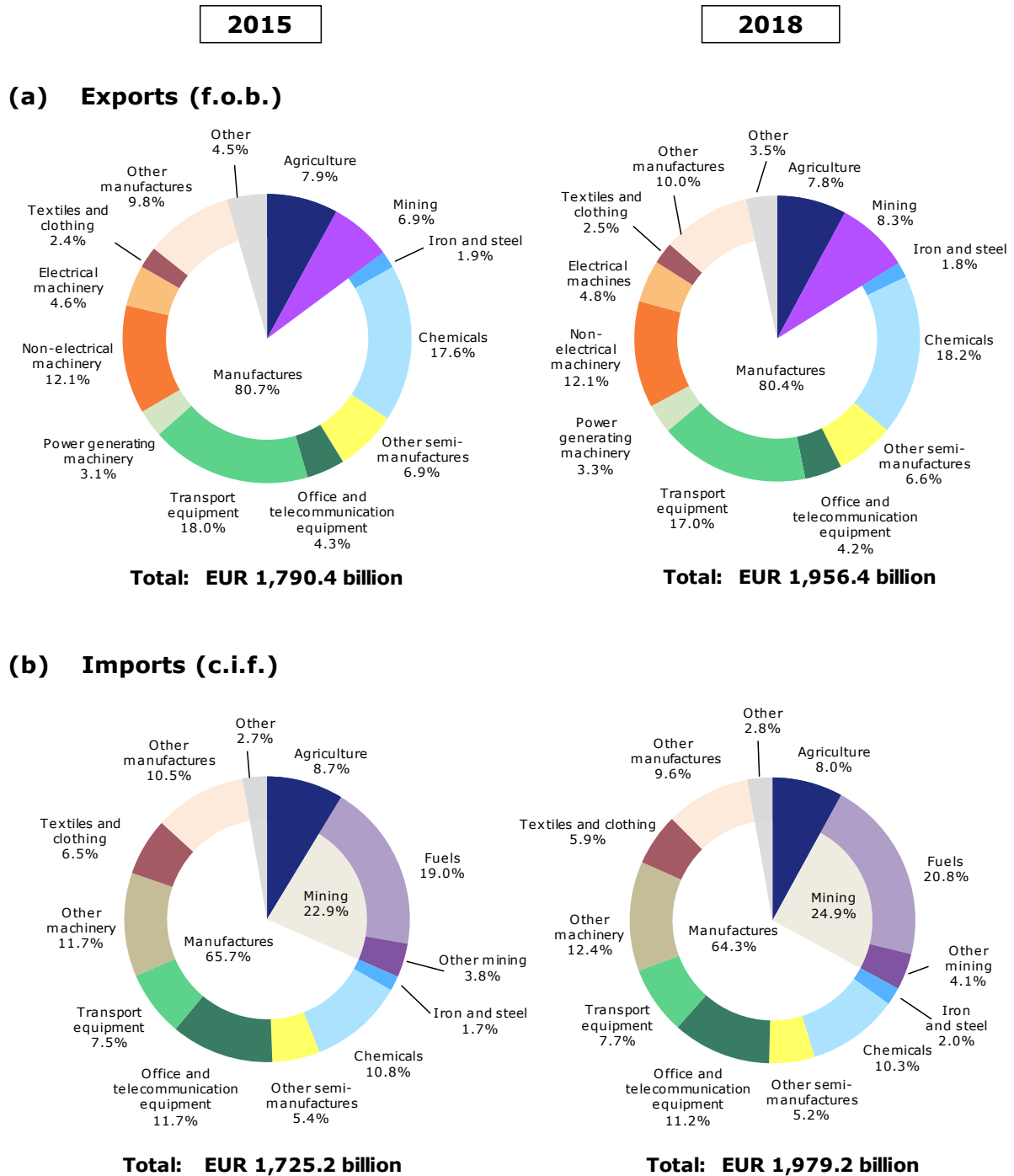
1.38. The top origins of EU's imports continued to be China with a 19.9% share in 2018, followed by the United States with 13.6, and the Russian Federation with 8.5% (Chart 1.6 and Table A1.5). Imports from China and the United States both decreased over the review period, while those from the Russian Federation increased from 7.0% in 2016.

<sup>30</sup> European Commission, *Annual Growth Survey 2019: For a stronger Europe in the face of global uncertainty*, p. 5.

<sup>31</sup> WTO Secretariat calculations, based on Eurostat, *Balance of Payments (bop\_eu6\_q)* and *National Accounts (including GDP), (nama\_10\_gdp)*. Viewed at: <https://ec.europa.eu/eurostat/web/balance-of-payments/data/database>; and <https://ec.europa.eu/eurostat/web/national-accounts/data/database>.

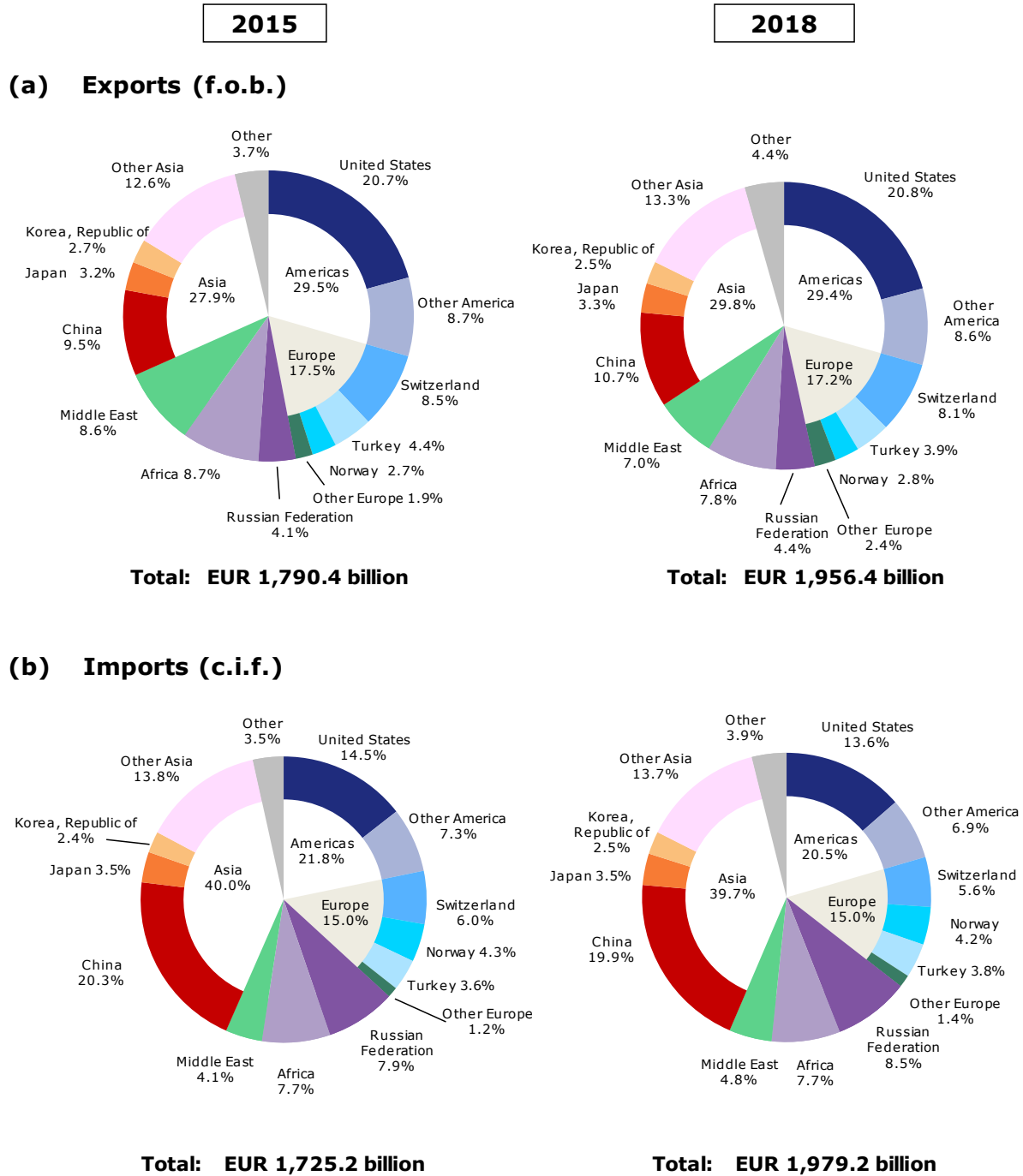
<sup>32</sup> European Commission, *EU position in world trade*. Viewed at: <https://ec.europa.eu/trade/policy/eu-position-in-world-trade/>.

**Chart 1.5 Composition of merchandise trade, 2015 and 2018**



Source: WTO Secretariat calculations, based on Eurostat, *International trade in goods*. Viewed at: <https://ec.europa.eu/eurostat/web/international-trade-in-goods/data/database>.

**Chart 1.6 Direction of merchandise trade, 2015 and 2018**



Source: WTO Secretariat calculations, based on Eurostat, *International trade in goods*. Viewed at: <https://ec.europa.eu/eurostat/web/international-trade-in-goods/data/database>.

1.39. Intra-EU trade is a key driver of economic performance, as merchandise trade within the bloc is by far larger than extra-EU trade (over 60% of total trade). The share of intra-EU trade in total trade varies among member States. For example, in 2018, the Czech Republic, Hungary, Poland, and the Slovak Republic had the highest share (over 80%), while Cyprus and the United Kingdom exported less than 50% of their merchandise into the EU (Table A1.6). Regarding imports, except the Netherlands, all EU countries sourced over half of their imports from within the Union in 2018.

1.40. Regarding extra-EU trade in services, the EU remained a net exporter, and the surplus in services trade increased during the review period. Exports grew considerably, after a slight stagnation between 2015 and 2016. Imports also grew in 2017-18, but at a slower pace. Telecommunication, transport, travel, finance, and other business services are the main services traded by EU countries. The United States and Switzerland are the main partners in services trade. China and Norway also have significant shares (Table 1.2).

**Table 1.2 Extra-EU trade in services, by sector and partner, 2015-18**

	Exports				Imports			
	2015	2016	2017	2018 <sup>a</sup>	2015	2016	2017	2018 <sup>a</sup>
<b>Total (EUR billion)</b>	871.8	870.5	912.4	918.5	733.2	732.3	720.7	728.4
<b>By sector</b>	(% of total)							
Manufacturing services on physical inputs owned by others	2.3	2.4	2.1	2.2	1.3	1.5	1.7	1.8
Maintenance and repair services n.i.e.	1.4	1.5	1.6	1.8	1.4	1.5	1.7	1.9
Transport	17.8	17.6	18.1	17.9	17.1	16.5	17.5	18.2
Sea transport	9.5	8.4	8.9	..	7.9	7.3	7.9	..
Air transport	5.6	6.4	6.5	..	6.0	6.0	6.3	..
Other modes of transport	2.4	2.4	2.4	..	2.8	2.7	3.0	..
Postal and courier services	0.3	0.4	0.4	..	0.4	0.4	0.5	..
Travel	14.7	14.3	15.0	15.4	14.5	13.9	14.8	15.2
Construction	1.6	1.4	1.4	1.3	0.8	0.8	0.8	0.8
Insurance and pension services	3.2	3.6	2.5	3.2	1.8	1.8	1.9	1.9
Financial services	10.3	9.9	9.5	9.0	6.7	6.4	6.7	6.9
Charges for the use of intellectual property n.i.e.	7.4	7.5	8.2	7.2	15.2	15.6	15.6	14.8
Telecommunications, computer, and information services	12.8	12.8	13.6	14.5	10.2	6.3	6.9	7.0
Telecommunications services	2.0	1.9	1.8	..	2.0	1.9	1.8	..
Computer services	10.1	10.0	10.8	..	7.8	3.9	4.5	..
Information services	0.7	0.8	1.0	..	0.4	0.5	0.5	..
Other business services	26.3	27.0	26.0	25.5	28.6	33.4	30.1	29.2
R&D services	4.1	4.6	4.8	4.3	7.7	11.9	7.4	7.4
Professional and management consulting services	7.2	7.4	7.5	8.3	7.0	7.7	8.4	7.9
Technical, trade-related, and other business services	15.0	15.0	13.8	12.9	13.8	13.8	14.3	13.9
Personal, cultural, and recreational services	1.0	1.1	1.1	1.3	1.6	1.5	1.5	1.5
Government goods and services n.i.e.	0.9	0.9	0.8	0.9	0.8	0.9	0.9	0.9
Services not allocated	0.3	0.1	0.0	0.0	0.0	0.0	0.0	0.0
<b>By selected trading partners/regions</b>								
European Free Trade Association	17.0	16.9	16.5	..	12.4	15.2	12.5	..
Iceland	0.1	0.2	0.2	..	0.2	0.2	0.3	..
Liechtenstein	0.1	0.1	0.1	..	0.1	0.1	0.1	..
Norway	3.5	3.3	3.1	..	2.2	2.2	2.2	..
Switzerland	13.2	13.4	13.0	12.9	10.0	12.7	9.9	8.4
Turkey	1.5	1.5	1.4	..	2.3	1.9	2.0	..
Russian Federation	3.0	2.9	3.2	3.0	1.7	1.5	1.7	1.8
Africa	6.2	5.6	5.2	..	5.7	5.1	5.0	..

	Exports				Imports			
	2015	2016	2017	2018 <sup>a</sup>	2015	2016	2017	2018 <sup>a</sup>
Northern Africa	1.7	1.6	1.5	..	2.1	1.9	2.2	..
Egypt	0.6	0.5	0.5	..	0.7	0.6	0.7	..
Morocco	0.5	0.5	0.5	..	0.7	0.8	0.8	..
Central and South Africa	4.5	3.9	3.7	..	3.5	3.1	2.8	..
South Africa	1.0	0.9	1.0	..	0.7	0.7	0.7	..
Nigeria	0.6	0.4	0.4	..	0.2	0.2	0.2	..
Americas	36.9	35.8	35.8	..	47.1	44.4	45.8	..
Northern America	28.4	28.3	28.3	..	31.1	33.0	32.9	..
Canada	2.2	2.3	2.4	2.5	1.7	1.6	1.8	2.1
United States	26.1	26.0	25.9	26.7	29.3	31.3	31.0	30.5
Central America	4.6	3.7	3.6	..	13.7	9.2	10.5	..
Mexico	1.1	1.2	1.2	..	0.7	0.7	0.8	..
South America	3.9	3.7	4.0	..	2.4	2.2	2.4	..
Argentina	0.5	0.5	0.6	..	0.3	0.3	0.3	..
Brazil	1.9	1.7	1.8	1.7	1.2	1.1	1.1	1.1
Chile	0.4	0.4	0.5	..	0.3	0.3	0.3	..
China	4.9	4.9	5.1	5.5	3.9	4.4	4.2	4.1
Hong Kong, China	1.3	1.3	1.5	1.5	1.6	1.6	1.8	1.8
India	1.7	1.6	1.8	1.8	2.1	2.1	2.4	2.7
Indonesia	0.5	0.5	0.5	..	0.3	0.3	0.4	..
Japan	3.3	3.6	3.8	3.7	2.2	2.5	2.5	2.7
Malaysia	0.5	0.5	0.5	..	0.4	0.5	0.6	..
Philippines	0.2	0.2	0.2	..	0.4	0.4	0.4	..
Singapore	2.8	2.8	3.2	..	3.0	3.1	3.1	..
Korea, Rep. of	1.5	1.4	1.5	..	0.9	1.0	1.1	..
Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei)	0.6	0.6	0.7	..	0.5	0.4	0.5	..
Thailand	0.4	0.4	0.4	..	0.8	0.9	0.9	..
Australia	2.4	2.4	2.6	..	1.4	1.2	1.3	..
New Zealand	0.3	0.3	0.3	..	0.2	0.2	0.3	..
Saudi Arabia	1.5	1.6	1.6	..	0.4	0.4	0.5	..
United Arab Emirates	1.8	1.9	1.8	..	1.6	1.8	1.8	..

.. Not available.

a Provisional.

Source: Eurostat, *Balance of Payments (bop\_its6\_det)*. Viewed at: <https://ec.europa.eu/eurostat/web/balance-of-payments/data/database>.

### 1.3.2 Trends and patterns in foreign direct investment (FDI)

1.41. The EU remains the world's largest recipient and supplier of FDI. In addition, it continued to be a net investor in the rest of the world during the review period. As at end-2017, it held EUR 7,487 billion in FDI stocks outside the EU against EUR 6,441 billion inside the EU.

1.42. Figures on extra-EU inbound and outbound FDI flows displayed an important decrease in 2015-17, in line with the global trend and amid raising global uncertainty over trade and investment. According to the OECD, the trend was set to continue in 2018, and the recent tax policy in the United States was expected to play a role as US multinationals repatriated large amounts of earnings held by foreign affiliates.<sup>33</sup>

1.43. FDI inflows surged, at EUR 697.5 billion, in 2015, before dropping to EUR 163.3 billion in 2017, reflecting large-scale investments and divestments to and from Special Purpose Entities

<sup>33</sup> OECD, *FDI in figures*. Viewed at: <http://www.oecd.org/investment/FDI-in-Figures-April-2019.pdf>.

(SPEs), mainly in Luxembourg, and the Netherlands (Table 1.3). Flows into the United Kingdom and Germany remained solid, while France, recorded volatile FDI performance.

1.44. FDI outflows from the EU also decreased, from EUR 737.1 billion in 2015 to EUR 245.1 billion in 2017 (Table 1.3). The largest decline took place in Luxembourg, while figures from four major EU economies (Germany, France, the United Kingdom and Italy) showed mixed performance (Table 1.3). In 2017, outflows from the United Kingdom firmed up noticeably, owing to large-scale purchases by United Kingdom-based multinational companies. For example, British American Tobacco purchased the remaining shares in Reynolds (United States) for USD 49 billion, and Reckitt Benckiser acquired Mead Johnson Nutrition (United States) for USD 17 billion.

**Table 1.3 Extra-EU FDI flows, 2015-17**

(EUR million)

	Inward			Outward		
	2015	2016	2017	2015	2016	2017
<b>EU-28</b>	<b>697,508</b>	<b>390,777</b>	<b>163,319</b>	<b>737,147</b>	<b>359,479</b>	<b>245,136</b>
Austria	-38,424	3,457	8,832	-955	-35,347	3,207
Belgium	33,749	39,692	5,234	6,315	-74,910	3,544
Bulgaria	928	38	178	39	62	163
Croatia	-411	36	27	-104	20	332
Cyprus	979	739	..	14,200	1,612	-724
Czech Republic	-444	416	466	52	-312	-158
Denmark	727	6,100	-1,477	2,372	14,874	823
Estonia	-201	5	310	-121	84	38
Finland	1,556	-2,351	-1,183	916	1,623	-2,062
France	19,504	2,311	13,485	14,782	25,248	18,170
Germany	2,218	5,579	12,137	34,080	20,642	32,744
Greece	638	855	1,148	774	-1,769	343
Hungary	-13,938	-5,458	6,717	-22,923	58,517	3,533
Ireland	147,419	61,523	-56,236	85,186	20,680	11,491
Italy	3,816	2,426	3,492	14,308	11,924	19,741
Latvia	409	360	-125	12	73	44
Lithuania	350	229	-288	-3	43	61
Luxembourg	277,946	111,309	-33,764	233,567	100,672	-245,936
Malta	3,386	1,742	1,243	-4,878	-1,688	-2,106
Netherlands	193,558	80,934	78,587	354,331	165,911	270,712
Poland	-135	1,238	1,357	521	3,561	1,072
Portugal	1,369	1,881	2,968	155	514	305
Romania	519	135	..	-94	-7	309
Slovak Republic	-33	-835	-457	-41	21	54
Slovenia	183	107	234	277	167	3
Spain	7,543	4,685	1,644	32,814	33,197	14,046
Sweden	406	7,080	3,242	12,218	6,467	7,661
United Kingdom	53,891	65,391	77,673	-40,652	7,236	107,724

.. Not available.

Source: Eurostat, *Balance of Payments (bop\_gdp6\_q)*. Viewed at: <https://ec.europa.eu/eurostat/web/balance-of-payments/data/database>.

1.45. The stock of inward FDI increased between 2015 and 2017, while the outward stock was volatile (Table 1.4). The United States and Switzerland remain the largest sources of inward FDI into the EU, both in terms of stocks and flows. Among the EU-28, the Netherlands and Luxembourg (the main locations of SPEs) remained, by far, the EU members with the largest inward and outward FDI stocks, followed by the United Kingdom. The majority of inward stocks are in mining, manufacture and the services sector, with financial and insurance activities being the most prevalent.

1.46. In 2019, according to a report released by the Commission on FDI, the EU hosts investors from about 170 countries, with the United States, EFTA countries, and Canada (the historical main investors) (Table 1.5) accounting by far for the largest share in terms of the number of companies controlled and, even more so, in terms of assets controlled. The document also shows the emergence of new investors, such as China and other emerging countries, with increasing number of deals over

the last years, such as, by China in aircraft manufacturing and specialized machinery, and by India in pharmaceuticals.<sup>34</sup>

**Table 1.4 Extra-EU FDI stocks, 2015-17**

(EUR billion)

	Inward			Outward		
	2015	2016	2017	2015	2016	2017
<b>EU-28</b>	<b>6,016</b>	<b>6,319</b>	<b>6,441</b>	<b>7,415</b>	<b>7,784</b>	<b>7,487</b>
Austria	80	78	85	136	96	93
Belgium	34	44	55	76	0	12
Bulgaria	9	9	9	1	1	1
Croatia	3	3	4	2	3	3
Cyprus	66	67	105	164	169	158
Czech Republic	12	12	15	1	1	1
Denmark	30	37	35	67	83	77
Estonia	3	3	3	1	1	1
Finland	8	7	5	17	17	14
France	173	180	197	498	531	494
Germany	174	189	230	525	541	524
Greece	4	5	6	10	7	7
Hungary	56	53	54	84	147	133
Ireland	474	475	418	209	215	221
Italy	34	35	40	149	170	186
Latvia	3	4	4	0	0	0
Lithuania	2	3	2	0	0	0
Luxembourg	1,829	1,949	1,837	1,807	1,894	1,512
Malta	147	54	57	60	20	20
Netherlands	1,863	2,125	2,198	2,335	2,629	2,753
Poland	13	14	15	6	9	8
Portugal	13	12	15	14	13	13
Romania	7	7	8	0	0	0
Slovak Republic	4	3	3	0	0	0
Slovenia	2	2	2	3	3	3
Spain	101	108	110	261	291	285
Sweden	67	72	68	131	140	134
United Kingdom	806	768	860	855	802	831

Source: Eurostat, Balance of Payments (bop\_fdi6\_geo). Viewed at: <https://ec.europa.eu/eurostat/web/balance-of-payments/data/database>.

**Table 1.5 FDI stocks by major partner, 2015-17**

(EUR billion)

	Inward			Outward		
	2015	2016	2017	2015	2016	2017
<b>Extra-EU-28</b>	<b>6,016</b>	<b>6,319</b>	<b>6,441</b>	<b>7,415</b>	<b>7,784</b>	<b>7,487</b>
United States	2,459	2,461	2,263	2,699	2,799	2,561
EFTA	818	907	941	995	1,098	1,120
Switzerland	688	765	803	894	985	1,005
Iceland	-1	-1	-1	7	8	19
Liechtenstein	41	37	45	2	2	2
Norway	90	105	94	92	103	93
Canada	246	300	288	283	315	310
Japan	207	227	261	86	100	99
Hong Kong, China	95	108	156	145	142	155

<sup>34</sup> European Commission, *Foreign direct investment report: continuous rise of foreign ownership of European companies in key sectors*. Viewed at <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1993>.

	Inward			Outward		
	2015	2016	2017	2015	2016	2017
Singapore	77	138	118	193	196	226
Russian Federation	72	73	83	168	233	217
Bahamas	64	68	74	50	59	55
Barbados	9	13	71	4	11	44
China	43	47	60	175	183	178
Israel	33	45	58	18	28	30
Mexico	32	36	50	162	144	153
Brazil	46	36	44	331	374	322
United Arab Emirates	41	45	40	30	36	39
Australia	37	29	30	141	177	168
Korea, Rep. of	19	24	28	43	47	52
Turkey	12	22	19	78	76	67
Panama	5	26	12	38	24	22
Kazakhstan	6	9	11	51	66	61
India	13	6	11	72	75	78
South Africa	12	12	11	96	70	60
Argentina	2	2	2	57	45	46
Nigeria	4	2	2	51	43	37
Chile	2	2	2	48	56	53
Egypt	0	1	1	39	38	39
Angola	2	1	1	32	31	28
Indonesia	7	1	1	31	35	33

Source: Eurostat, Balance of Payments (bop\_fdi6\_geo). Viewed at:  
<https://ec.europa.eu/eurostat/web/balance-of-payments/data/database>.



## 2 TRADE AND INVESTMENT REGIMES

### 2.1 General Framework

2.1. The TFEU defines the division of competences between the EU and its member States by distinguishing, in particular, between areas of exclusive EU competence<sup>1</sup>, areas of shared competence<sup>2</sup>, and areas in which the EU's competence is of a supporting nature.<sup>3</sup> The common commercial policy is one of five policy areas in which the EU's competence is explicitly defined as being exclusive.<sup>4</sup>

2.2. The TFEU provides that "[t]he common commercial policy shall be based on uniform principles, particularly regarding changes in tariff rates, the conclusion of tariff and trade agreements relating to trade in goods and services, and the commercial aspects of intellectual property, foreign direct investment, the achievement of uniformity in measures of liberalisation, export policy and measures to protect trade such as those to be taken in the event of dumping or subsidies" and "shall be conducted in the context of the principles and objectives of the EU's external action".<sup>5</sup> The negotiation and conclusion of international agreements in the field of transport are excluded from the scope of the common commercial policy.<sup>6</sup>

2.3. Legislation to define the framework for implementing the common commercial policy consists of regulations adopted in accordance with what is known as the ordinary legislative procedure.<sup>7</sup> This procedure consists of the joint adoption by the European Parliament and the Council of the EU of a proposal for a legislative act submitted by the European Commission.<sup>8</sup> The Parliament and the Council may propose amendments to the Commission's proposal. The detailed rules governing the process whereby the Parliament and the Council arrive at a joint position on a Commission proposal are set out in Article 294 of the TFEU.

2.4. The Commission also implements trade policy, notably through "delegated acts" and "implementing acts".<sup>9</sup> Under delegated acts, the legislators (i.e. the Parliament and the Council) delegate power to the Commission to adopt non-legislative acts of general application, in order to supplement or amend certain non-essential elements of the legislative act. Under implementing acts, the Commission, where specified in the primary legislation, acquires the necessary implementing powers in instances where uniform conditions for implementing legally-binding EU acts are needed. The Commission's exercise of implementing powers is controlled by the member States, through a procedure known colloquially as "comitology". Under this procedure, committees, composed of representatives from member States, assist the Commission in executing the implementing powers conferred upon it by the legislators. The comitology rules are set out in specific legislation.<sup>10</sup> The

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<sup>1</sup> In areas of exclusive EU competence, only the EU may legislate and adopt binding legal acts. The member States may only do so if so empowered by the EU or for the implementation of EU acts. Art. 2(1), TFEU.

<sup>2</sup> In areas of shared competence, both the EU and the member States may legislate and adopt legally-binding acts. The member States may exercise their competence to the extent that the EU has not done so and to the extent that the EU has decided to cease doing so. Art. 2(2), TFEU.

<sup>3</sup> In areas in which the EU's competence is of a supporting nature, it may take actions to support, coordinate or supplement the actions of the member States, without superseding their competence. Any legally-binding acts of the EU in these areas shall not entail harmonization of member States' laws or regulations. Art. 2(5), TFEU.

<sup>4</sup> Art. 3.1(e), TFEU. The other policy areas which are explicitly identified by the Treaty as being of exclusive EU competence are: the customs union; the establishing of the competition rules necessary for the functioning of the internal market; monetary policy for the member States whose currency is the euro; and the conservation of marine biological resources under the common fisheries policy. Arts. 3.1(a)-(d), TFEU.

<sup>5</sup> Art. 207(1), TFEU. Because these principles and objectives include sustainable development linked to the preservation and improvement of the quality of the environment and the sustainable management of global natural resources, "the objective of sustainable development henceforth forms an integral part of the common commercial policy". Opinion 2/15 of the Court (Full Court), 16 May 2017, Request for an opinion pursuant to Article 218(11) TFEU, made on 10 July 2015 by the European Commission, para. 147. Viewed at: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62015CV0002\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62015CV0002(01)&from=EN).

<sup>6</sup> Art. 207(5), TFEU.

<sup>7</sup> Art. 207(2), TFEU.

<sup>8</sup> Art. 289, TFEU.

<sup>9</sup> Arts. 290 and 291(2), TFEU. WTO documents WT/TPR/S/284/Rev.2, 28 November 2013, paras. 2.5-2.6 and WT/TPR/S/317/Rev.1, 21 October 2015, paras. 2.6-2.7.

<sup>10</sup> The current comitology rules came into effect on 1 March 2011. Regulation (EU) No. 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles

adaptation of trade instruments to the current comitology rules was completed via the Trade Omnibus I and II Regulations, and entered into force on 20 February 2014.<sup>11</sup>

2.5. The TFEU rules regarding the negotiation and conclusion of international trade agreements<sup>12</sup> provide that the Commission makes a recommendation to launch negotiation of an agreement to the Council, which shall authorize the opening of negotiations. The Commission conducts negotiations on the trade agreement, in consultation with a committee appointed by the Council (the Trade Policy Committee), and reports regularly to the Parliament.<sup>13</sup> Section 2.2 of this Report describes several recent initiatives aimed at enhancing the transparency and inclusiveness of EU trade policy, notably in respect of the launch and conduct of negotiations on trade agreements.

2.6. The Council adopts the decision concluding the agreement, after obtaining the consent of the Parliament. The latter ratifies international trade agreements by simple majority vote. Council decisions on the negotiation and conclusion of international trade agreements are adopted by a qualified majority, subject to certain exceptions. Firstly, the Council must act unanimously for the negotiation and conclusion of an agreement in respect of agreements in the field of services, commercial aspects of intellectual property (IP), and foreign direct investment (FDI), if such agreements include provisions for which unanimity is required for the adoption of internal rules. Secondly, the Council must act unanimously for the negotiation and conclusion of agreements in the field of trade in cultural and audiovisual services where such agreements risk prejudicing the EU's cultural and linguistic diversity, and in the field of trade in social, education and health services where these agreements risk seriously disturbing the national organization of such services and prejudicing the responsibility of member States to deliver them.<sup>14</sup>

2.7. In addition to the five specific policy areas explicitly defined by Article 3.1 of the TFEU as being of exclusive EU competence, the TFEU also expressly provides the EU with exclusive competence to conclude international (trade) agreements in certain circumstances defined in Article 3.2. Pursuant to this provision, the EU has exclusive competence for the conclusion of an international (trade) agreement: (i) when this is provided for in a legislative act of the EU; (ii) when it is necessary to enable the EU to exercise its internal competence; or (iii) insofar as the conclusion of the international agreement may affect common rules or alter their scope.

2.8. In an opinion of 16 May 2017, the Court of Justice of the EU (CJEU) clarified the scope of the EU's exclusive competence to conclude international trade agreements.<sup>15</sup> This opinion concerned a question submitted by the Commission on whether the envisaged free trade agreement (FTA) with Singapore, the first FTA completed after the entry into force of the TFEU, could be signed by the EU alone or whether it would have to be signed and concluded both by the EU and by each of its member States as a "mixed" agreement. The Court confirmed that most of the provisions of the envisaged

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concerning mechanisms for control by Member States of the Commission's exercise of implementing powers. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011R0182&from=EN>. See also WTO document WT/TPR/S/248/Rev.1, 1 August 2011, Chart II.1.

<sup>11</sup> Regulation (EU) No. 37/2014 of the European Parliament and of the Council of 15 January 2014 amending certain regulations relating to the common commercial policy as regards the procedures for the adoption of certain measures. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0037&from=EN>; Regulation (EU) No. 38/2014 of the European Parliament and of the Council of 15 January 2014 amending certain regulations relating to the common commercial policy as regards the granting of delegated and implementing powers for the adoption of certain measures. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0038&from=EN>.

<sup>12</sup> Arts. 207(3)-(4) and 218, TFEU.

<sup>13</sup> See also WTO document WT/TPR/S/357/Rev.1, 13 October 2017, paras. 2.4-2.8. For a detailed description of the launch, conduct and conclusion of negotiations on EU trade agreements, see European Commission, *Negotiating EU trade agreements – Who does what and how we reach a final deal*. Viewed at: [http://trade.ec.europa.eu/doclib/docs/2012/june/tradoc\\_149616.pdf](http://trade.ec.europa.eu/doclib/docs/2012/june/tradoc_149616.pdf).

<sup>14</sup> Art. 207(4), TFEU.

<sup>15</sup> Opinion 2/15 of the Court (Full Court), 16 May 2017, Request for an opinion pursuant to Article 218(11) TFEU, made on 10 July 2015 by the European Commission (Opinion 2/15 of the Court). See Kleimann, D. and Kübek, G., The Signing, Provisional Application, and Conclusion of Trade and Investment Agreements in the EU: the Case of CETA and Opinion 2/15, *Legal Issues of Economic Integration*, Vol. 45, No. 1 (2018), pp. 13-46; Hainbach, P., The CJEU's Opinion 2/15 and the Future of EU Investment Policy and Law-Making, *Legal Issues of Economic Integration*, Vol. 45, No. 2, (2018), pp. 199-210; Geraets, D., Changes in EU Trade Policy After Opinion 2/15, *Global Trade and Customs Journal*, Vol. 13, No. 1 (2018), pp.13-18; and Gruni, G., Towards a Sustainable World Trade Law? The Commercial Policy of the European Union After Opinion 2/15 CJEU, *Global Trade and Customs Journal*, Vol. 13, No. 1 (2018), pp. 4-12.

FTA were covered by the EU's exclusive competence to conclude international agreements, because they fell within the scope of the common commercial policy, and thereby fell within the scope of the exclusive competence in Art. 3(1)(e) of the TFEU, or they were within the EU's exclusive competence pursuant to Article 3(2) of the TFEU.<sup>16</sup>

2.9. In light of Opinion 2/15 of the Court, the Commission considers that the EU's exclusive competence to conclude international trade agreements covers the following matters:

- trade in goods, including regulatory matters;
- trade in services, including mutual recognition agreements and all transport services other than air transport;
- trade related aspects of IP in its entirety;
- all public procurement matters;
- market access in the area of FDI;
- investment protection as far as it concerns FDI;
- trade and sustainable development in its entirety; and
- the termination of member State bilateral investment agreements for the parts concerning exclusive competence.<sup>17</sup>

2.10. Opinion 2/15 of the Court resulted in an important change in the architecture of the EU's trade agreements (Section 2.2).

2.11. In March 2017, the United Kingdom notified its intention to withdraw from the EU under Article 50 of the Treaty on European Union on 31 March 2019. While negotiations under Article 50 have resulted in an agreement on the terms of the United Kingdom's withdrawal from the EU, this agreement had not yet been ratified at the time of the circulation of this report. On 29 October 2019, the European Council, in agreement with the United Kingdom, decided on an additional extension of the period provided for in Article 50(3) until 31 January 2020.

## 2.2 Trade Policy Formulation and Objectives

2.12. EU trade policy during the period under review continued to be guided by the general objectives of the Trade for All Strategy, adopted in October 2015.<sup>18</sup> In this regard, the

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<sup>16</sup> The Court concluded that the FTA between the EU and Singapore fell within the exclusive competence of the EU, with the exception of provisions which fell within a competence shared between the EU and the member States: (i) investment protection provisions, insofar as they related to non-direct investment; (ii) the investor-state dispute settlement mechanism; and (iii) provisions on the object of the agreement, institutional matters, transparency, and state-to-state dispute settlement, insofar as those provisions related to provisions on investment protection that fell within a competence shared between the EU and the member States. Opinion 2/15 of the Court, para. 305.

<sup>17</sup> European Commission, *The Opinion of the European Court of Justice on the EU-Singapore Trade Agreement and the Division of Competences in Trade Policy*. Viewed at: [http://trade.ec.europa.eu/doclib/docs/2017/september/tradoc\\_156035.pdf](http://trade.ec.europa.eu/doclib/docs/2017/september/tradoc_156035.pdf).

<sup>18</sup> European Commission, *Trade for All - Towards a more responsible trade and investment policy*. Viewed at: [http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc\\_153846.pdf](http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc_153846.pdf). The Trade for All Strategy was described in some detail in the previous Review. WTO document WT/TPR/S/357/Rev.1, 13 October 2017, pp. 32-33, Box 2.1. The Strategy pursues four main objectives: (i) to make EU trade policy more effective, including by updating trade policy to take account of new economic realities; (ii) to make EU trade and investment policy more transparent; (iii) to anchor EU trade policy in values, notably with regard to the protection of the right to regulate, sustainable development, fair and ethical trade, human rights, the fight against corruption, and responsibility in the management of supply chains; and (iv) to achieve progress in negotiations to shape globalization by re-energizing multilateral negotiations, designing a new and open approach to bilateral and regional agreements, and starting new negotiations on trade and investment with countries in the Asia-Pacific region. See also European Commission, *Reflection paper on harnessing*

European Commission issued a communication in September 2017 on proposals for "a balanced and progressive trade policy to harness globalisation".<sup>19</sup> The communication noted that "[g]lobal trade is a key contributor to a competitive and prosperous EU", but "needs to be proactively shaped and managed to ensure it is fair, projects values and remains firmly anchored in a rules-based system". The EU's aim is a "trade policy that is transparent and responsible, benefits all citizens, and provides modern solutions for the realities of today's economy in the middle of technological change". The communication defined three main objectives of EU trade policy.<sup>20</sup>

2.13. The first objective is to seal new trade partnerships to build progressive rules for global trade. EU trade policy aims to create new economic opportunities through a comprehensive negotiating agenda at various (bilateral and multilateral) levels. The EU is committed to strengthening its economic ties with future engines of growth in Asia and Latin America. This first objective also involves the use of trade policy to promote the universal values the EU adheres to, regarding environmental, consumer, social and labour protection and fundamental rights, as well as the express preservation of the right to regulate in the public interest. Section 2.3.2 of this Report discusses EU trade agreements concluded and/or entered into force, and the launch of new negotiations during the review period.

2.14. A noteworthy development relating to this first objective concerns gender aspects of international trade, which have begun to feature more prominently in EU trade policy. This includes analysis to improve the understanding of the impact of international trade agreements on gender equality. The potential effects of trade agreements on women were analysed in sustainability impact assessments and in several *ex post* assessments of EU trade agreements. In 2017, the Commission published a study on the gender balance of the employment opportunities supported by extra-EU exports.<sup>21</sup> More recently, it launched a study, which is implemented by the International Trade Centre (ITC), on "Women in Extra-EU Trade: Opportunities and Obstacles". The results of this study were presented at the "Trade for Her" conference, organized by the Commission on 30 September 2019 in Brussels. Furthermore, the Commission is implementing a recommendation on Trade and Gender of the Joint Committee, established under the EU's FTA with Canada, the Comprehensive Economic and Trade Agreement (CETA). This provides for cooperation between the Parties to improve the capacity and conditions for women to access, and fully benefit from, the opportunities created by the CETA, starting with analytical work to better understand the impact of trade on gender equality and women's participation in the economy.<sup>22</sup> For example, together with the Canadian Mission to the EU, the Commission organized a CETA trade and gender workshop in Brussels on 1 April 2019. Also, in negotiations on the modernization of the EU-Chile Association Agreement, the Commission tabled a proposal for dedicated provisions on trade and gender equality.<sup>23</sup>

2.15. The review period also saw increased interest in ways to improve the practical implementation and effectiveness of sustainable development provisions in EU FTAs.<sup>24</sup> A debate, launched by the

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*globalisation*. Viewed at: [https://ec.europa.eu/commission/publications/reflection-paper-harnessing-globalisation\\_en](https://ec.europa.eu/commission/publications/reflection-paper-harnessing-globalisation_en).

<sup>19</sup> European Commission, *A Balanced and Progressive Trade Policy to Harness Globalisation*. Viewed at: [http://trade.ec.europa.eu/doclib/docs/2017/september/tradoc\\_156038.pdf](http://trade.ec.europa.eu/doclib/docs/2017/september/tradoc_156038.pdf).

<sup>20</sup> The Commission's trade agenda also aims to support the general objectives of boosting jobs, growth and investment, and reinforcing the position of the EU as a global actor. European Commission, DG Trade, *Strategic Plan 2016-2020 - Trade*. Viewed at: [https://ec.europa.eu/info/publications/strategic-plan-2016-2020-trade\\_en](https://ec.europa.eu/info/publications/strategic-plan-2016-2020-trade_en); and *Management Plan 2019 - Trade*. Viewed at: [https://ec.europa.eu/info/publications/management-plan-2019-trade\\_en](https://ec.europa.eu/info/publications/management-plan-2019-trade_en).

<sup>21</sup> Rueda-Cantucho, J.M. and Sousa, N., Are EU Exports Gender Blind? Some Key Features of Women Participation in Exporting Activities in the EU, *Chief Economist Note*, Issue 3, June 2017. Viewed at: [http://trade.ec.europa.eu/doclib/docs/2017/june/tradoc\\_155632.pdf](http://trade.ec.europa.eu/doclib/docs/2017/june/tradoc_155632.pdf).

<sup>22</sup> Recommendation 002/2018 of 26 September 2018 of the CETA Joint Committee on Trade and Gender. Viewed at: [http://trade.ec.europa.eu/doclib/docs/2018/september/tradoc\\_157419.pdf](http://trade.ec.europa.eu/doclib/docs/2018/september/tradoc_157419.pdf).

<sup>23</sup> European Commission, *Draft provisions on Trade and Gender Equality in the context of the Modernisation of the EU-Chile Association Agreement*. Viewed at: [http://trade.ec.europa.eu/doclib/docs/2018/june/tradoc\\_156962.pdf](http://trade.ec.europa.eu/doclib/docs/2018/june/tradoc_156962.pdf).

<sup>24</sup> Hradilova, K. and Svoboda, O., Sustainable Development Chapters in the EU Free Trade Agreements: Searching for Effectiveness, *Journal of World Trade* 52, No. 6 (2018), pp. 1019-1042; Douma, W.Th., The Promotion of Sustainable Development through EU Trade Instruments, *European Business Law Review*, 2017, pp. 197-216.

Commission in July 2017<sup>25</sup>, revealed a clear consensus on the need to improve the implementation of such provisions. While there were suggestions for the introduction of economic sanctions to enforce compliance with sustainable development provisions, this was opposed by most participants in the debate. The Commission pointed out that a cooperative approach is more appropriate and effective. A non-paper, issued in February 2018 concluding this debate, set out an Action Plan of 15 concrete steps aimed at: (i) improving coordination between EU institutions and between the EU and relevant international organizations; (ii) enabling civil society to play a more effective role in the implementation of sustainable development provisions, including by facilitating the monitoring role of civil society, allowing civil society to comment and provide advice not only on provisions of sustainable development chapters but, more generally, on other FTA provisions with implications for sustainable development, and reinforcing the implementation of provisions on corporate social responsibility; (iii) taking actions aimed at identifying priority implementation actions for each partner country, a more assertive approach to enforcement, the encouragement of the early ratification of core international agreements, reviewing the effectiveness of implementation on an ongoing basis, developing a handbook for implementation, and stepping up resources; and (iv) improving transparency and communication.<sup>26</sup>

2.16. The second objective of the EU trade policy agenda is a robust trade and investment policy protecting EU interests and ensuring fairness. The September 2017 communication emphasized the need to actively use all the tools available to the EU to enforce commitments undertaken by its partners to remove trade barriers and to combat unfair trade practices. In this respect, it referred to the reform of EU Trade Defence Instruments, and identified the need to combat unfair subsidy practices, which it considered to be one of the main root causes of unfair international trade. It also highlighted discrimination and lack of reciprocity in government procurement and the acquisition of strategic EU assets by foreign investors as areas where the EU needed to take steps to protect its interests and ensure fairness.

2.17. The third objective of the agenda is delivering effective agreements through a transparent and inclusive negotiation process. The Commission pointed out, in its September 2017 communication, that, to be a credible negotiating partner, the EU must be able to ratify and implement its negotiated agreements in an accountable, legitimate and effective manner, and that, where agreements cover subjects fully covered by the common commercial policy, the EU will be able to proceed quickly. It noted that transparency and inclusiveness should be ensured, irrespective of whether the final decision to adopt a trade agreement is taken only by the EU or also by the member States and, in this regard, it encouraged member States to ensure the involvement of national parliaments at the earliest stage of EU trade negotiations. To this end, it decided to publish its recommendations for negotiating directives for trade agreements. It also announced the creation of an advisory group on EU trade negotiations.

2.18. Regarding Opinion 2/15 of the Court (Section 2.1 ), the Commission adopted a new approach to the architecture of EU trade agreements. The agreement completed in 2012 between the EU and Singapore was restructured to create two separate agreements: an FTA, covering matters within the exclusive competence of the EU and which will be concluded only by the EU; and an Investment Protection Agreement including both matters in which the EU has exclusive competence and matters in which the EU and the member States share competences and which will be concluded by the EU and the member States.<sup>27</sup> The trade agreement with Viet Nam was restructured in the same way.<sup>28</sup> In both cases, the FTAs include provisions on the liberalization of FDI, whereas the Investment Protection Agreements contain provisions on the protection of foreign (direct and non-direct) investment after their establishment and procedures allowing investors to have recourse to international dispute settlement.

2.19. The Council of the EU endorsed this new approach in May 2018 when it noted that "in the future the Commission intends to recommend draft negotiating directives for FTAs covering exclusive

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<sup>25</sup> European Commission, *Trade and Sustainable Development (TSD) Chapters in EU Free Trade Agreements (FTAs)*. Viewed at: [http://trade.ec.europa.eu/doclib/docs/2017/july/tradoc\\_155686.pdf](http://trade.ec.europa.eu/doclib/docs/2017/july/tradoc_155686.pdf).

<sup>26</sup> European Commission, *Feedback and way forward on improving the implementation and enforcement of Trade and Sustainable Development chapters in EU Free Trade Agreements*. Viewed at: [http://trade.ec.europa.eu/doclib/docs/2018/february/tradoc\\_156618.pdf](http://trade.ec.europa.eu/doclib/docs/2018/february/tradoc_156618.pdf).

<sup>27</sup> EU-Singapore trade and investment agreements. Viewed at: <http://trade.ec.europa.eu/doclib/press/index.cfm?id=961>.

<sup>28</sup> EU-Viet Nam trade and investment agreements. Viewed at: <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1437>.

EU competence on the one hand and separate mixed investment agreements on the other, with a view to strengthening the EU's position as a negotiating partner. It is for the Council to decide whether to open negotiations on this basis".<sup>29</sup> The decoupling of investment protection provisions from trade agreements is a significant change, compared with the trend noted in the previous Review, towards the integration of trade and investment in comprehensive economic agreements.<sup>30</sup>

2.20. In late 2017, the Commission began to publish the texts of draft negotiating directives, based on which it seeks authorization from the Council to open negotiations on international trade agreements. It encouraged the Council to publish the final adopted texts of such directives. The Council decides whether to publish such final adopted directives on a case-by-case basis. Negotiating directives published to date include directives adopted for the opening of negotiations with Chile, Australia, New Zealand and the United States, WTO e-commerce negotiations, negotiations on the establishment of a multilateral investment court, and negotiations on the modernization of the Energy Charter Treaty.<sup>31</sup> The Commission also publishes the texts of initial EU negotiating proposals, reports on negotiating rounds, and the consolidated negotiated text agreed between the parties before the completion of the final legal revision of the texts. The Commission also improved transparency with respect to the implementation phase of trade agreements, for example, through the publication of meeting agendas and reports.<sup>32</sup>

2.21. The Commission carries out impact assessment analyses to support its decision-making for all proposals with significant direct impact, including in the trade policy area. In terms of trade agreements, up to four major types of evaluation may be conducted during the life of a trade agreement. When the Commission recommends the opening of negotiations on a trade agreement, it also submits the results of an impact assessment, as required by the Commission's Better Regulation agenda.<sup>33</sup> This assessment must verify the existence of a problem, identify its underlying causes, assess whether EU action is needed, and analyse the advantages and disadvantages of available solutions and their impacts. The assessment includes an online public consultation of interested parties. At the stage of negotiations, the Commission carries out trade sustainability impact assessments (SIAs) to analyse the economic, environmental, human rights and social impacts of the proposed trade agreements for both the EU and its trading partners.<sup>34</sup> SIAs are independent studies conducted by external consultants, involving comprehensive consultations with stakeholders and taking into account their knowledge and concerns both in the EU and in the trading partner. SIAs are published online. Once the negotiations are concluded, and before the agreement is signed, an analysis of the economic impact of the proposed deal for the EU is prepared for the Parliament and the Council. After sufficient time has passed (normally five years after entry into force), the Commission carries out an *ex post* evaluation of the trade agreement, to assess whether the expected outcome was achieved, and also to look for unintended effects.<sup>35</sup> *Ex post* evaluations are also published online.

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<sup>29</sup> Council of the EU, *New approach on negotiating and concluding trade agreements adopted by Council*. Viewed at: <https://www.consilium.europa.eu/en/press/press-releases/2018/05/22/new-approach-on-negotiating-and-concluding-eu-trade-agreements-adopted-by-council/>; and Council of the EU, *Draft Council conclusions on the negotiation and conclusion of EU trade agreements*. Viewed at: <http://data.consilium.europa.eu/doc/document/ST-8622-2018-INIT/en/pdf>.

<sup>30</sup> WTO document WT/TPR/357/Rev.1, 13 October 2017, para. 2.16, noting that "the EU wants to integrate investment rules, including liberalization and protection provisions, into its broader trade agreements".

<sup>31</sup> The texts of these directives were viewed at: <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1395>.

<sup>32</sup> European Commission, *Transparency Policy in DG Trade*. Viewed at: [http://trade.ec.europa.eu/doclib/docs/2018/november/tradoc\\_157486.pdf](http://trade.ec.europa.eu/doclib/docs/2018/november/tradoc_157486.pdf). Published materials referred to in this paragraph were viewed at: <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1395>.

<sup>33</sup> European Commission, *Impact assessments*. Viewed at: <http://ec.europa.eu/trade/policy/policy-making/analysis/policy-evaluation/impact-assessments>. *Better Regulation: why and how*. Viewed at: [https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law/better-regulation-why-and-how\\_en](https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law/better-regulation-why-and-how_en).

<sup>34</sup> European Commission, *SIAs*. Viewed at: <http://ec.europa.eu/trade/policy/policy-making/analysis/policy-evaluation/sustainability-impact-assessments/>.

<sup>35</sup> European Commission, *Ex post evaluations*. Viewed at: <http://ec.europa.eu/trade/policy/policy-making/analysis/policy-evaluation/ex-post-evaluations/>.

2.22. In addition to the SIA process, the Commission engages stakeholders during international trade negotiations through regular Civil Society Dialogue meetings.<sup>36</sup>

2.23. The Commission launched a series of annual comprehensive reports on the implementation of EU trade agreements.<sup>37</sup>

2.24. The task of the Expert Group on EU Trade Agreements, established in September 2017, is to provide expert advice that can assist the Commission in the negotiation and implementation of trade agreements. To this end, the Group: (i) provides technical expertise and practical experience relevant to negotiations in bilateral, plurilateral and multilateral trade agreements; (ii) sheds light on the different perspectives that the stakeholders they represent may take on certain issues; (iii) provides input related to the overall implementation of trade agreements; and (iv) provides feedback on the perception and public debate on trade agreements across EU member States, and issues that may require particular attention on the basis of their contacts with their respective European networks. The Group is composed of between 20 and 30 members, selected from European-level, non-governmental organizations, which may include employers' organizations, trade unions, representative associations, socio-economic interest groups like consumer associations, and other civil society organizations.<sup>38</sup> It currently has 27 members.<sup>39</sup>

## 2.3 Trade Agreements and Arrangements

### 2.3.1 WTO

2.25. The EU is an original Member of the WTO, and each EU member State is also a WTO Member. The EU, through the European Commission, represents all the member States in the WTO. It is a contracting party to the Agreement on Government Procurement, a participant in the Information Technology Agreement, and a signatory to the Agreement on Trade in Civil Aircraft. The trade policies of the EU have been reviewed 13 times by the WTO; the last review was in 2017.<sup>40</sup>

2.26. The EU attaches great importance to preserving an open, rules-based multilateral trading system, with the WTO at its core but, at the same time, emphasizes the need for a comprehensive reform of the WTO in respect of its negotiating, monitoring and dispute settlement functions.<sup>41</sup> The EU presented its initial ideas on WTO reform in September 2018.<sup>42</sup> It co-sponsored proposals to enhance transparency by improving compliance with notification requirements and to provide procedural guidelines for WTO Committees and Councils dealing with trade concerns.<sup>43</sup> It also

<sup>36</sup> European Commission, *EU trade meetings with Civil Society*. Viewed at: [http://trade.ec.europa.eu/civilsoc/?\\_cldee=Y2F0aGVyaW5lLnZlcmJhZXIzZGlsdWFrYUBlZXNjLmV1cm9wYSSldQ%3d%3d&urlid=54](http://trade.ec.europa.eu/civilsoc/?_cldee=Y2F0aGVyaW5lLnZlcmJhZXIzZGlsdWFrYUBlZXNjLmV1cm9wYSSldQ%3d%3d&urlid=54).

<sup>37</sup> European Commission, *Report on Implementation of EU FTAs, 1 January 2017-31 December 2017*, Viewed at: [http://trade.ec.europa.eu/doclib/docs/2018/october/tradoc\\_157468.pdf](http://trade.ec.europa.eu/doclib/docs/2018/october/tradoc_157468.pdf); and accompanying Commission Staff Working Document, Individual reports and info sheets on implementation of EU Free Trade Agreements, 31 October 2018. Viewed at: [http://trade.ec.europa.eu/doclib/docs/2018/october/tradoc\\_157473.PDF](http://trade.ec.europa.eu/doclib/docs/2018/october/tradoc_157473.PDF).

<sup>38</sup> Commission Decision of 13 September 2017 setting up the Group of Experts on EU Trade Agreements. Viewed at: <http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetailDoc&id=34613&no=1>.

<sup>39</sup> European Commission, *Expert group on EU trade agreements*. Viewed at: [http://trade.ec.europa.eu/doclib/docs/2017/december/tradoc\\_156487.pdf](http://trade.ec.europa.eu/doclib/docs/2017/december/tradoc_156487.pdf).

<sup>40</sup> WTO documents WT/TPR/G/357, 17 May 2017, WT/TPR/S/357/Rev.1, 13 October 2017, and WT/TPR/M/357, 13 October 2017.

<sup>41</sup> For example, in March 2019, the European Council reaffirmed "its commitment to an open-rules-based multilateral trading system with a modernised WTO at its core, and to resisting all forms of protectionism and distortions". Viewed at: <https://www.consilium.europa.eu/media/38789/22-euco-final-conclusions-en.pdf>. In June 2019, the Council of the EU adopted conclusions on EU action to strengthen rules-based multilateralism, including a commitment to "[c]ontinue the EU's leadership in the effort to preserve and reinforce the rules-based multilateral trading system, with the WTO at its core, in all its functions, to ensure it can effectively address current global trade challenges". Viewed at: <https://www.consilium.europa.eu/en/press/press-releases/2019/06/17/effective-multilateralism-council-adopts-conclusions/>.

<sup>42</sup> European Commission, *WTO modernisation – Introduction to future EU proposals*. Viewed at: [http://trade.ec.europa.eu/doclib/docs/2018/september/tradoc\\_157331.pdf](http://trade.ec.europa.eu/doclib/docs/2018/september/tradoc_157331.pdf).

<sup>43</sup> WTO documents JOB/GC/204/Rev.2-JOB/CTG/14/Rev.2, 27 June 2019 and WT/GC/777/Rev.3, 3 October 2019.

participates in discussions on WTO reform in various other settings, including the Ottawa Group<sup>44</sup>, a trilateral process launched in December 2017 in the margin of the 11<sup>th</sup> WTO Ministerial Conference with Japan and the United States on non-market-oriented policies and practices, state enterprises, industrial subsidies, and forced technology transfers, and a joint EU-China Working Group on WTO reform created in 2018. The EU underlined the urgent need to resolve the impasse that has arisen because of the absence of consensus on the appointment of Appellate Body members, and co-sponsored several proposals in this regard.<sup>45</sup>

2.27. The EU is an active participant in the work of the regular WTO bodies and in several initiatives on investment facilitation, micro, small and medium-sized enterprises (MSMEs), electronic commerce, and domestic regulation in services launched in December 2017 on the occasion of the 11<sup>th</sup> WTO Ministerial Conference. The EU and its member States endorsed the Declaration on Trade and Women's Economic Empowerment, adopted on the same occasion. Pursuant to this Declaration, the EU co-hosted a workshop on "Women in Digital Trade", together with Trinidad and Tobago, Senegal, the ITC, the WTO, and UNCTAD, in Geneva on 1 July 2019.

2.28. During the review period, the EU submitted numerous notifications to the WTO on, *inter alia*, agriculture, trade remedies, technical regulations, regional trade agreements (RTAs), and preferential rules of origin (Table A2.1). It was a complainant in five new dispute settlement cases and a respondent in one new case (Table A2.2)

### 2.3.2 Regional and preferential agreements

#### 2.3.2.1 Reciprocal preferences

2.29. As at 30 September 2019, the EU had 41 FTAs in force with 72 countries (Table A.2.3).

2.30. The EU divides its FTAs with third countries into four broad categories:

- "first-generation FTAs" are agreements concluded before 2006 and Stabilisation and Association agreements concluded with Western Balkan countries between 2009 and 2016.<sup>46</sup> First-generation FTAs are in force with: Mediterranean partners (Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, Palestine, and Tunisia), Western Balkan partners (Albania, Bosnia and Herzegovina, North Macedonia, Kosovo<sup>47</sup>, Montenegro, and Serbia), Chile, Mexico, Andorra, the Faroe Islands, Iceland, Norway, San Marino, Switzerland, and Turkey.
- "new-generation FTAs" are comprehensive FTAs, negotiated by the EU after 2006, with selected third countries, which typically go beyond provisions on liberalization of trade in goods. They cover services and public procurement. In some cases, they also cover investment and regulatory cooperation. Since 2010, all new-generation agreements include provisions on sustainable development.<sup>48</sup> New-generation FTAs are currently in force with: Japan; Canada; Korea, Rep. of; Colombia/Ecuador/Peru; and Central America.
- "deep and comprehensive FTAs" are agreements aimed at establishing comprehensive free trade areas as part of a process of deepening political association and gradual economic integration between the EU and its partners.<sup>49</sup> Deep and comprehensive FTAs are in force with: Ukraine, Georgia and Moldova, Rep. of.

<sup>44</sup> Australia; Brazil; Canada; Chile; EU; Japan; Kenya; Korea, Rep. of; Mexico; New Zealand; Norway; Singapore; and Switzerland.

<sup>45</sup> WTO documents WT/GC/W/753/Rev.1, 11 December 2018, and WT/GC/W/752/Rev.2, 11 December 2018.

<sup>46</sup> European Commission, *Individual reports and info sheets on implementation of EU Free Trade Agreements*, p. 113. Viewed at: [https://trade.ec.europa.eu/doclib/docs/2018/october/tradoc\\_157473.PDF](https://trade.ec.europa.eu/doclib/docs/2018/october/tradoc_157473.PDF).

<sup>47</sup> All references to Kosovo in this report should be understood in the context of UNSC 1244/1999.

<sup>48</sup> European Commission, *Individual reports and info sheets on implementation of EU Free Trade Agreements*, p. 15.

<sup>49</sup> European Commission, *Individual reports and info sheets on implementation of EU Free Trade Agreements*, p. 71.



- Economic partnership agreements (EPAs) with African Caribbean and Pacific (ACP) countries are in force with: the Southern African Development Community (SADC), Côte d'Ivoire, Ghana, Cameroon, CARIFORUM, the Pacific States, and the Eastern and Southern African States.

2.31. FTAs of the EU with third states currently cover 32% of EU trade in goods, and cover 45% when FTAs that have not yet entered into force or that are under negotiation are included.<sup>50</sup> Based on data on trade in goods, the largest FTA partners in 2018 were Switzerland (accounting for 8% of EU exports and 6% of EU imports), Turkey (4% of each), Norway (3% and 4%, respectively) and the Republic of Korea (3% of each).

2.32. As noted above, the negotiation of new FTAs is a key objective of the EU's Trade for All Strategy, and of its balanced and progressive trade policy agenda. A recent EU Trade Chief Economist Note observed that "[t]he last half decade has been the most prolific ever for the EU in terms of concluding FTAs with the rest of the world".<sup>51</sup> During the review period, FTAs with Canada and Japan entered into force, and FTAs with Singapore and Viet Nam were completed. In several cases, negotiations on FTAs were concluded at a political level and new FTA negotiations were launched with some partners. The new-generation FTAs are characterized by their broad scope, high level of ambition, and innovative features in areas such as investment and sustainable development. Aside from the new economic opportunities expected to be generated by these recent FTAs, the EU stresses their strategic benefits. In a more uncertain and unstable international trading environment, it regards these FTAs as important signals of a shared commitment to open trade and a willingness to pursue international cooperation to shape global trade in accordance with common values.

2.33. The CETA between Canada, on the one hand, and the EU and its member States, on the other, signed on 30 October 2016, provisionally entered into force on 21 September 2017.<sup>52</sup> Canada ratified it in May 2017. It will enter into force fully and definitively when ratified by all EU member States. As at 30 September 2019, 13 member States had notified the completion of their ratification processes. The CETA was notified to the WTO on 19 September 2017, and was considered in the Committee on Regional Trade Agreements in June 2018.<sup>53</sup> In 2018, the Commission characterized the CETA as "the most ambitious and progressive trade agreement the EU has concluded to date and the most far-reaching, both in terms of market access and trade rules, in particular in setting new standards for investment rules".<sup>54</sup> The CETA resulted in the elimination of duties for 97% of tariff lines on imports of products originating in the EU and for 97.7% of tariff lines on imports of products originating in Canada as from the date of its entry into force. Transition periods for the elimination of duties on the remaining products mean that, by 2024, almost 99% of duties on imports of products originating in the EU and Canada will be abolished. In the case of certain agricultural products, market access will be improved through tariff rate quotas. Some products are excluded from the process of tariff elimination.<sup>55</sup>

<sup>50</sup> European Commission, *Trade for You Too: Why is trade more important than you think? Chief Economist Note*, Issue 1, pp.33-34. Viewed at: [http://trade.ec.europa.eu/doclib/docs/2019/may/tradoc\\_157903.pdf](http://trade.ec.europa.eu/doclib/docs/2019/may/tradoc_157903.pdf).

<sup>51</sup> European Commission, *Trade for You Too: Why is trade more important than you think?* p. 33.

<sup>52</sup> The text of the CETA was published in Official Journal (OJ), L 11/23, 14 January 2017. Viewed at: [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2017.011.01.0023.01.ENG&toc=OJ:L:2017:011:TOC](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2017.011.01.0023.01.ENG&toc=OJ:L:2017:011:TOC). The provisional application of the CETA does not apply to its provisions on investment protection, market access for portfolio investment, and the Investment Court System.

<sup>53</sup> WTO documents WT/REG389/N/1 and S/C/N//896, 21 September 2017, WT/REG389/1/Rev.1, 26 June 2018, WT/REG389/2, 6 June 2018 and WT/REG389/M/1, 27 June 2018.

<sup>54</sup> European Commission, *Individual reports and info sheets on implementation of EU Free Trade Agreements*, p. 20. The 30 chapters of the CETA contain disciplines on trade in goods; trade remedies; technical barriers to trade; sanitary and phytosanitary measures; customs and trade facilitation; subsidies; investment (establishment and protection of investment and settlement of investment disputes between investors and states); cross-border trade in services; temporary entry and stay of natural persons for business purposes; mutual recognition of professional qualifications; domestic regulation; financial services; international maritime transport services; telecommunications; electronic commerce; competition policy; state enterprises, monopolies, and enterprises granted special rights or privileges; government procurement; IP, regulatory cooperation, trade and sustainable development; trade and labour; trade and the environment; transparency; and dispute settlement. For details, see the Factual Presentation prepared by the WTO Secretariat in document WT/REG/389/1/Rev.1, 26 June 2018.

<sup>55</sup> WTO document WT/REG/389/1/Rev.1, 26 June 2018.

2.34. The EPA between the EU and Japan (EU-Japan EPA) was signed on 17 July 2018 and entered into force on 1 February 2019.<sup>56</sup> It was notified to the WTO in January 2019.<sup>57</sup> It achieves a comprehensive level of liberalization of trade in goods and services and of investments; it includes provisions on IP (including geographical indications) and government procurement; and it lays down rules on sustainable development, among other elements. Some innovative features of the EU-Japan EPA include the express reference to the Paris Agreement on Climate Change, a chapter aimed at supporting the use of the Agreement by small and medium-sized enterprises (SMEs), and provisions on corporate governance. Unlike the CETA, the EU-Japan EPA does not contain provisions on investment protection or the settlement of investment disputes between investors and states. Separate negotiations between Japan and the EU for the conclusion of an Investment Protection Agreement are ongoing.

2.35. The FTA between the EU and Singapore and the Investment Protection Agreement between the EU and its member States and Singapore<sup>58</sup> were signed on 19 October 2018 and received the consent of the European Parliament on 13 February 2019. Once officially concluded by the Council, the FTA can enter into force. The Investment Protection Agreement will firstly also have to be ratified by member States according to their respective internal procedures. The FTA with Singapore, the first EU FTA with a country in Southeast Asia, is seen as a building block towards the conclusion of an FTA with ASEAN.<sup>59</sup> It covers provisions on national treatment and market access; trade remedies; technical barriers to trade; sanitary and phytosanitary measures; customs and trade facilitation; non-tariff barriers to trade and investment in renewable energy generation; services, establishment and electronic commerce; government procurement; IP; competition and related matters; trade and sustainable development; and dispute settlement.

2.36. The FTA between the EU and Viet Nam and the Investment Protection Agreement concluded between the EU and its member States and Viet Nam were signed on 30 June 2019 and were submitted to the European Parliament for its consent. Once the Parliament gives its consent, the FTA can be officially concluded by the Council, and will enter into force. The Investment Protection Agreement will firstly also have to be ratified by member States according to their respective internal procedures. The EU-Viet Nam FTA is similar in scope to the EU's FTA with Singapore, but also includes some further topics, such as a chapter on state enterprises, monopolies and enterprises with special rights. It has been described as the most ambitious FTA ever concluded by the EU with a developing country.<sup>60</sup>

2.37. In April 2018, the EU and Mexico reached agreement in principle on the modernization of the trade part of the EU-Mexico association agreement, which will render it comparable in scope and level of ambition to the recent EU FTAs.<sup>61</sup> Negotiations with Chile on a similar modernization of the trade part of the EU-Chile association agreement were launched in November 2017.<sup>62</sup> Negotiations

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<sup>56</sup> The text of the EU-Japan EPA was published in OJ, L 330/3, 27 December 2018. Viewed at: [http://publications.europa.eu/resource/ellar/d40c8f20-09a4-11e9-81b4-01aa75ed71a1.0006.01/DOC\\_1](http://publications.europa.eu/resource/ellar/d40c8f20-09a4-11e9-81b4-01aa75ed71a1.0006.01/DOC_1).

<sup>57</sup> WTO documents WT/REG396/N/1 and S/C/N/921, 14 January 2019. The EU-Japan EPA contains chapters on trade in goods; rules of origin and origin procedures; customs matters and trade facilitation; trade remedies; sanitary and phytosanitary measures; technical barriers to trade; trade in services, investment liberalization and electronic commerce; capital movements, payments and transfers, and temporary safeguard measures; government procurement; competition policy; subsidies; state-owned enterprises, enterprises granted special rights or privileges, and designated monopolies; IP; corporate governance; trade and sustainable development; transparency; good regulatory practices and regulatory cooperation; cooperation in the field of agriculture; SMEs; and dispute settlement. The WTO Secretariat's factual description of this agreement was circulated in document WT/REG396/1, 12 August 2019.

<sup>58</sup> EU-Singapore trade and investment agreements. Viewed at: <http://trade.ec.europa.eu/doclib/press/index.cfm?id=961>.

<sup>59</sup> European Commission, *Agreement with Singapore set to give a boost to EU-Asia trade*. Viewed at: <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1980>.

<sup>60</sup> European Parliament, *EU-Vietnam free trade agreement*. Viewed at: [https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/614702/EPRS\\_BRI\(2018\)614702\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/614702/EPRS_BRI(2018)614702_EN.pdf).

<sup>61</sup> According to a summary of the agreement reached in 2018, the modernized agreement will cover provisions on trade in goods; rules of origin; customs and trade facilitation; trade remedies; sanitary and phytosanitary measures; animal welfare and antimicrobial resistance; energy and raw materials; technical barriers to trade; services; investment; public procurement; competition; IP rights; trade and sustainable development; transparency; good regulatory practice; SMEs; anti-corruption; and dispute settlement. Viewed at: [http://trade.ec.europa.eu/doclib/docs/2018/april/tradoc\\_156791.pdf](http://trade.ec.europa.eu/doclib/docs/2018/april/tradoc_156791.pdf).

<sup>62</sup> European Commission, *Modernisation of the trade part of the EU-Chile Association Agreement*. Viewed at: <http://ec.europa.eu/trade/policy/countries-and-regions/countries/chile/>.

with Mercosur on the conclusion of an association agreement, which had resumed in 2016, were concluded at the political level at the end of June 2019.

2.38. Negotiations with Tunisia on a deep and comprehensive free trade area (DCFTA), launched in October 2015, continued during the review period. Negotiations with Morocco on the same type of agreement have been on hold since 2014.<sup>63</sup> The DCFTAs will complement and modernize the current legal framework for trade relations between the EU and Tunisia and Morocco, called the Euro-Mediterranean Association Agreements. The key objective of these DCFTAs is to support Tunisia's and Morocco's development and reform agendas, the enhancement of their export competitiveness, and their better integration into regional and global value chains.

2.39. In June 2018, the EU launched negotiations for comprehensive trade agreements with Australia<sup>64</sup> and New Zealand.<sup>65</sup>

2.40. The United States and the EU adopted a Joint Statement in July 2018, in which they agreed to work towards elimination of tariffs, non-tariff barriers, and subsidies on non-auto industrial goods, and towards the reduction of barriers to trade in services, chemicals, pharmaceuticals, medical products and soybeans.<sup>66</sup> The Statement also provides for a strengthening of strategic cooperation with respect to energy, and notes that the EU wants to increase imports of liquefied natural gas from the United States to diversify its energy supply. It envisages a close dialogue on standards, to reduce bureaucratic obstacles to trade and slash costs. Additionally, the United States and the EU agreed to join forces to better protect their companies from unfair trade practices and to work closely with like-minded partners to reform the WTO. Finally, the two sides agreed to work together to resolve the steel and aluminium tariff issues and retaliatory tariffs. The Statement established an Executive Working Group to implement this agenda. In April 2019, the Council of the EU adopted decisions authorizing the opening of negotiations with the United States of agreements on the elimination of tariffs for industrial goods, and on conformity assessment.<sup>67</sup> The Council decision on the former notes that "the negotiating directives for the Transatlantic Trade and Investment Partnership must be considered obsolete and no longer relevant".<sup>68</sup>

2.41. The EU maintains the European Economic Area (EEA) Agreement with Iceland, Liechtenstein and Norway, permitting these countries to participate in the internal market for free movement of goods (except for agricultural and fisheries products), services, capital and labour. However, negotiations on further liberalization of agricultural products are part of the EEA Agreement. Agreements concluded in 2015 between the EU and Iceland on geographical indications for agricultural products and the improvement of market access for agricultural products entered into force on 1 May 2018. An agreement concluded in 2017 between the EU and Norway on additional preferences for certain agricultural products<sup>69</sup> entered into force on 1 October 2018.

2.42. The EU has customs unions with Andorra and Turkey that cover trade in industrial products (HS 25-97) and one with San Marino that covers all goods (except coal and steel). It is currently in the process of negotiating an association agreement with Andorra, Monaco and San Marino (AMS) the aim of which is to allow AMS to participate in the EU's internal market. The customs union with Andorra will be extended to cover agricultural products, while that with San Marino will be extended without a change in scope of product coverage. In June 2018, the Council decided that no further work regarding the modernization of the EU-Turkey customs union would be foreseen.

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<sup>63</sup> European Commission, *The texts proposed by the EU for a Deep and Comprehensive Free Trade Area (DCFTA) with Tunisia*. Viewed at:

<http://trade.ec.europa.eu/doclib/press/index.cfm?id=1490&serie=1106&langId=en>.

<sup>64</sup> European Commission, *EU-Australia Trade Agreement negotiations*. Viewed at: <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1865>.

<sup>65</sup> European Commission, *EU-New Zealand Trade Agreement negotiations*. Viewed at: <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1867>.

<sup>66</sup> European Commission, *Joint EU-U.S. Statement following President Juncker's visit to the White House*. Viewed at: <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1898>.

<sup>67</sup> European Commission, *EU-US Trade: Commission welcomes Council's green light to start negotiations with the United States*. Viewed at: <http://trade.ec.europa.eu/doclib/press/index.cfm?id=2010>.

<sup>68</sup> Council Decision authorizing the opening of negotiations with the United States on the elimination of tariffs for industrial goods. Viewed at: <https://www.consilium.europa.eu/media/39180/st06052-en19.pdf>.

<sup>69</sup> The text of the Agreement was published in OJ L 129/3, 25 May 2018. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2018:129:FULL&from=GA>.

2.43. Trade between the EU and Switzerland is governed by the FTA concluded in 1972, which only covers trade in goods, and approximately 120 bilateral sectoral agreements, some of them of trade relevance, notably on agricultural products and processed agricultural products, public procurement, technical barriers to trade, and free movement of persons. Negotiations to further liberalize trade in agricultural products with Switzerland are on hold. The conclusion of an Institutional Framework Agreement has been under discussion since 2014. This would cover the five major sectoral agreements, on free movement of persons, mutual recognition of conformity assessment, agricultural products, air transport, and road transport.

2.44. The majority of the ACP countries are either implementing an EPA or have concluded negotiations on an EPA with the EU.<sup>70</sup> EPAs are implemented by 31 countries in the Caribbean, the Pacific<sup>71</sup>, Eastern and Southern Africa<sup>72</sup>, Central Africa<sup>73</sup>, West Africa<sup>74</sup>, and member States of the SADC. Regional EPAs concluded with countries in West Africa and with the East African Community have yet to be signed by all the Parties before they can enter into force. The Communication on a New Africa–Europe Alliance for Sustainable Investment and Jobs, adopted in September 2018, highlighted the role of the EPAs concluded with countries in Africa as building blocks to the benefit of the construction of the African Continental Free Trade Area (ACFTA) and suggested that, building on the implementation of the Area, the long-term perspective was to create a comprehensive continent-to-continent FTA between the EU and Africa.<sup>75</sup>

### 2.3.2.2 Unilateral preferences

2.45. The EU Generalised Scheme of Preferences (GSP), introduced in 1971 and implemented through successive Council regulations, provides preferential access to the EU market, to assist developing countries in their efforts to reduce poverty and promote sustainable development and good governance. The current GSP Regulation<sup>76</sup> is the product of a reform that pursued three main objectives: (i) to contribute to poverty eradication by expanding exports from countries most in need; (ii) to promote sustainable development and good governance; and (iii) to ensure better safeguards for the EU's financial and economic interests. It entered into force in January 2014 for a period of ten years.

2.46. The GSP provides a general GSP arrangement and two special arrangements.

2.47. The general arrangement (Standard GSP) grants duty suspensions (non-sensitive products) or duty reductions (sensitive products) for about 66% of all EU tariff lines to countries of low or lower-middle income status, which do not benefit from other preferential trade access to the EU market. As at 30 September 2019, there were 15 Standard GSP beneficiaries: Congo, Cook Islands, India, Indonesia, Kenya, Micronesia, Nauru, Nigeria, Niue, Samoa, Syria, Tajikistan, Tonga, Uzbekistan, and Viet Nam.<sup>77</sup>

2.48. The GSP Regulation provides that tariff preferences under the Standard GSP shall be suspended if the average value of imports of a product originating in a GSP country over three consecutive years exceeds the threshold listed in an annex to the Regulation. Based on this provision, the Commission adopted an implementing regulation in 2016, suspending tariff preferences for the period 2017-19 in respect of certain products originating in India, Indonesia,

<sup>70</sup> European Commission, *Economic Partnership Agreements (EPAs)*. Viewed at: [http://trade.ec.europa.eu/doclib/docs/2017/february/tradoc\\_155300.pdf](http://trade.ec.europa.eu/doclib/docs/2017/february/tradoc_155300.pdf).

<sup>71</sup> Fiji and Papua New Guinea.

<sup>72</sup> Madagascar, Mauritius, Seychelles and Zimbabwe.

<sup>73</sup> Cameroon.

<sup>74</sup> Côte d'Ivoire and Ghana. The regional EPA has yet to be signed by all the parties before it can enter into force.

<sup>75</sup> European Commission, *Communication on a new Africa–Europe Alliance for Sustainable Investment and Jobs: Taking our partnership for investment and jobs to the next level*. Viewed at: [https://ec.europa.eu/commission/sites/beta-political/files/soteu2018-africa-europe-jobs-alliance-communication-643\\_en.pdf](https://ec.europa.eu/commission/sites/beta-political/files/soteu2018-africa-europe-jobs-alliance-communication-643_en.pdf).

<sup>76</sup> Regulation (EU) No. 978/2012 of the European Parliament and of the Council of 25 October 2012, applying a scheme of generalised tariff preferences. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012R0978&from=EN>.

<sup>77</sup> At the time of the previous Review, there were 19 Standard GSP beneficiaries, including Côte d'Ivoire, Ghana, Swaziland, and Ukraine, all of which have since left the Scheme.

Kenya and Ukraine.<sup>78</sup> It adopted a similar regulation in February 2019, suspending tariff preferences for the period 2020-22 in respect of certain products originating in India, Indonesia and Kenya.<sup>79</sup>

2.49. The Special Incentive Arrangement for Sustainable Development and Good Governance (GSP+) grants complete duty suspension for essentially the same 66% of tariff lines as the Standard GSP, for countries which are especially vulnerable in terms of their economies' diversification and export volumes, and which have ratified, and effectively implemented, 27 core international conventions.<sup>80</sup> To apply for the GSP+ scheme, a country must: (i) meet the thresholds for being considered a vulnerable economy in terms of its import share to the EU and the diversification of those imports; (ii) have ratified and implemented the 27 conventions; (iii) not have formulated reservations that are prohibited under the conventions or could be considered incompatible with the GSP Regulation; and (iv) sign a binding undertaking to cooperate with the United Nations (UN) system and the Commission in monitoring implementation. Failure to comply with these requirements could result in the suspension of the tariff concession. As at 30 September 2019, there were eight GSP+ beneficiaries: Armenia, Bolivia, Cabo Verde, the Kyrgyz Republic, Mongolia, Pakistan, the Philippines and Sri Lanka.<sup>81</sup>

2.50. The Everything But Arms (EBA) special arrangement grants full duty-free, quota-free access for all products except arms and ammunition, for countries classified by the UN as least-developed countries (LDCs). As at 30 September 2019, there were 48 EBA beneficiaries.<sup>82</sup> The EU launched a process of enhanced engagement with three EBA beneficiaries (Bangladesh, Cambodia, and Myanmar) in respect of their compliance with certain international conventions on human and labour rights, the violation of which can be a ground for the temporary withdrawal of tariff preferences provided under any of the three GSP arrangements.<sup>83</sup> In February 2019, the EU initiated the procedure provided for in the GSP Regulation that might lead to the temporary withdrawal of tariff preferences provided to Cambodia.<sup>84</sup> The EU will adopt a decision on this matter in February 2020.

2.51. The GSP Regulation provides that safeguard measures may be applied, through the reintroduction of the Common Customs Tariff duty, if a product originating in a GSP beneficiary country is imported in volumes and/or at prices which cause, or threaten to cause, serious difficulties to EU producers of like or directly competing products. In January 2019, the Commission adopted a regulation imposing such safeguard measures on imports of Indica rice from Cambodia and Myanmar. The import duties under this Regulation will be imposed for a period of three years, and will be progressively reduced.<sup>85</sup>

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<sup>78</sup> Commission Implementing Regulation (EU) 2016/330 of 8 March 2016 suspending the tariff preferences for certain GSP beneficiary countries in respect of certain GSP sections in accordance with Regulation (EU) No. 978/2012 applying a scheme of generalised tariff preferences for the period of 2017-19, Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0330&from=EN>.

<sup>79</sup> Commission Implementing Regulation (EU) 2019/249 of 12 February 2019 suspending the tariff preferences for certain GSP beneficiary countries in respect of certain GSP sections in accordance with Regulation (EU) No. 978/2012 of the European Parliament and of the Council applying a scheme of generalised tariff preferences for the period of 2020-22. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R0249&from=EN>.

<sup>80</sup> These include seven conventions on human rights, eight work-related conventions of the International Labour Organization (ILO), eight conventions on environmental protection and climate change, and four good governance conventions under UN auspices against corruption and the control of illegal drugs.

<sup>81</sup> Sri Lanka joined the GSP+ in 2017. Georgia ceased to benefit from the GSP+ after it obtained preferential access to the EU market under its DCFTA with the EU. Paraguay left the GSP+ in January 2019 as a result of a change in its economic status, as it had been classified by the World Bank as an upper middle-income country for three consecutive years.

<sup>82</sup> At the time of the previous Review, there were 49 EBA beneficiaries. Samoa ceased to benefit from the EBA arrangement when it graduated from LDC status in January 2019.

<sup>83</sup> Chapter V, GSP Regulation.

<sup>84</sup> Commission Implementing Decision of 11 February 2019 on the initiation of the procedure for temporary withdrawal of the tariff preferences provided to the Kingdom of Cambodia under Article 19 of Regulation (EU) No. 978/2012. Viewed at: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019D0212\(02\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019D0212(02)&from=EN).

<sup>85</sup> Commission Implementing Regulation (EU) 2019/67 of 16 January 2019 imposing safeguard measures with regard to imports of Indica rice originating in Cambodia and Myanmar/Burma. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R0067&from=NL>.

2.52. In January 2018, the Commission published its second biennial report to the Parliament and the Council on the effects of the reformed GSP during the period 2016-17.<sup>86</sup> The report focused on the performance of the ten countries that were GSP+ beneficiaries during this period (Armenia, Bolivia, Cabo Verde, Georgia, the Kyrgyz Republic, Mongolia, Pakistan, Paraguay, the Philippines and Sri Lanka). It noted the countries' progress and shortcomings. The third biennial report, covering the period 2010-19, is expected to be published in December 2019 or January 2020.

2.53. In October 2018, the Commission published a report reflecting the main results of a comprehensive mid-term evaluation of the GSP.<sup>87</sup> The report indicated that the share of imports under the GSP in total EU imports is relatively modest, and declined from 5.8% in 2011 to 4.1% in 2016.<sup>88</sup> It offered the following observations, based on an evaluation of the GSP in light of the three general objectives of the 2012 reform. Firstly, in relation to the objective of contributing to poverty reduction by expanding exports from countries most in need, the effectiveness of the GSP was enhanced by focusing better on countries most in need. Secondly, the GSP had an overall positive impact on social development and human rights in the beneficiary countries. Thirdly, the reform improved provisions to protect the EU's financial and economic interests, in that products that are too competitive are regularly removed from the Scheme. Overall, the report concluded that there was no need to amend the GSP Regulation before its expiry on 31 December 2023 but that measures should be taken to improve transparency and inclusiveness in GSP+ monitoring, both in the EU and in the beneficiary countries, and to promote greater awareness of GSP in beneficiary countries.

## 2.4 Investment Regime

### 2.4.1 Investment and the EU internal market

2.54. As a general rule, the TFEU prohibits all restrictions on capital movements and on payments among EU member States, and between EU member States and non-members. The free movement of capital may be restricted based on the exceptions<sup>89</sup> provided for in the TFEU or for overriding reasons of general interest as defined in the case law of the CJEU, provided that the restrictions are necessary and proportionate to the achievement of the public objective pursued. Under the TFEU, no restrictions are in principle allowed on the freedom of establishment of an EU national in the territory of another member State. Freedom of establishment extends to EU subsidiaries affiliated to non-EU companies<sup>90</sup>, but not to branches or agencies of non-EU companies.

2.55. The removal of regulatory barriers to investment in the EU is one of the three main pillars of the Investment Plan for Europe, launched in 2014. The Plan pursues three main objectives in this regard: (i) improvement of the quality of regulation at all levels; (ii) development of new sources for long-term financing, including through the establishment of a Capital Markets Union; and (iii) reinforcing the level playing field and eliminating barriers to investment in the single market, notably through the removal of barriers to investment in the energy and transport sectors, the creation of a Digital Single Market, and the elimination of obstacles to the proper functioning of services and product markets.<sup>91</sup> In the implementation of the latter, the Commission divided the main challenges to investment that require reforms into five categories: (i) public administration/business environment; (ii) labour market/education; (iii) financial sector/taxation; (iv) research, development and innovation; and (v) sector-specific regulation.

2.56. The Commission reported, in 2018, that member States had made significant progress in providing favourable investment conditions. However, it considered that major challenges continued

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<sup>86</sup> European Commission, *Report on the Generalised Scheme of Preferences covering the period 2016-17*. Viewed at: [https://trade.ec.europa.eu/doclib/docs/2018/january/tradoc\\_156536.pdf](https://trade.ec.europa.eu/doclib/docs/2018/january/tradoc_156536.pdf).

<sup>87</sup> European Commission, *Report from the Commission to the European Parliament and the Council on the application of Regulation (EU) No. 978/2012 applying a Scheme of Generalised Tariff Preferences and repealing Council Regulation (EC) No. 732/2008*. Viewed at: [http://trade.ec.europa.eu/doclib/docs/2018/october/tradoc\\_157438.PDF](http://trade.ec.europa.eu/doclib/docs/2018/october/tradoc_157438.PDF).

<sup>88</sup> European Commission, *Report from the Commission to the European Parliament and the Council on the application of Regulation (EU) No. 978/2012 applying a Scheme of Generalised Tariff Preferences and repealing Council Regulation (EC) No. 732/2008*, pp. 2-3.

<sup>89</sup> See in particular Arts. 64-66, TFEU.

<sup>90</sup> Arts. 49 and 54, TFEU.

<sup>91</sup> European Commission, *An Investment Plan for Europe*. Viewed at: <http://ec.europa.eu/transparency/regdoc/rep/1/2014/EN/1-2014-903-EN-F1-1.Pdf>.

to exist, and that member States should step up their efforts to implement the necessary reforms to remove obstacles to investment; in this regard, it stressed the importance of effective justice systems.<sup>92</sup> The need to improve conditions for investment within the EU also featured prominently in the 2019 European Semester process. The Commission noted in that context that "all Members experienced barriers to investment in different policy areas" and that "[a]mong the most frequently cited impediments to investment in the EU are inefficiencies in public administration, unfavourable conditions for doing business, and high administrative and regulatory burden[s] for specific sectors".<sup>93</sup> Accordingly, the country-specific recommendations submitted by the Commission in the 2019 European Semester feature a deeper focus on investment.<sup>94</sup>

2.57. The period under review saw important developments regarding the status under EU law of bilateral investment agreements between EU member States. Intra-EU bilateral investment agreements were often concluded at a time when one of the two parties was not yet an EU member.<sup>95</sup> The Commission has consistently considered such agreements to be incompatible with EU law and, in 2016, requested certain member States to terminate them. The Commission "intensified its dialogue" with member States in this regard following a ruling of the CJEU in 2018, confirming that investor-state arbitration clauses in intra-EU bilateral investment agreements are contrary to EU law.<sup>96</sup> In January 2019, all member States signed political declarations in which they committed to terminating their intra-EU bilateral investment agreements by the end of 2019.<sup>97</sup>

#### 2.4.2 Investment relations with third countries

2.58. The Commission defines the objectives of EU investment policy as to: secure a level playing field so that EU investors abroad are not discriminated against or mistreated; make it easier to invest by creating a predictable and transparent business environment; promote investment that supports sustainable development, respect for human rights and high labour and environmental standards; attract international investment into the EU, while protecting the EU's essential interests; and preserve the right of home and host countries to regulate their economies in the public interest.<sup>98</sup>

##### 2.4.2.1 Establishment of a cooperation mechanism for the screening of FDI

2.59. A key development during the review period was the preparation and adoption of legislation providing for the establishment of an EU framework for the screening of FDI. While no EU-wide mechanism exists for the review of inward investment from third countries based on considerations relating to security or public order<sup>99</sup>, 15 EU member States currently have national mechanisms

<sup>92</sup> European Commission, *Investment Plan for Europe: stock-taking and next steps*, and Annexes 1 and 2. Viewed at: [https://ec.europa.eu/commission/sites/beta-political/files/communication\\_investment\\_plan\\_for\\_europe\\_nov2018.pdf](https://ec.europa.eu/commission/sites/beta-political/files/communication_investment_plan_for_europe_nov2018.pdf).

<sup>93</sup> European Commission, *2019 European Semester: Assessment of progress on structural reforms, prevention and correction of macroeconomic imbalances, and results of in-depth reviews under Regulation (EU) No. 1176/2011*, p. 15. Viewed at: <https://ec.europa.eu/transparency/regdoc/rep/1/2019/EN/COM-2019-150-F1-EN-MAIN-PART-1.PDF>.

<sup>94</sup> European Commission, *2019 European Semester: country-specific recommendations*. Viewed at: [https://ec.europa.eu/info/sites/info/files/2019-european-semester-country-specific-recommendations-commission-recommendations-communication\\_en.pdf](https://ec.europa.eu/info/sites/info/files/2019-european-semester-country-specific-recommendations-commission-recommendations-communication_en.pdf).

<sup>95</sup> According to UNCTAD data, the number of arbitration cases brought by an investor from one EU member State against another member State based on an investment agreement totalled 174 by 31 July 2018, which constitutes about 20% of the total 901 known investor-state dispute settlement proceedings globally. About 45 per cent of these intra-EU cases were brought pursuant to the Energy Charter Treaty. UNCTAD, *Fact Sheet on Intra-European Union Investor-State Arbitration Cases*. Viewed at: [https://unctad.org/en/PublicationsLibrary/diaepcb2018d7\\_en.pdf](https://unctad.org/en/PublicationsLibrary/diaepcb2018d7_en.pdf).

<sup>96</sup> Judgment of the Court (Grand Chamber) of 6 March 2018, Case C-284/16, *Slowakische Republik v Achmea BV*, EU:C:2018:158. Viewed at: <http://curia.europa.eu/juris/document/document.jsf?text=&docid=199968&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3823964>; see also European Commission, *Protection of intra-EU Investment*. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52018DC0547&from=EN>.

<sup>97</sup> Declarations of the Representatives of the Governments of the member States, of 15 and 16 January 2019, on the Legal Consequences of the Judgment of the Court of Justice in *Achmea* and on Investment Protection in the European Union. Viewed at: <https://ec.europa.eu/info/publications/190117-bilateral-investment-treaties>.

<sup>98</sup> European Commission, *Objectives of EU investment policy*. Viewed at: <http://ec.europa.eu/trade/policy/accessing-markets/investment/>.

<sup>99</sup> Review at the EU level of a foreign investment transaction under the Merger Regulation is based on criteria relating to the impact of a proposed merger on competition.

enabling them to screen inward investment on that basis.<sup>100</sup> These screening mechanisms vary significantly with respect to factors such as whether they apply only to extra-EU investment or to both intra- and extra-EU investment; the type of criteria used to define the investment to be reviewed; the sectors covered by the screening mechanism; whether the grounds for screening are limited to defence-related national security interests or include the protection of broader public policy; and whether the screening is in the form of a prior authorization procedure or of an *ex post* mechanism.<sup>101</sup>

2.60. The European Commission President proposed the creation of an EU framework for FDI screening in the 2017 State of the Union address.<sup>102</sup> The proposal was motivated by growing concerns regarding the impact on the strategic interests of the EU or its member States of certain types of FDI, especially foreign acquisitions in cases involving state-owned enterprises and strategic sectors.<sup>103</sup> This legislation, a regulation based on the common commercial policy competence in Article 207(2) of the TFEU, was adopted on 19 March 2019, entered into force on 10 April 2019, and shall apply from 11 October 2020.<sup>104</sup>

2.61. The Regulation consists of two main pillars. It (i) provides for a framework for the screening by member States of FDI into the EU on the grounds of security or public order; and (ii) establishes a mechanism for cooperation between member States, and between member States and the Commission, with regard to FDI likely to affect security or public order. The Regulation does not establish a centralized EU mechanism for the screening of inward investments. FDI is defined in the Regulation as "an investment of any kind by a foreign investor aiming to establish or to maintain lasting and direct links between the foreign investor and the entrepreneur to whom or the undertaking to which the capital is made available in order to carry on an economic activity in a Member State, including investment which enable effective participation in the management or control of a company carrying out an economic activity".<sup>105</sup>

2.62. Regarding the first pillar – the establishment of a framework – it is important to note that the Regulation does not require member States to adopt screening mechanisms or to harmonize them. Rather, it provides that member States may maintain, amend or adopt mechanisms to screen FDI in their territory on the grounds of security or public order<sup>106</sup>, and lays down certain requirements that these screening mechanisms must satisfy with respect to the following factors: transparency and non-discrimination between third countries; the application of time-frames; the protection of confidential information; the right of foreign investors and the undertakings concerned to seek

<sup>100</sup> Austria, Denmark, Finland, France, Germany, Hungary, Italy, Latvia, Lithuania, the Netherlands, Poland, Portugal, Romania, Spain, and the United Kingdom. Insofar as such member State screening mechanisms relate to national security and public policy considerations, their possible legal basis is Article 346(1)(b) of the TFEU and/or one of the exceptions to the free movement of capital and payments.

<sup>101</sup> European Commission, *Commission Staff Working Document accompanying the document Proposal for a Regulation of the European Parliament and of the Council establishing a framework for screening of foreign direct investments into the European Union*. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017SC0297&from=EN>. See also European Parliament, *Foreign direct investment screening: A debate in light of China-EU FDI flows*. Viewed at: [https://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS\\_BRI%282017%29603941](https://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_BRI%282017%29603941); European Parliament, *EU framework for FDI screening*. Viewed at: [https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/614667/EPRS\\_BRI\(2018\)614667\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/614667/EPRS_BRI(2018)614667_EN.pdf); and Copenhagen Economics, *Screening of FDI towards the EU*. Viewed at: <https://www.copenhageneconomics.com/dyn/resources/Publication/publicationPDF/2/422/1516698849/copenhagen-economics-2018-screening-of-fdi-towards-the-eu.pdf>.

<sup>102</sup> European Commission, *State of the Union 2017-Trade Package: European Commission proposes framework for screening of foreign direct investments*. Viewed at: <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1716>.

<sup>103</sup> European Commission, *Welcoming Foreign Direct Investment while Protecting Essential Interests*. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017DC0494&from=EN>.

<sup>104</sup> Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investment into the Union. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R0452&from=EN>.

<sup>105</sup> Regulation (EU) 2019/452, Art. 2(1). Screening "means a procedure allowing to assess, investigate, authorise, condition, prohibit or unwind foreign direct investments". Regulation (EU) 2019/452, Art. 2(3). A screening mechanism for purposes of the Regulation "means an instrument of general application, such as a law or regulation, and accompanying administrative requirements, implementing rules or guidelines, setting out the terms, conditions and procedures to assess, investigate, authorise, condition, prohibit or unwind foreign direct investments on grounds of security or public order". Regulation (EU) 2019/452, Art. 2(4).

<sup>106</sup> Regulation (EU) 2019/452, Art. 3.



recourse to screening decisions; the avoidance of circumvention of screening mechanisms and screening decisions; and the notification to the Commission of existing screening mechanisms and of the adoption of new screening mechanisms or amendments to existing ones.<sup>107</sup>

2.63. In addition, the Regulation defines the factors that may be taken into consideration by member States (or the Commission) in determining whether FDI is likely to affect security or public order. In this respect, it provides that account may be taken of the potential effects of the investment on the following factors:

- "(a) critical infrastructure, whether physical or virtual, including energy, transport, water, health, communications, media, data processing or storage, aerospace, defence, electoral or financial infrastructure, and sensitive facilities, as well as land and real estate crucial for the use of such infrastructure;
- (b) critical technologies and dual use items as defined in point 1 of Article 2 of Council Regulation (EC) No. 428/2009, including artificial intelligence, robotics, semiconductors, cybersecurity, aerospace, defence, energy storage, quantum and nuclear technologies as well as nanotechnologies and biotechnologies;
- (c) supply of critical inputs, including energy or raw materials, as well as food security;
- (d) access to sensitive information, including personal data, or the ability to control such information; or
- (e) the freedom and pluralism of the media."<sup>108</sup>

2.64. Account may also be taken of whether the foreign direct investor is controlled by the government of a third country or has already been involved in activities affecting security or public order in a member State; or whether there is a serious risk that the foreign investor engages in illegal or criminal activities.<sup>109</sup>

2.65. With regard to the second pillar - the mechanism for cooperation- the Regulation requires member States to notify the Commission and other member States of any FDI that is undergoing screening<sup>110</sup>, provides that other member States may submit comments to the member State undertaking the screening, and allows the Commission to issue an opinion to such member State, on its own initiative or at the request of the screening member State. Such opinion is legally non-binding.<sup>111</sup> While the member State undertaking the screening must give due consideration to such comments and to the opinion of the Commission, the final screening decision shall be taken by that member State.<sup>112</sup> Another aspect of the cooperation mechanism is the provision that a member State may submit comments to, and request information from, another member State if it considers that its security or public order is affected by FDI in another member State that is not undergoing screening; the Commission may issue an opinion to, and request information from, a member State if it considers that FDI in that member State that is not being screened affects security or public order in more than one member State.<sup>113</sup>

<sup>107</sup> Member States were required to notify the Commission of existing screening mechanisms by 10 May 2019. *List of screening mechanisms notified by Member States*. Viewed at: [http://trade.ec.europa.eu/doclib/docs/2019/june/tradoc\\_157946.pdf](http://trade.ec.europa.eu/doclib/docs/2019/june/tradoc_157946.pdf).

<sup>108</sup> Regulation (EU) 2019/452, Art. 4(1).

<sup>109</sup> Regulation (EU) 2019/452, Arts. 4(2)(a)-(c). The Regulation does not include any criteria relating to whether the country of origin of the foreign investor grants reciprocal access to its market to EU investors.

<sup>110</sup> Article 9(2) specifies the information that must be provided when a member State notifies the Commission and other member States that FDI in its territory is undergoing screening. This information includes: the ownership structure of the foreign investor and of the undertaking in which the investment is planned or has been completed; the value of the investment; the products, services and business operations of the foreign investor and of the undertaking in which the FDI is planned or has been completed; the member States in which the foreign investor and the undertaking in which the investment is planned, or has been completed, conduct relevant business operations; the funding of the investment and its source; and the date when the investment is planned to be, or was, completed.

<sup>111</sup> Under EU law, recommendations and opinions have no binding force. Art. 288, TFEU.

<sup>112</sup> Regulation (EU) 2019/452, Art. 6.

<sup>113</sup> Regulation (EU) 2019/452, Art. 7.

2.66. The cooperation procedure also covers situations in which the Commission considers that FDI is likely to affect projects or programmes of Union interest on grounds of security or public order. In such situations, the Commission may issue an opinion addressed to the member State where the FDI is planned, or has been completed, and the member State must take utmost account of the opinion and provide an explanation to the Commission if it does not follow the opinion.<sup>114</sup> The term "projects or programmes of Union interest" is defined to "include those projects and programmes which involve a substantial amount or a significant share of Union funding, or which are covered by Union law regarding critical infrastructure, critical technologies or critical inputs which are essential for security or public order".<sup>115</sup> A list of these projects and programmes is contained in an annex to the Regulation.

2.67. Finally, the Regulation requires member States and the Commission to establish a contact point for the implementation of the Regulation, provides that the group of experts on the screening of FDI into the EU<sup>116</sup> shall continue its work, and allows the member States and the Commission to cooperate with responsible authorities of third countries on issues relating to the screening of FDI on the grounds of security and public order.<sup>117</sup>

#### 2.4.2.2 Agreements with third countries

2.68. As noted above, following the advisory opinion of the CJEU of May 2017, the treatment of investment matters in EU agreements bifurcated. Trade agreements that deal only with matters within exclusive EU competence, and are concluded only by the EU, include market access provisions with respect to FDI. Investment protection issues are addressed in separate investment protection agreements that include matters that fall within EU-exclusive and shared EU and member State competences and that are concluded by both the EU and the member States. These mixed EU investment protection agreements will replace bilateral investment agreements between individual EU member States and third countries.

2.69. The recent agreements with Singapore illustrate how investment is dealt with under the new architecture of EU trade and investment agreements. The FTA between the EU and Singapore provides that, with respect to market access through establishment, each Party shall accord establishments and entrepreneurs of the other Party treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule of Specific Commitments. The protection of investment is treated separately in the Investment Protection Agreement between the EU and its member States on the one hand, and Singapore on the other. The Agreement adopts the broad, asset-based definition of investment which is typical of investment protection agreements. It reaffirms the Parties' right to regulate within their territories to achieve legitimate policy objectives; requires each Party to accord national treatment to covered investors and the covered investments of the other Party; requires each Party to accord fair and equitable treatment and full protection and security to covered investors of the other Party; requires each Party to accord compensation for losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot in the territory of the other Party; prohibits expropriation of investments except for a public purpose, in accordance with the due process of law, on a non-discriminatory basis, and against payment of prompt, adequate and effective compensation; and requires each party to permit all transfers relating to a covered investment to be made in a freely-convertible currency without restriction or delay, subject to certain exceptions.

2.70. The dispute settlement provisions of the Investment Protection Agreement are similar to those of the CETA and reflect what is now commonly referred to as the Investment Court System. This new System results from a policy adopted by the EU in 2015 as part of the Trade for All Strategy, to work towards the reform of the traditional investor-state dispute settlement mechanism of international investment agreements. Instead of *ad hoc* arbitration bodies, the System provides for a permanent Tribunal of First Instance and a permanent Appeal Tribunal to hear appeals from provisional awards issued by the Tribunal of First Instance. The members of these Tribunals are

<sup>114</sup> Regulation (EU) 2019/452, Art. 8(2).

<sup>115</sup> Regulation (EU) 2019/452, Art. 8(3).

<sup>116</sup> This group of experts was established by the European Commission in November 2017. Commission Decision of 29 November 2017 setting up the group of experts on the screening of foreign direct investments into the European Union. Viewed at:

<https://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetailDoc&id=36097&no=1>.

<sup>117</sup> Regulation (EU) 2019/452, Arts. 12-13.

appointed in advance by the contracting parties, must meet specified requirements regarding expertise and qualifications, and are subject to strict rules of ethical conduct. The new rules also include detailed provisions on the transparency of proceedings, notably through public access to documents, hearings and the possibility of third persons making submissions.<sup>118</sup> In addition to the inclusion of provisions regarding the System in bilateral agreements, the EU is also pursuing the establishment of a multilateral investment court system<sup>119</sup> and the reform of the investment provisions in the Energy Charter Treaty.

2.71. The EU is also negotiating a stand-alone investment agreement with China. In April 2019, the EU and China committed to achieving, during 2019, the decisive progress required, notably with regard to liberalization commitments, for the conclusion of an ambitious EU-China Comprehensive Investment Agreement in 2020.<sup>120</sup>

2.72. EU foreign investment policy includes transition arrangements regarding bilateral investment treaties signed by EU member States with third countries before the entry into force of the Lisbon Treaty or the date of their accession to the EU. According to a notice published by the Commission in June 2019<sup>121</sup>, more than 1,400 bilateral investment agreements were in force between EU member States and third states, which is more than half of the 2,353 bilateral investment agreements in force globally, according to the UNCTAD data base on international investment agreements.<sup>122</sup> Regulation (EU) No. 1219/2012 lays down the conditions under which such treaties may be maintained until they are progressively replaced by investment agreements concluded by the EU.<sup>123</sup> It also provides that the Commission may authorize member States to negotiate with third states to amend existing treaties or conclude new ones, subject to certain conditions.

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<sup>118</sup> On 30 April 2019, the CJEU ruled that the new System is compatible with EU law. Opinion 1/17 of the Court (Full Court), 30 April 2019, *Request for an opinion pursuant to Article 218(11) TFEU, made on 7 September 2017 by the Kingdom of Belgium*. Viewed at: <http://curia.europa.eu/juris/document/document.jsf?text=&docid=213502&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=4976548>.

<sup>119</sup> Council of the EU, Negotiating directives for a Convention establishing a multilateral court for the settlement of investment disputes. Viewed at: <http://data.consilium.europa.eu/doc/document/ST-12981-2017-ADD-1-DCL-1/en/pdf>.

<sup>120</sup> EU-China Summit Joint Statement, para. 4. Viewed at: <https://www.consilium.europa.eu/media/39020/euchina-joint-statement-9april2019.pdf>.

<sup>121</sup> List of bilateral investment agreements referred to in Article 4(1) of Regulation No. 1219/2012 of the European Parliament and of the Council establishing transitional arrangements for bilateral investment agreements between Member States and third countries. Viewed at: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52019XC0613\(02\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52019XC0613(02)&from=EN).

<sup>122</sup> The UNCTAD data base indicates that the total number of bilateral investment agreements of EU member States, i.e. including both agreements with third states and with other EU member States, is 1,655.

<sup>123</sup> Regulation (EU) No. 1219/2012 of the European Parliament and of the Council of 12 December 2012 establishing transitional arrangements for bilateral investment agreements between member States and third countries. Viewed at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:351:0040:0046:EN:PDF>.

### 3 TRADE POLICIES AND PRACTICES BY MEASURE

#### 3.1 Measures Directly Affecting Imports

##### 3.1.1 Customs procedures, valuation, and requirements

3.1. The EU Customs Union recently celebrated its 50<sup>th</sup> anniversary of trading as a single entity in 2018. It commenced in 1968 when a common customs tariff replaced the individual tariffs of the original six EEC member countries and allowed goods to flow free from duties and other trade restrictions. Since that time, other milestones along the way were the introduction of the single administrative document replacing numerous national customs declarations, and the Community Customs Code unifying the customs legislation and procedures.<sup>1</sup> Today these first instruments still form the backbone of the Customs Union, although they have been improved, harmonized, and adapted to technological change.

3.2. The TFEU further defined the functions of the Union and set out that the Customs Union is one of the exclusive competences of the EU. Importantly, it provides for uniform treatment for goods upon importation, exportation, or transit from the EU's customs territory. In cooperation, the national customs' services of the 28 member States are responsible for the day-to-day work and implementation at the borders. In 2018, 89,652 customs officers<sup>2</sup> at 2,007 border posts<sup>3</sup> worked together to facilitate legitimate trade, collect payment of duties and taxes, and enforce the rules to counteract fraud, piracy, and counterfeiting. Almost 92% of import declarations under a standard procedure were cleared within 1 hour in 2018.<sup>4</sup>

3.3. Directorate-General for Taxation and Customs Union (TAXUD) is the Commission's service for customs matters. It works to support the trading interests of the EU, promote cooperation among member States, and create a coherent customs policy. As part of its strategic vision for 2016-20, DG TAXUD has identified proper implementation of the Union Customs Code (UCC), the deployment of electronic systems, the management of the withdrawal of the United Kingdom, and the maintaining of close cooperation with national customs administrations as the key goals or objectives during the period. As part of its ongoing work, DG TAXUD was testing new technologies, in particular blockchains, for their potential in various customs processes, such as the Import One Stop Shop (IOSS) system (Section 3.1.4).<sup>5</sup>

3.4. DG TAXUD also continues to work on the EU Single Window (SW) environment for customs initiative, which was launched in 2012 with its first pilot project and is currently in operation in nine member States.<sup>6</sup> The SW initially incorporated the certificates for the Common Veterinary Entry Document and Common Entry Document. Last year, it incorporated new certificates i.e. the Forest Law Enforcement, Governance and Trade (FLEGT) licence, the Certificate of Organic Inspection (COI), the Common Health Entry Document for Plant Protection (CHED-PP). Other certificates are under integration (i.e. Ozone-Depleting Substances (ODS), Fluorinated Greenhouse Gases (f-gases) and Dual-Use Export Goods); implementation is targeted for early 2021.<sup>7</sup>

3.5. Another initiative launched during the review period was the 2018-22 EU Customs Action Plan to combat intellectual property rights (IPR) infringements.<sup>8</sup> The Commission reports that over EUR 738 million in fake or counterfeit goods was confiscated by customs in 2018, with China;

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<sup>1</sup> European Commission, *50 years of the EU Customs Union*. Viewed at: [https://ec.europa.eu/taxation\\_customs/50-years-eu-customs-union\\_en](https://ec.europa.eu/taxation_customs/50-years-eu-customs-union_en).

<sup>2</sup> Customs Union Performance Annual Report 2018, based on provisional data provided by member States on 8 May 2019.

<sup>3</sup> Count based on the Customs Control Equipment Instrument (CCEI) Needs Assessment.

<sup>4</sup> Customs Union Performance Annual Report 2018, based on provisional data provided by member States on 8 May 2019.

<sup>5</sup> European Commission, *2018 – Annual Activity Report*. Viewed at: [https://ec.europa.eu/info/sites/info/files/taxud\\_aar\\_2018\\_final.pdf](https://ec.europa.eu/info/sites/info/files/taxud_aar_2018_final.pdf).

<sup>6</sup> Bulgaria, Czech Republic, Cyprus, Estonia, Ireland, Latvia, Poland, Portugal, and Slovenia.

<sup>7</sup> European Commission, *The EU Single Window environment for customs*. Viewed at: [https://ec.europa.eu/taxation\\_customs/general-information-customs/electronic-customs/eu-single-window-environment-for-customs\\_en](https://ec.europa.eu/taxation_customs/general-information-customs/electronic-customs/eu-single-window-environment-for-customs_en).

<sup>8</sup> EUR-Lex, Council Conclusions on the EU Customs Action Plan to combat IPR infringements for the years 2018 to 2022. Viewed at: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52019XG0121\(01\)&rid=9](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52019XG0121(01)&rid=9).

Hong Kong, China; and Turkey as the main sources. Over 69,000 detentions were made concerning about 26.7 million articles, with the highest concentration in cigarettes, toys, and packaging materials.<sup>9</sup> The EU Customs Action Plan to combat IPR infringements contains four main strategic objectives, with a number of specific objectives for, and actions to be taken under, each one. For example, there are specific objectives on engaging right-holders and stakeholders, developing tailor-made approaches for parcel and postal traffic, and strengthening customs risk management.<sup>10</sup>

3.6. In 2018, the EU collected about EUR 25.4 billion in customs duties on imports.<sup>11</sup> Due to the sharing arrangement in place, about EUR 20 billion was transferred to the EU budget and EUR 5 billion (i.e. 20% administrative collection fee) was retained by the member States. Customs revenue contributed to 12.75% of the EU budget in 2018.<sup>12</sup>

### 3.1.1.1 Legal framework and electronic systems

3.7. As enumerated in the previous Review, there were significant ongoing changes in the area of customs in recent years, with the implementation of the EU's new UCC and its accompanying legislation (hereinafter, UCC refers to the UCC and its related Acts) (Box 3.1)<sup>13</sup>, whose main substantive provisions entered into force on 1 May 2016. The UCC is at the core of the EU's customs law, as it provides a comprehensive framework for customs rules and procedures. It mandates that all customs communications must be electronic. For that purpose, various electronic systems are to be deployed pursuant to the UCC Work Programme.<sup>14</sup> In the meantime, certain transitional arrangements are in place. Pursuant to a recent modification of the UCC, the transition period was extended and so, the UCC electronic systems can now be gradually deployed until the end of 2025.

3.8. The Work Programme will be reviewed to reflect these changes in the UCC<sup>15</sup> and the information technology (IT) planning (Table 3.1). Work will continue after 2020 on the national electronic systems concerned with notifications of arrival and presentation, declarations of temporary storage, and customs declarations; on existing electronic systems that must be upgraded to take account of certain requirements, such as the harmonization of data; and three new trans-European electronic systems concerning guarantees for potential or existing customs debts, the customs status of goods, and centralized clearance.

3.9. The EU's planned implementation of new electronic systems, while delayed for some systems, is still going ahead or has been implemented in a number of areas. The systems which have already been implemented to date are as follows: Registered Exporters System, Binding Tariff Information Phase 1, Customs Decisions System, Uniform User Management and Digital Signature, Authorised Economic Operator upgrade Phase 1, Economic Operator Registration and Identification System upgrade, and Surveillance 3. More specifically, the Customs Decisions System (CDS) and the Uniform User Management and Digital Signature (UUM&DS) started their activities in October 2017.

3.10. The Registered Export System (REX) was implemented on 1 January 2017 to facilitate the origin procedures under the GSP and recent EU FTAs.<sup>16</sup> It allows registered exporters to self-certify

<sup>9</sup> European Commission, Taxation and Customs Union, *Report on the EU customs enforcement of intellectual property rights: Results at the EU border, 2018*. Viewed at: [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/2019-ipr-report.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/2019-ipr-report.pdf).

<sup>10</sup> EUR-Lex, Council Conclusions on the EU Customs Action Plan to combat IPR infringements for the years 2018 to 2022. Viewed at: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52019XG0121\(01\)&rid=9](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52019XG0121(01)&rid=9).

<sup>11</sup> European Commission, *Customs duties mean revenue*. Viewed at: [https://ec.europa.eu/taxation\\_customs/facts-figures/customs-duties-mean-revenue\\_en](https://ec.europa.eu/taxation_customs/facts-figures/customs-duties-mean-revenue_en); DG BUDG, Surveillance; and information provided by the authorities.

<sup>12</sup> Information provided by the authorities.

<sup>13</sup> The UCC Delegated Act; the UCC Implementing Act; the UCC Transitional Delegated Act; and the UCC Work Programme; including their amendments, addenda, corrigenda, etc.

<sup>14</sup> See Table 3.2 in the previous Review (WTO document WT/TPR/S/357/Rev.1, 13 October 2017) and European Commission online information. Viewed at: [https://ec.europa.eu/taxation\\_customs/business/union-customs-code/ucc-work-programme\\_en#heading\\_2](https://ec.europa.eu/taxation_customs/business/union-customs-code/ucc-work-programme_en#heading_2).

<sup>15</sup> Regulation (EU) 2019/632. EUR-Lex, *UCC – Work Programme*. Viewed at: [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2019.111.01.0054.01.ENG&toc=OJ:L:2019:111:TOC](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2019.111.01.0054.01.ENG&toc=OJ:L:2019:111:TOC).

<sup>16</sup> To date, the REX only applies to the FTAs with Canada and Japan.

and make out a statement on origin.<sup>17</sup> Another development was the implementation of the New Computerised Transit System (NCTS). This System was designed to increase efficiencies and accelerate transactions for goods under transit procedures. It will be updated from Phase 4 to Phase 5, with deployment foreseen during 2021–23. There will be new processes for "Incidents en route", i.e. if there is an incident during the transit operation, the economic operator must inform the nearest responsible customs office, which will register the incident in the system (in the current phase, this task is done by either the customs office of destination or the customs office of transit). A new role Customs office of exit for transit" will be introduced. This office will act as the exit frontier customs office in case of pure transit (transit not following an export procedure), and address safety and security data and risk management. The declaration acceptance process will be extended, with the possibility of submitting the declaration prior to the presentation of the goods. The data structure of the information exchange messages will be aligned with the EU Customs Data Model. Other minor adjustments will be made to the existing processes.

### Box 3.1 UCC framework

UCC	Main law	Regulation (EU) No. 952/2013 <sup>a</sup>
UCC Delegated Act	Provides detailed rules concerning certain provisions of the UCC	Regulation (EU) No. 2015/2446 <sup>b</sup>
UCC Implementing Act	Lays down detailed rules for implementing certain provisions of the UCC	Regulation (EU) No. 2015/2447 <sup>c</sup>
UCC Transitional Delegated Act	Transitional rules for certain provisions of the UCC where the relevant electronic systems are not yet operational	Regulation (EU) No. 2016/341 <sup>d</sup>
UCC Work Programme	Establishes the Work Programme relating to the development and deployment of the electronic systems	Commission Implementing Decision (EU) No. 2016/578 <sup>e</sup>

a Viewed at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0952&rid=1>.

b Viewed at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015R2446&from=EN>.

c Viewed at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015R2447&from=EN>.

d Viewed at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32016R0341>.

e Viewed at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016D0578&from=EN>.

Source: As noted in Box.

**Table 3.1 UCC new transitional measures for certain electronic systems, 2019**

Subject	UCC Article	New transition period <sup>a</sup>
For the exchange and storage of information, e.g. declarations, applications or decisions, between customs authorities and between economic operators and customs authorities	Article 6(1)	31 December 2020
Provisions on the notification of arrival, on presentation and on declarations of temporary storage	Articles 133, 139, 145 and 146	31 December 2022
Provisions related to the customs declaration for goods brought into the customs territory	Articles 158, 162, 163, 166, 167, 170 to 174, 201, 240, 250, 254 and 256	31 December 2022
Provisions on guarantees for potential or existing customs debts	Point (b) of Article 89(2) and Article 89(6)	31 December 2025
Provisions on entry summary declarations and risk analysis	Articles 46, 47, 127, 128 and 129	31 December 2025
Provisions on the customs status of goods	Article 153(2)	31 December 2025
Provisions on centralized clearance	Article 179	31 December 2025
Provisions on transit	Point (a) of Article 210, Articles 215(2), 226, 227, 233 and 234	31 December 2025

<sup>17</sup> European Commission, *REX – Registered Exporter system*. Viewed at: [https://ec.europa.eu/taxation\\_customs/business/calculation-customs-duties/rules-origin/general-aspects-preferential-origin/arrangements-list/generalised-system-preferences/the\\_register\\_exporter\\_system\\_en](https://ec.europa.eu/taxation_customs/business/calculation-customs-duties/rules-origin/general-aspects-preferential-origin/arrangements-list/generalised-system-preferences/the_register_exporter_system_en).

Subject	UCC Article	New transition period <sup>a</sup>
Provisions on outward processing, pre-departure declarations, formalities on exit of goods, export of EU goods, re-export of non-EU goods, and exit summary declarations	Articles 258, 259, 263, 267, 269, 270, 271, 272, 274 and 275	31 December 2025

a At the latest.

Source: Regulation (EU) No. 2019/632 of the European Parliament and of the Council of 17 April 2019 amending Regulation (EU) No. 952/2013 to prolong the transitional use of means other than the electronic data-processing techniques provided for in the Union Customs Code. Viewed at: [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2019.111.01.0054.01.ENG&toc=OJ:L:2019:111:TOC](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2019.111.01.0054.01.ENG&toc=OJ:L:2019:111:TOC).

3.11. One of the recent developments was an amendment to the UCC Delegated Regulation in 2019 to introduce a new form of import declaration with a "reduced data set" for goods below the customs dutiable threshold (low-value consignments).<sup>18</sup> The introduction of the new form of declaration responds to the need to lodge a customs declaration for every low-value consignment from 1 January 2021 (when the VAT exemption for goods not exceeding EUR 10 or EUR 22 will disappear). It was recognized that the full dataset in Annex B of the Delegated Regulation was not appropriate for the customs clearance of the low-value goods, due to the large increase in volume of low-value consignments now imported into the EU.<sup>19</sup> Also, it did not meet the requirements for levying VAT on these shipments. Neither declarants nor customs IT systems can handle the production and processing of a standard customs declaration per consignment. Therefore, amendments were made to have a simpler declaration for these goods, as outlined in the Annex. These changes are scheduled to enter into force on 1 January 2021 to coincide with the changes to VAT.

3.12. The UCC was also amended in March 2019 to take into account a number of changes or corrections.<sup>20</sup> The most relevant are the inclusion of certain pre-arrival data in an entry summary declaration, relief from import duty in certain cases where goods have been repaired or altered for outward processing, a clarification to certain rules on binding tariff rules (see Section 3.1.1.2), and the inclusion of the Italian municipality of Campione d'Italia into the customs territory of the EU.

3.13. The UCC Delegated Act, which provides more detailed rules to provisions in the UCC, was also amended during the review period. In May 2018, a number of provisions were changed or clarified, such as the definition of exporter and registered exporter (Section 3.2.1), goods transhipped through a territory outside the Customs Union, certain rules on cumulation for rules of origin.<sup>21</sup> Other developments concern two amendments to the UCC Implementing Act, in 2017 and 2018, respectively.<sup>22</sup> These were mainly to correct certain errors and omissions, and to facilitate the establishment of certain preferential rules of origin, in particular with respect to the GSP. A further

<sup>18</sup> Commission Delegated Regulation (EU) 2019/1143 of 14 March 2019 amending Delegated Regulation (EU) 2015/2446 as regards the declaration of certain low-value consignments. Viewed at: [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2019.181.01.0002.01.ENG&toc=OJ:L:2019:181:TOC](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2019.181.01.0002.01.ENG&toc=OJ:L:2019:181:TOC).

<sup>19</sup> In the European Commission study of 2015, *Assessment of the application and impact of the VAT exemption for importation of small consignments*, it was estimated that small value consignments, i.e. parcels below the EUR 10 to EUR 22 threshold, represent about 70% of all parcels. European Commission online information. Viewed at: [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/resources/documents/common/publications/studies/lvcr-study.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/common/publications/studies/lvcr-study.pdf).

<sup>20</sup> Regulation (EU) 2019/474 of the European Parliament and of the Council of 19 March 2019 amending Regulation (EU) No. 952/2013 laying down the Union Customs Code. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1562827757662&uri=CELEX:32019R0474>.

<sup>21</sup> Commission Delegated Regulation (EU) 2018/1063 of 16 May 2018 amending and correcting Delegated Regulation (EU) 2015/2446 supplementing Regulation (EU) No. 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1562827757662&uri=CELEX:32018R1063>.

<sup>22</sup> Commission Implementing Regulation (EU) 2017/989 of 8 June 2017 correcting and amending Implementing Regulation (EU) 2015/2447 laying down detailed rules for implementing certain provisions of Regulation (EU) No. 952/2013 of the European Parliament and of the Council laying down the Union Customs Code. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1538035166624&uri=CELEX:32017R0989>; and Commission Implementing Regulation (EU) 2018/604 of 18 April 2018 amending Implementing Regulation (EU) 2015/2447 as regards the procedural rules to facilitate the establishment in the Union of the preferential origin of goods, and repealing Regulations (EEC) No. 3510/80 and (EC) No. 209/2005. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1538035166624&uri=CELEX:32018R0604>.

amendment occurred in September 2019 making a number of changes, in particular on surveillance of data elements and rules on exit.<sup>23</sup>

### 3.1.1.2 Trade facilitation

3.14. Binding rulings for tariffs (BTI) and binding origin information (BOI) continue to be part of the EU's customs regime. As noted in the previous Review, there were some changes to the validity period and to their application on the trader, i.e. making them binding, as a result of the UCC's entry into force. Since that time, there were no further legal amendments. In 2018, as part of DG TAXUD's efforts to provide certain legal clarifications, Administrative Guidance for BTI was developed and published; similar guidance for BOI was also made available in 2017.<sup>24</sup> The use of BTI gradually increased each year, and over 244,000 valid BTIs were in force as at mid-2019. The use of BOI remained relatively stable and, at the end of 2018, there were 4,775 valid BOIs. From October 2019, all BTI applications will be done electronically; currently, most of them are submitted in paper form only. For BOI, there is no electronic system and these are treated in paper form.

3.15. One new development was the EU's initiative to expand advance rulings to customs valuation, in addition to tariffs and origin. In March 2018, the Commission launched exploratory consultations to gauge the need or desire for a legal basis for decisions on Binding Value Information (BVI), pursuant to the UCC.<sup>25</sup> About 200 responses were received during the public comment period, and 86.5% of the respondents were in favour of establishing BVI decisions.<sup>26</sup> Based on the results of the public consultation, a Customs 2020 Project Group involving ten member States was set up, with the aim of drafting a feasibility study addressing the possible implementation of an EU BVI system. It is planned to complete the feasibility study by early 2020.

3.16. Under the EU Authorised Economic Operator (AEO) programme, trusted traders, who voluntarily meet a wide range of criteria, work in close cooperation with customs authorities to assure the common objective of supply chain security. This entitles AEOs to benefit throughout the EU. As described in the previous Review, there are two types of authorizations: AEOs for customs simplification programmes (AEOC) and for security (AEOS). It is possible to combine AEOC and AEOS status. From 1 October 2019, an EU harmonized trader interface, the eAEO, will be operational. It will allow electronic exchange of information, i.e. notifications between Customs and AEOs regarding the AEO processes relating to the application and management of authorization. The system is expected to be fully operational on 15 December 2019.

3.17. Another trade-facilitating measure is the Smart and Secure Trade Lanes (SSTL) Pilot Project that was initiated in 2006 as a pilot to test end-to-end supply chain security instruments between the EU and China. The Project operates about 120 trade lanes involving 200 economic operators between 16 maritime ports in certain EU member States and China. The Project has now entered into a third phase, whereby traders will have faster customs clearance with enhanced logistical processes. This is expected to result in a higher share of goods traded under the SSTL, thereby improving supply chain security and trade facilitation.<sup>27</sup> The Project is expanding to other modes of transportation, in particular air and rail, and to involve more partner countries.

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<sup>23</sup> Commission Implementing Regulation (EU) 2019/1394 of 10 September 2019 amending and correcting Implementing Regulation (EU) 2015/2447 as regards certain rules on surveillance for release for free circulation and exit from the customs territory of the Union. Viewed at: [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2019.234.01.0001.01.ENG&toc=OJ:L:2019:234:TOC](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2019.234.01.0001.01.ENG&toc=OJ:L:2019:234:TOC).

<sup>24</sup> European Commission, *Administrative Guidance on the Binding Tariff Information Process*. Viewed at: [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/bti\\_guidance\\_en.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/bti_guidance_en.pdf); and *Guidance on Binding Origin Information*. Viewed at: [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/guidance\\_boi\\_en.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/guidance_boi_en.pdf).

<sup>25</sup> European Commission, *Exploratory Public consultation on the establishment in the EU of Decisions relating to binding information in the field of customs valuation*. Viewed at: [https://ec.europa.eu/info/consultations/exploratory-public-consultation-establishment-eu-decisions-relating-binding-information-field-customs-valuation\\_en](https://ec.europa.eu/info/consultations/exploratory-public-consultation-establishment-eu-decisions-relating-binding-information-field-customs-valuation_en).

<sup>26</sup> CIRCABC, *Statistics: Exploratory Public consultation on the establishment in the EU of Decisions relating to binding information in the field of customs valuation*. Viewed at: <https://circabc.europa.eu/sd/a/d447b5cb-421d-4df8-95a5-bb75fb6f72f6/Statistics%20report%20Customs%20valuation%20consultation.pdf>.

<sup>27</sup> European Commission, *Smart and Secure Trade Lanes Pilot (SSTL)*. Viewed at: [https://ec.europa.eu/taxation\\_customs/general-information-customs/customs-security/smart-secure-trade-lanes-pilot-sstl\\_en](https://ec.europa.eu/taxation_customs/general-information-customs/customs-security/smart-secure-trade-lanes-pilot-sstl_en).



3.18. The Commission continues to streamline and improve procedures in ports and maritime transport. On 15 August 2019, Regulation 2019/1239, establishing a European Maritime Single Window environment (EMSWe), entered into force. This was in response to the need to reduce the administrative burden for shipping companies, expedite maritime transport, and improve the interoperability of information flows. Thus, the new Regulation, replacing the previous one from 2010, further harmonizes rules for submitting information when ships arrive at or depart from EU ports. It will be fully applied from 2025 and is expected to halve the time currently required for administrative formalities for port calls.<sup>28</sup>

### 3.1.1.3 Customs valuation

3.19. The UCC's changes to the customs valuation framework were rather extensive in terms of structure and substance, as outlined in the previous Review.<sup>29</sup> There were no major changes in the legal structure since the UCC provisions become applicable on 1 May 2016.

3.20. In 2018, the Commission issued a new version of the Customs Valuation Compendium, to take into account the changes introduced by the UCC.<sup>30</sup> This, and the associated Guidance document, provide further clarification on the application of the transaction value method (Article 128 UCC IA) and the treatment of royalties for valuation purposes (Article 136 UCC IA). The Compendium and Guidance are meant to serve as a guide for customs administrations and traders; i.e. they are of an explanatory nature and are not legally binding. Section B of the Compendium aligns the UCC provisions with the respective interpretive notes of the WTO Agreement on Implementation of Article VII of GATT 1994 (Customs Valuation Agreement). Currently, works are underway to revise the Guidance document. It is intended that an updated version of the document will be made available in the first quarter of 2020.

3.21. Another development that may have an impact on valuation results from a CJEU court case in 2017. The case questions whether transfer prices can be used as the basis for the transaction value methodology of valuation. The CJEU ruling states that the EU legal provisions on the determination of the customs value "do not permit an agreed transaction value, composed of an amount initially invoiced and declared and a flat-rate adjustment made after the end of the accounting period, to form the basis for the customs value, without it being possible to know at the end of the accounting period whether that adjustment would be made up or down".

3.22. The EU initiated consultations for advance binding rulings on valuation during the period (Section 3.1.1.2).

3.23. No notifications were made to the Committee on Customs Valuation during the review period; the modifications made to the EU's valuation rules pursuant to the UCC remain outstanding.

### 3.1.2 Rules of origin

3.24. As with other aspects of customs, the implementation of the UCC brought about changes in the EU's rules of origin, both preferential and non-preferential, in recent years. In summary, the UCC brought about changes to the lists indicating substantial processing or working operations conferring origin; designation of minimal operations that cannot be used for the substantial transformation test; and self-certification of registered exporters, a new system for preferential rules of origin.

3.25. Since the last Review, there have not been substantial changes in the EU's rules or origin. However, a number of new preferential agreements entered into force or were provisionally applied, which have their own unique origin rules.

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<sup>28</sup> Regulation of the European Parliament and of the Council establishing a European Maritime Single Window Environment and repealing Directive 2010/65/EU. Viewed at: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CONSIL:PE\\_38\\_2019\\_REV\\_1&qid=1562323418812&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CONSIL:PE_38_2019_REV_1&qid=1562323418812&from=EN).

<sup>29</sup> WTO document WT/TPR/S/357, 17 May 2017, Section 3.1.2

<sup>30</sup> European Commission, *Compendium of Customs Valuation Texts*. Viewed at: [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/customs\\_valuation\\_compendium\\_2018\\_en.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/customs_valuation_compendium_2018_en.pdf). It is noted that revisions included the removal of references to "domestic sales".

### 3.1.2.1 Non-preferential

3.26. The basic rules on non-preferential origin, as outlined in the UCC, did not change since the last Review. The basic rules remain as follows:

- goods wholly obtained in a single country or territory are regarded as having their origin in that country or territory; and
- goods, the production of which involves more than one country or territory, shall be deemed to originate in the country or territory where they underwent their last, substantial, economically-justified processing or working, in an undertaking equipped for that purpose, resulting in the manufacture of a new product or representing an important stage of manufacture.

3.27. In order to determine their substantial transformation if more than one country is involved, the EU refers to Annex 22-01 of the UCC Delegated Act, which lists the specific rules for many products. For example, each item may have its own rule specified or it refers to a change in tariff heading, for example. Annex 22-01 sets out specific rules for several products, at chapter, heading or subheading level, for 37 chapters.<sup>31</sup> To determine the non-preferential origin of the products not explicitly mentioned in Annex 22-01, the general rule applies (wholly obtained or last substantial transformation).

3.28. In December 2018, a "Guidance on non-preferential rules of origin", referring to the relevant articles under the UCC, was published.<sup>32</sup>

### 3.1.2.2 Preferential

3.29. Preferential rules of origin are determined by the underlying preferential agreement. The legal basis for the implementation of the preferential agreement is Article 64 of the UCC. Such preferential agreements can either be bilateral agreements (e.g. the CETA between the EU and Canada) or a regional convention which harmonizes rules and promotes cumulation among the parties (e.g. the Regional Convention on pan-Euro-Mediterranean preferential rules of origin (PEM Convention)).<sup>33</sup> The majority of the EU's FTA partners are part of the PEM Convention; furthermore, the EU replaced the bilateral protocols of the preferential agreements with the PEM Members with a single legal instrument using the PEM Convention.<sup>34</sup>

3.30. Two recent agreements, with Canada and Japan, continue an earlier practice in a few FTAs for origin determination with the establishment of origin quotas. For goods that ordinarily would not qualify through the product-specific rules, another alternative was given for a limited number of products and quantities. For example, the CETA provides for some origin quotas for high-sugar-containing products, sugar confectionary and chocolate preparations, processed foods, dog and cat food, fish and seafood, textiles, apparel, and vehicles, as listed by HS code and quota amount in Annex 5-A to the Protocol on Rules of Origin of the CETA.<sup>35</sup>

3.31. Other new FTAs entering into force in last few years, i.e. Japan, Côte d'Ivoire, Ghana, and the SADC, have rules of origin included in the respective EPAs or in the Market Access Regulation. An important feature of EU rules of origin is cumulation (Table 3.2).

<sup>31</sup> Only textile chapters provide comprehensive coverage of all tariff lines; other chapters provide partial coverage.

<sup>32</sup> European Commission, *Guidance on Non-Preferential Rules of Origin*. Viewed at: [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/guidance-on-non-preferential-rules-of-origin\\_en.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/guidance-on-non-preferential-rules-of-origin_en.pdf).

<sup>33</sup> European Commission, *Regional Convention on pan-Euro-Mediterranean preferential rules of origin*. Viewed at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L:2013:054:TOC>.

<sup>34</sup> European Commission, *The pan-euro-Mediterranean cumulation and the PEM Convention*. Viewed at: [https://ec.europa.eu/taxation\\_customs/business/calculation-customs-duties/rules-origin/general-aspects-preferential-origin/arrangements-list/paneuromediterranean-cumulation-pem-convention\\_en](https://ec.europa.eu/taxation_customs/business/calculation-customs-duties/rules-origin/general-aspects-preferential-origin/arrangements-list/paneuromediterranean-cumulation-pem-convention_en).

<sup>35</sup> European Commission, *Origin Quotas and Alternatives to the Product-Specific Rules of Origin in Annex 5*. Viewed at: <http://data.consilium.europa.eu/doc/document/ST-10973-2016-ADD-6/en/pdf#page=163>.

3.32. On 21 December 2016, the CJEU ruled that the EU-Morocco Association Agreement did not apply to Western Sahara.<sup>36</sup> As a result, the tariff preferences granted to products originating in Morocco could not be granted to products originating in Western Sahara. On 28 January 2019, the Council of the EU adopted a Decision on the conclusion of an agreement amending protocols of the EU-Morocco Association Agreement.<sup>37</sup> This Agreement responds to the requirements set out by the CJEU for an agreement to apply to Western Sahara. It creates the legal basis for granting the tariff preferences provided for in the EU-Morocco Association Agreement to products from Western Sahara, and followed a wide-ranging consultation of the people concerned after a prior analysis demonstrated the benefits of the agreement for the Western Saharan population. Following ratification by Morocco, the Agreement entered into force on 19 July 2019.

3.33. During the review period, the EU notified preferential rules of origin to the WTO Committee on Rules of Origin for the CETA and the EU-Japan EPA.<sup>38</sup> Also, in June 2017, the EU notified the Committee of its preferential rules of origin for LDCs pursuant to Paragraph 4.3 of the 2015 Ministerial Decision on preferential rules of origin for LDCs (WT/L/917/Add.1).<sup>39</sup>

**Table 3.2 Overview of preferential rules of origin, 2019**

Partner	Convention or arrangement	Cumulation	Legal reference
Africa, the Caribbean and the Pacific (ACP)	EC-ACP-OCT	Bilateral, diagonal and full	Regulation (EU) No. 2016/1076 <sup>a</sup>
Albania	PEM Convention	Bilateral and diagonal	OJ L 129, 27.5.2015, p. 50
Algeria	PEM Convention	Bilateral, diagonal and full	OJ L 297, 15.11.2007
Andorra	Agricultural products outside the Customs Union	Bilateral	OJ L 344, 30.12.2015, pp. 15-52
Bosnia-Herzegovina	PEM Convention	Bilateral and diagonal	OJ L 22, 27.1.2017, pp. 82-85
Canada	Trade Agreement		OJ L 11, 14.01.2017, pp. 465-566
Central America (Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Panama)	Association Agreement	Bilateral and regional	OJ L 346, 15.12.2012, p. 3
Ceuta and Melilla	Protocol	Bilateral cumulation with the EC and diagonal or full cumulation, as appropriate, with partner countries of the EC	OJ L 20, 20.01.2001, p. 1
Chile	Association Agreement	Bilateral	OJ L 352, 30.12.2002, p. 3 amended by OJ L 38, 10.2.2005, p. 3
Colombia	Trade Agreement	Bilateral and regional	OJ L 354, 21.12.2012, p. 3
Ecuador	Trade Agreement	Bilateral and regional	OJ L 356, 24.12.2016, p. 3
EEA	PEM Convention	Bilateral, diagonal and full	OJ L 129, 19.5.2016, pp. 56-84
Egypt	PEM Convention	Bilateral and diagonal	OJ L 334, 22.12.2015
Faroe Islands/Denmark	PEM Convention	Bilateral and diagonal	OJ L 134, 30.5.2015, p. 29
Georgia	PEM Convention	Bilateral	OJ L 140, 6.6.2018, pp. 107-109

<sup>36</sup> Judgment of the Court of Justice of 21 December 2016, *Council of the European Union v Polisario Front*, C-104/16 P, ECLI:EU:C:2016:973.

<sup>37</sup> EUR-Lex, *Council Decision (EU) 2019/217 of 28 January 2019 on the conclusion of the agreement in the form of an Exchange of Letters between the European Union and the Kingdom of Morocco on the amendment of Protocols 1 and 4 to the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part*. Viewed at: [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2019.034.01.0001.01.ENG&toc=OJ:L:2019:034:FULL](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2019.034.01.0001.01.ENG&toc=OJ:L:2019:034:FULL).

<sup>38</sup> WTO documents G/RO/N/169, 24 May 2018; and G/RO/N/184, 15 April 2019.

<sup>39</sup> WTO document G/RO/LDC/N/EU/1, 30 June 2017.

Partner	Convention or arrangement	Cumulation	Legal reference
Iceland	PEM Convention	Bilateral and diagonal	OJ L 72, 17.3.2016, pp. 66-68
Israel	PEM Convention	Bilateral and diagonal	OJ L 20, 24.1.2006
Japan	Trade Agreement	Bilateral, diagonal and full	OJ L 330, 27.12.2019, pp. 21-32, and 634-687
Jordan	PEM Convention	Bilateral and diagonal	OJ L 209, 31.7.2006
Korea, Republic of	Trade Agreement	Bilateral	OJ L 127, 14.5.2011, p. 1344
Lebanon	PEM Convention	Bilateral	OJ L 143, 30.05.2006, p. 73
Mexico	Partnership Agreement	Bilateral	OJ L 157, 30.06.2000, p. 10; and OJ L 245, 29.09.2000, p. 1
Republic of Moldova	PEM Convention	Bilateral and diagonal	OJ L 39, 16.2.2017, pp. 45-48
Montenegro	PEM Convention	Bilateral and diagonal	OJ L 28, 4.2.2015, p. 45
Morocco	PEM Convention	Bilateral, diagonal and full	OJ L 336, 21.12.2005 last amended by OJ L 141/66, 27.5.2011
North Macedonia, Republic of	PEM Convention	Bilateral and diagonal	OJ L 293, 28.10.2016, pp. 58-64
Norway	PEM Convention	Bilateral and diagonal	OJ L 72, 17.3.2016, pp. 63-65
Overseas Countries and Territories (OCT)	Council Decision No. 2013/755/EU of 25 November 2013	EC-OCT-EPA bilateral and full cumulation, cumulation with GSP countries, extended cumulation	OJ L 344, 19.12.2013, pp. 38-114
Palestinian Authority of the West Bank and the Gaza Strip	PEM Convention	Bilateral and diagonal	OJ L 05, 30.7.2016, pp. 24-26
Peru	Trade Agreement	Bilateral and regional	OJ L 354, 21.12.2012, p. 3
Serbia	PEM Convention	Bilateral and diagonal	OJ L 367, 23.12.2014, p. 119
Switzerland	PEM Convention	Bilateral and diagonal	OJ L 23, 29.1.2016, pp. 79-81
Syria	PEM Convention	Bilateral	OJ L 269, 27.09.1978
Tunisia	PEM Convention	Bilateral, diagonal and full	OJ L 260, 21.9.2006
Turkey	PEM Convention	Bilateral and diagonal	OJ L 265, 26.9.2006, p. 18, as last amended by OJ L 267, 27.9.2006, p. 48; OJ L 43, 06.06.2009, and Decision No. 3/2006 of the EC-Turkey Association Council
Ukraine	PEM Convention	Bilateral and diagonal	OJ L 161, 29.5.2014, p. 3

a Rules of origin are included in the EPAs, Market Access Regulations, and the GSP.

Source: European Commission, *Arrangements list*. Viewed at: [https://ec.europa.eu/taxation\\_customs/business/calculation-customs-duties/rules-origin/general-aspects-preferential-origin/arrangements-list\\_en#eastern](https://ec.europa.eu/taxation_customs/business/calculation-customs-duties/rules-origin/general-aspects-preferential-origin/arrangements-list_en#eastern).

### 3.1.3 Tariffs

3.34. Since the formation of the single market, the EU established the Common Customs Tariff (CCT) for the import of goods from external markets. In its most basic form, it provided the nomenclature for the classification of goods and the rates of duty. Council Regulation (EEC) No. 2658/87 of 23 July 1987 created the Combined Nomenclature (CN) as a further tool to integrate nomenclature, duties, the WCO's Harmonised System (HS), and statistical information. Since its establishment, the CN is updated regularly to take into account changes in nomenclature, duty rates, or other statistical information. During the review period, it was updated twice, with the most recent

amendment in October 2018; the next update is planned for October 2019.<sup>40</sup> The EU also maintains the integrated Tariff of the European Union (TARIC), which is a database tool incorporating tariffs, statistical nomenclatures, agricultural measures, trade defence instruments, prohibitions, restrictions, etc.<sup>41</sup>

### 3.1.3.1 Nomenclature and bound rates

3.35. During the review period, the EU continually updated the tariff nomenclature of the CN, for statistical reasons and to implement the WCO's HS 2017 changes. As a result, the number of tariff lines gradually increased over the period. In 2017, there were over 1,260 nomenclature changes, mainly on meat, chemicals, fish, and machinery, reflecting the WCO HS changes, compared with about 27 in 2018, mainly on agriculture, chemicals, and transport products, and 14 in 2019, mainly on fish, and chemicals.<sup>42</sup>

3.36. There have not been many developments with the EU's bound commitments in its WTO tariff schedule since the last Review. The last certified schedule, Schedule CLXXIII, was approved in 2016, updating the tariff nomenclature to HS2002; thus, the three subsequent HS changes from 2007, 2012, and 2017 remain pending certification.<sup>43</sup> The EU is covered by the respective WTO HS waivers for the introduction of these changes.<sup>44</sup> A few other issues to the schedule remain pending.<sup>45</sup>

3.37. Furthermore, the United Kingdom took steps to establish its schedule, as a consequence of its expected withdrawal from the EU. It submitted a draft schedule, indicating that the effective date is pending further notification, and notes that, in the meantime, it will continue to be covered by Schedule CLXXV-European Union.<sup>46</sup> This draft received objections from other WTO Members; thus, it is not approved.<sup>47</sup> The United Kingdom also initiated Article XXVIII negotiations with respect to TRQs on agricultural and non-agricultural goods.<sup>48</sup>

### 3.1.3.2 Applied rates

3.38. There were no significant changes in the EU's applied tariff structure since the last Review, and the rates remain nearly identical (Table 3.3). For example, the simple average tariff remains at 6.3% overall, and most others only deviate slightly due to statistical discrepancies.<sup>49</sup> The only notable change was the slight increase in the number of duty-free tariff lines. This can be attributed to the ongoing staged reductions in tariffs pursuant to the ITA II implementation.<sup>50</sup> Thus, the number of nuisance tariffs declined slightly as a result of these changes. MFN applied rates are generally

<sup>40</sup> Commission Implementing Regulation (EU) No. 2017/1925 of 12 October 2017 amending Annex I to Council Regulation (EEC) No. 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017R1925>; and Commission Implementing Regulation (EU) 2018/1602 of 11 October 2018 amending Annex I to Council Regulation (EEC) No. 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff. Viewed at: [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018R1602#ntr1-L\\_2018273EN.01000101-E0001](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018R1602#ntr1-L_2018273EN.01000101-E0001).

<sup>41</sup> European Commission, *TARIC*. Viewed at: [https://ec.europa.eu/taxation\\_customs/business/calculation-customs-duties/what-is-common-customs-tariff/taric\\_en](https://ec.europa.eu/taxation_customs/business/calculation-customs-duties/what-is-common-customs-tariff/taric_en).

<sup>42</sup> CIRCABC, *TARIC and Quota data and information*. Viewed at: <https://circabc.europa.eu/ui/group/0e5f18c2-4b2f-42e9-aed4-dfe50ae1263b/library/90dd4b94-39dd-45f4-8f33-ec9ef9820016>.

<sup>43</sup> WTO document WT/Let/1220, 14 December 2016.

<sup>44</sup> WTO documents WT/L/1049; WT/L/1050; and WT/L/1051, 13 December 2018.

<sup>45</sup> For example, as a consequence to the expected withdrawal of the United Kingdom from the EU, Article XXVIII negotiations were initiated by the EU.

<sup>46</sup> WTO document G/MA/TAR/RS/570, 24 July 2018.

<sup>47</sup> Status as at May 2019. WTO document G/MA/W/123/Rev.5, 20 May 2019.

<sup>48</sup> WTO document G/SECRET/44, 21 December 2018.

<sup>49</sup> As the number of tariff lines has increased, this has an impact on the calculations.

<sup>50</sup> Council Decision (EU) 2016/971 of 17 June 2016 on the conclusion, on behalf of the European Union, of an agreement in the form of the Declaration on the Expansion of Trade in Information Technology Products (ITA). Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016D0971>; and Council Decision 2011/194/EU of 7 March 2011 on the conclusion of a Geneva Agreement on Trade in Bananas between the European Union and Brazil, Colombia, Costa Rica, Ecuador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Peru and Venezuela and of an Agreement on Trade in Bananas between the European Union and the United States of America. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32011D0194>.

identical, or close, to the WTO bound rates; thus, the EU does not have any significant binding overhang.

**Table 3.3 Structure of MFN tariffs, 2019**

(%)

		MFN applied		Final bound 2019 <sup>a</sup>
		2016 <sup>a</sup>	2019 <sup>b</sup>	
1.	Bound tariff lines (% of all tariff lines)	100.0	100.0	100.0
2.	Simple average tariff rate	6.3	6.3	6.4
	Agricultural products (WTO definition)	14.1	14.2	14.4
	Non-agricultural products (WTO definition)	4.3	4.2	4.3
	Agriculture, hunting, forestry and fishing (ISIC 1)	7.8	7.7	8.6
	Mining and quarrying (ISIC 2)	0.2	0.2	0.3
	Manufacturing (ISIC 3)	6.3	6.2	6.3
3.	Duty-free tariff lines (% of all tariff lines)	26.1	27.0	25.9
4.	Simple average rate of dutiable lines only	8.6	8.7	8.7
5.	WTO tariff quotas (% of all tariff lines) <sup>c</sup>	4.7	4.5	4.5
6.	Non- <i>ad valorem</i> tariffs (% of all tariff lines)	10.6	10.7	10.8
7.	Non- <i>ad valorem</i> tariffs with no AVEs (% of all tariff lines)	3.0	3.1	3.1
8.	Domestic tariff peaks (% of all tariff lines) <sup>d</sup>	5.7	5.5	5.7
9.	International tariff peaks (% of all tariff lines) <sup>e</sup>	8.5	8.5	8.8
10.	Overall standard deviation of applied rates	12.1	10.0	10.1
11.	Nuisance applied rates (% of all tariff lines) <sup>f</sup>	7.7	6.8	7.0
Number of lines		9,414	9,533	9,533
	<i>Ad valorem</i>	8,416	8,512	8,502
	Duty-free lines	2,461	2,572	2,470
	Non- <i>ad valorem</i>	998	1,021	1,031
	Specific	652	674	684
	Compound	199	199	201
	Mixed	64	64	62
	Other <sup>g</sup>	83	84	84

- a *Ad valorem* equivalents (AVEs) were estimated based on 2015 import data at the 8-digit tariff from the Eurostat database. In case of unavailability, the *ad valorem* part was used for compound and mixed rates. Duty rates under the ITA Expansion (as at 1 July 2016) were taken into account in calculations.
- b AVEs were estimated based on 2018 import data at the 8-digit tariff from the Eurostat database. In case of unavailability, the *ad valorem* part was used for compound and mixed rates. Duty rates under the ITA Expansion (as at 1 July 2017) were taken into account in calculations.
- c Information based on the *Official Journals* of the European Union, L 285 (30 October 2015) and L 273 (31 October 2018).
- d Domestic tariff peaks are defined as those exceeding three times the overall simple average applied rate.
- e International tariff peaks are defined as those exceeding 15%.
- f Nuisance rates are those greater than zero, but less than or equal to 2%.
- g Other includes Agricultural Components (EA), Additional Duties for Sugar (AD S/Z), Additional Duties for Flour (AD F/M), and Entry Prices (EP).

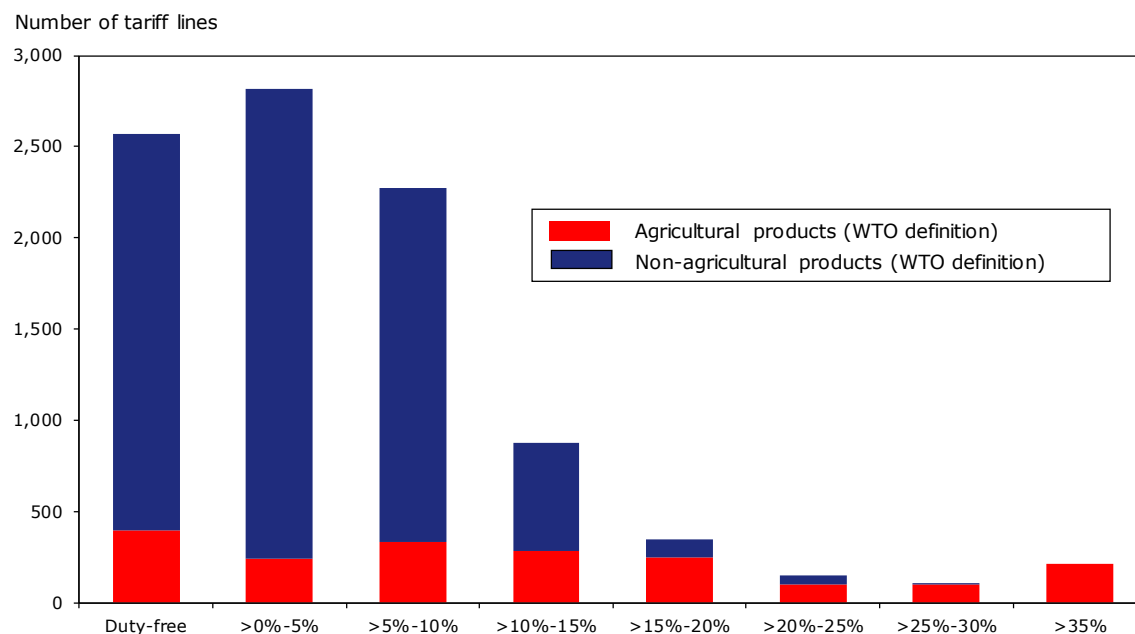
Note: All tariff calculations exclude in-quota lines. Year 2016 and 2019 tariff schedules are based on HS2012 and HS2017, respectively.

Source: WTO Secretariat calculations, based on the IDB database and the Eurostat database.

3.39. As noted in previous reviews, the agricultural sector stands out in the tariff analysis, due to significantly higher rates, wide tariff range, use of non-*ad valorem* rates, and use of tariff quotas. There were minor changes to the simple average tariffs in the agriculture sector and the tariff range, due mainly to statistical anomalies in calculating *ad valorem* equivalents. While the highest tariff in the agriculture sector appears to have declined since the last Review, this was due to one outlying tariff with a high *ad valorem* equivalent. Nevertheless, there is a much greater incidence of high tariffs in the agriculture sector compared to non-agricultural products. Nearly all tariffs above 20% are in the agriculture sector (Chart 3.1). The highest tariff rates in agriculture are concentrated in

the animal and animal products, dairy, and sugar and confectionary sectors. The dairy sector continues to be one with the highest levels of protection, with high tariffs that are all non-*ad valorem* duties and no duty-free lines (Table 3.4).

**Chart 3.1 Applied MFN tariff rate distribution for agricultural and non-agricultural products, 2019**



Note: Calculations exclude in-quota rates and include AVEs, as available. In cases where they were not available, the *ad valorem* part was used for compound and mixed rates. Figures do not add to 100% due to certain AVEs not being available (approximately 2% of the total tariff lines).

Source: WTO Secretariat, based on the IDB and Eurostat databases.

**Table 3.4 Applied MFN tariff summary, 2019**

	Number of lines	Simple average (%)	Tariff range (%)	SD <sup>a</sup>	Share of duty-free lines (%)	Share of non- <i>ad valorem</i> tariffs (%)
<b>Total</b>	<b>9,533</b>	<b>6.3</b>	<b>0-171.6</b>	<b>10.0</b>	<b>27.0</b>	<b>10.7</b>
<b>HS 01-24</b>	<b>2,505</b>	<b>14.1</b>	<b>0-171.6</b>	<b>16.7</b>	<b>14.9</b>	<b>38.4</b>
<b>HS 25-97</b>	<b>7,028</b>	<b>3.7</b>	<b>0-70</b>	<b>3.8</b>	<b>31.3</b>	<b>0.8</b>
<b>By WTO category</b>						
<b>WTO agricultural products</b>	<b>2,099</b>	<b>14.2</b>	<b>0-171.6</b>	<b>18.3</b>	<b>18.9</b>	<b>47.0</b>
Animals and products thereof	351	19.0	0-116.6	21.0	15.1	68.7
Dairy products	151	32.3	0.9-160.3	25.9	0.0	100.0
Fruit, vegetables, and plants	509	13.0	0-162.9	13.5	11.8	17.1
Coffee, tea, and cocoa and cocoa preparations	47	11.5	0-18.7	6.7	14.9	51.1
Cereals and preparations	226	17.2	0-99.6	14.8	8.8	79.6
Oil seeds, fats, oils and their products	175	6.3	0-94.3	10.6	35.4	7.4
Sugars and confectionary	44	27.0	0-148.2	33.4	4.5	88.6
Beverages, spirits and tobacco	331	12.9	0-118.5	18.3	16.6	58.6
Cotton	6	0.0	0	0.0	100.0	0.0
Other agricultural products, n.e.s.	259	5.9	0-171.6	14.7	51.0	22.0

	Number of lines	Simple average (%)	Tariff range (%)	SD <sup>a</sup>	Share of duty-free lines (%)	Share of non- <i>ad valorem</i> tariffs (%)
<b>WTO non-agricultural products</b>	<b>7,434</b>	<b>4.2</b>	<b>0-26</b>	<b>4.4</b>	<b>29.3</b>	<b>0.5</b>
Fish and fishery products	525	11.8	0-26	6.1	7.4	0.0
Minerals and metals	1,443	2.0	0-12	2.6	50.6	0.7
Chemicals and photographic supplies	1,310	4.4	0-17.3	2.7	25.1	0.3
Wood, pulp, paper and furniture	461	1.2	0-10.5	2.3	74.0	0.0
Textiles	838	6.6	0-12	2.5	2.0	0.1
Clothing	341	11.6	6.3-12	1.3	0.0	0.0
Leather, rubber, footwear and travel goods	259	5.0	0-17	4.7	22.0	0.0
Non-electric machinery	882	1.8	0-9.7	1.4	23.7	0.0
Electric machinery	463	2.1	0-14	2.5	37.6	0.0
Transport equipment	270	5.3	0-22	5.0	11.1	0.0
Non-agricultural products, n.e.s.	594	2.0	0-9.5	1.9	38.7	3.4
Petroleum	48	2.4	0-4.7	2.0	39.6	0.0
<b>By ISIC sector<sup>b</sup></b>						
ISIC 1 - Agriculture, hunting and fishing	654	7.7	0-171.6	12.9	35.3	17.6
ISIC 2 - Mining and quarrying	115	0.2	0-8	1.1	93.0	2.6
ISIC 3 - Manufacturing	8,763	6.2	0-162.9	9.8	25.5	10.3
<b>By stage of processing</b>						
First stage of processing	1,222	6.4	0-171.6	10.5	42.9	12.7
Semi-processed products	2,819	5.0	0-162.9	7.8	31.3	3.8
Fully processed products	5,492	6.9	0-160.3	10.8	21.2	13.8

a Standard deviation.

b International Standard Industrial Classification (Rev.2). Electricity, gas and water are excluded (1 tariff line).

Note: Calculations for averages are based on the national tariff line level (8-digit), excluding in-quota rates. Tariff schedule was based on HS2017. AVEs were estimated based on 2018 import data at the 8-digit tariff from the Eurostat database. In the case of unavailability, the *ad valorem* part was used for compound and mixed rates.

Source: WTO Secretariat calculations, based on the IDB database and the Eurostat database.

3.40. The number of non-*ad valorem* tariffs in the EU also stands out, as about 10% of tariff lines are non-*ad valorem*, and their number increased over the review period. Further, of the non-*ad valorem* tariffs, about one third are compound, mixed, or other, meaning that it is often difficult to determine the duty rate or calculate the real impact of the tariff.

3.41. For non-agricultural products, the fish and fishery products (11.8% simple average) and clothing (11.6%) sectors stand out as the ones with the highest tariff protection among an overall low average of 4.2% for non-agricultural products. The electric machinery sector had some declines in the overall average for the sector compared to the last Review, due mainly to the ITA II implementation. The sectors with the highest outlying tariffs, i.e. above 20% in non-agricultural products, are fish and transport equipment.

### 3.1.3.3 TRQs and administration

3.42. The EU continues to have a number of tariff quotas as part of its trade regime, although it characterizes these as an exception to the norm as they permit a limited quantity of goods to benefit from preferential tariff rates. There are three main categories of TRQs: (i) preferential, pursuant to FTAs or other agreements by the EU; (ii) autonomous, for duty suspensions (Section 3.1.3.4),



certain fish products, and other non-preferential access<sup>51</sup>; and (iii) conventional, which include the WTO TRQs.<sup>52</sup> DG Agriculture and Rural Development (DG AGRI) manages the quotas for agricultural products based on licences, some of which are subject to allocation coefficients. These are published online.<sup>53</sup> DG TAXUD manages the other quotas, including agricultural TRQs, on a first-come-first-served basis, and maintains a quota database for monitoring and determining fill rates.<sup>54</sup>

3.43. According to information contained in the TARIC, 712 preferential TRQs were in place pursuant to FTAs with 26 trading partners as at 1 January 2019.<sup>55</sup> Most of these, about 78%, were with respect to agricultural products, and the vast majority provided access with zero rates of duty. The other category, referred to as non-preferential TRQs, had 257 TRQs in place, including the WTO TRQs and those providing autonomous access.<sup>56</sup> Many of these provide autonomous access below MFN rates for fish and industrial products in particular.

3.44. There were several developments on tariff quotas during the review period. In January 2019, the EU issued a regulation on the apportionment of the WTO tariff quotas<sup>57</sup> between the EU and the United Kingdom, in anticipation of the latter's eventual withdrawal from the EU.<sup>58</sup> More specifically, the EU put in place a methodology for the apportionment of TRQs for Article XXVIII negotiations, in order to ensure a smooth transition and a continuous process of importation under quotas. The regulation sets out that the TRQs will be apportioned between the EU-27 and the United Kingdom, based on their respective import share of the quota during a recent representative three-year period. The Annexes then establish the percentages and apportionment for each quota category. An implementing regulation was issued in March 2019 that further clarifies and gives more precision to the earlier directive in the field of licences managed by DG AGRI.<sup>59</sup> The regulations are currently in force but the articles implementing the apportionment have not been activated because they only become effective when Regulation (EC) No. 32/2000 ceases to apply to the United Kingdom, meaning that the regulation has built-in transition provisions that will apply for a period after which the treaties cease to apply between the EU and the United Kingdom.

3.45. The EU has 107 categories of TRQs in its WTO schedule, of which 79 (74%) concern agricultural products, and 28 (26%) are with respect to non-agricultural products (Table A3.1).<sup>60</sup> Agricultural TRQs cover a diverse group of products, including meat, fruit, grains, vegetables, cheese, wine, chocolates, etc., while non-agricultural TRQs are mainly on fish, certain metal products, certain wood products, flax yarn, and glass beads. For the latest representative period,

<sup>51</sup> Council Regulation (EU) 2018/1977 of 11 December 2018 opening and providing for the management of autonomous Union tariff quotas for certain fishery products for the period 2019–2020. Viewed at: [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2018.317.01.0002.01.ENG&toc=OJ:L:2018:317:TOC](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2018.317.01.0002.01.ENG&toc=OJ:L:2018:317:TOC).

<sup>52</sup> The EU has TRQs in its WTO schedule on both agricultural and non-agricultural goods; thus, the reference here is only to the agricultural TRQs.

<sup>53</sup> Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No. 952/2013 of the European Parliament and of the Council laying down the Union Customs Code. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015R2447>; European Commission, *Aim of tariff rate quotas*. Viewed at: [https://ec.europa.eu/agriculture/tariff-rate-quotas-trqs\\_en](https://ec.europa.eu/agriculture/tariff-rate-quotas-trqs_en); and European Commission, *Tariff Rate Quotas*. Viewed at: <https://ec.europa.eu/info/food-farming-fisheries/key-policies/common-agricultural-policy/market-measures/trqs>.

<sup>54</sup> European Commission, *Tariff Quota Consultation*. Viewed at: [https://ec.europa.eu/taxation\\_customs/dds2/taric/quota\\_consultation.jsp?Lang=en](https://ec.europa.eu/taxation_customs/dds2/taric/quota_consultation.jsp?Lang=en).

<sup>55</sup> CIRCABC, *TARIC and Quota data and information*. Viewed at: <https://circabc.europa.eu/ui/group/0e5f18c2-4b2f-42e9-aed4-dfe50ae1263b/library/90dd4b94-39dd-45f4-8f33-ec9ef9820016>.

<sup>56</sup> It also includes special TRQs for certain handicraft products.

<sup>57</sup> Both agricultural and non-agricultural TRQs.

<sup>58</sup> Regulation (EU) 2019/216 of the European Parliament and of the Council of 30 January 2019 on the apportionment of tariff rate quotas included in the WTO schedule of the Union following the withdrawal of the United Kingdom from the Union, and amending Council Regulation (EC) No. 32/2000. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1562700042527&uri=CELEX:32019R0216>.

<sup>59</sup> Commission Implementing Regulation (EU) 2019/386 of 11 March 2019 laying down rules with regard to the apportionment of tariff rate quotas for certain agricultural products included in the WTO schedule of the Union following the withdrawal of the United Kingdom from the Union and with regard to import licences issued and import rights allocated under those tariff rate quotas. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1562700042527&uri=CELEX:32019R0386>.

<sup>60</sup> WTO documents WT/Let/1220, 14 December 2016; G/AG/N/EU/48, 30 October 2018; and G/AG/N/EU/50, 22 February 2019; and information provided by the authorities.

the use of TRQs varied significantly; some have 100% fill rates and others have 0% but with an overall average fill rate of 52%. A fairly significant number, 24%, were not utilized at all (zero fill rate), and about 30% were fully utilized with 100% fill rates (Table A3.1).

### 3.1.3.4 Duty suspensions and special tariff treatment

3.46. The EU maintains legislation for the autonomous suspension of customs duties or autonomous tariff quotas for certain agricultural and industrial products that are either not available or insufficiently produced in the EU to meet the demand in the EU. The previous legislation from 2013 was replaced by two new regulations in 2019.<sup>61</sup> The new regulation on the suspension of tariff duties amends the products covered, to add 97 new products, remove 26 products, and modify the conditions for 47 products. Moreover, with a view to promoting integrated battery production in the EU, and in accordance with the communication from the Commission entitled "Europe on the Move – Sustainable Mobility for Europe: safe, connected, and clean", the suspensions for 20 additional products listed were withdrawn. Furthermore, another 50 suspensions were deleted as a result of the implementation of the agreement in the form of the Declaration on the Expansion of Trade in Information Technology Products, which reduced the duty rate for the products concerned to zero. Thus, there are now autonomous duty suspensions on 2,277 tariff lines, and these products are mainly imported with zero duties, although in some cases only lower duties apply. The majority of products are concentrated in the chemicals and machinery sectors.

3.47. A similar regulation on providing autonomous tariff quotas was also put in place to ensure sufficient and uninterrupted supply, and to avoid disturbances on the market of certain products. The changes introduced six new tariff quotas and the increase in quota volume for four quotas. One tariff quota was terminated. Furthermore, four tariff quotas were closed as a result of the implementation of the agreement in the form of the Declaration on the Expansion of Trade in Information Technology Products. There are 120 tariff lines covered by these autonomous quotas in 2019.

3.48. Another development was the replacement of another regulation on the temporary suspension of duties on the import of certain aircraft products. The previous regulation (EC No. 1147/2002) was replaced by Council Regulation (EU) 2018/581, in order to take into account a number of technical and legislative developments.<sup>62</sup> The Regulation provides for the temporary duty suspension of parts, components and other goods used for the manufacture, repair, maintenance, rebuilding, modification or conversion of aircraft when imported with airworthiness certificates. The Regulation goes beyond the product coverage of the WTO Civil Aircraft Agreement, which is also applied by the EU. In order to benefit from the special treatment, the new Regulation requires an authorized release certificate EASA Form 1 as part of the importation process.

3.49. As highlighted in the previous Review, the EU maintains other special import tariff treatment on certain poultry meat, eggs, and egg albumin from certain countries; and on other products due to their nature, quality, or authenticity.<sup>63</sup> There were no changes to these regimes.

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<sup>61</sup> Council Regulation (EU) 2019/998 of 13 June 2019 amending Regulation (EU) No. 1388/2013 opening and providing for the management of autonomous tariff quotas of the Union for certain agricultural and industrial products. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R0998&from=EN>; and Council Regulation (EU) No. 2019/999 of 13 June 2019 amending Regulation (EU) No. 1387/2013 suspending the autonomous Common Customs Tariff duties on certain agricultural and industrial products. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R0999&from=EN>.

<sup>62</sup> Council Regulation (EU) 2018/581 of 16 April 2018 temporarily suspending the autonomous Common Customs Tariff duties on certain goods of a kind to be incorporated in or used for aircraft, and repealing Regulation (EC) No. 1147/2002. Viewed at: [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2018.098.01.0001.01.ENG&toc=OJ:L:2018:098:TOC](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2018.098.01.0001.01.ENG&toc=OJ:L:2018:098:TOC).

<sup>63</sup> Commission Implementing Regulation (EU) 2016/1894 of 26 October 2016 amending Regulation (EC) No. 1484/95 as regards fixing representative prices in the poultrymeat and egg sectors and for egg albumin. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016R1894>; and Annex 9 of Commission Implementing Regulation (EU) No. 2018/1602 of 11 October 2018 amending Annex I to Council Regulation (EEC) No. 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018R1602>.

### 3.1.3.5 Preferential tariffs

3.50. The EU continues to have a number of preferential regimes, both reciprocal and unilateral, that offer preferential duties upon importation into the EU. Based on the 2019 preferential duty rates, most partners or recipients receive significant duty-free access on a large percentage of their exports to the EU (Table 3.5). Similar to the situation with MFN tariffs, access was greater on non-agricultural goods compared to agricultural goods, with several partners having 100% of non-agricultural goods covered at zero duties, and with the simple average duty rate of non-agricultural products below 1% in all regimes except GSP. The agricultural sector, on the other hand, had simple average tariffs of above 10% for many partners. In general, the percentage of duty-free lines increased since the last Review, due to the staged implementation of some agreements and new improved agreements with certain partners, e.g. Iceland. At the same time, the simple average tariff rate slightly decreased for many agreements for the same reasons.<sup>64</sup>

**Table 3.5 Tariffs under preferential agreements, 2019**

	Simple average tariff rate (%)			Duty-free lines as a percentage of total tariff lines (includes MFN duty-free lines) (%)		
	Overall	WTO agri.	WTO non-agri.	Overall	WTO agri.	WTO non-agri.
<b>MFN</b>	<b>6.3</b>	<b>14.2</b>	<b>4.2</b>	<b>27.0</b>	<b>18.9</b>	<b>29.3</b>
Albania <sup>a</sup>	0.3	1.1	0.1	97.1	91.2	98.8
Algeria	2.4	12.0	0.0	84.3	29.3	99.9
Andorra	0.1	0.3	0	98.8	94.5	100
Bosnia and Herzegovina <sup>a</sup>	0.3	1.1	0.1	97.2	91.3	98.8
Canada <sup>b</sup>	0.4	1.4	0.1	96.2	88.0	98.5
Central America <sup>b</sup>	1.1	5.4	0.0	93.1	68.7	100.0
Ceuta-Melilla	2.5	12.2	0.0	84.7	30.9	99.9
Chile	1.8	8.8	0.0	89.9	54.8	99.7
Colombia <sup>b</sup>	0.9	4.5	0.0	93.9	72.5	100.0
Ecuador <sup>b</sup>	1.0	4.8	0.0	93.6	71.8	99.8
Egypt	0.2	0.7	0.0	98.9	95.9	99.8
EPA <sup>b</sup>	0.0	0	0.0	99.8	100	99.8
Faroe Islands	3.2	13.6	0.6	79.4	21.6	95.7
Georgia	0.0	0.2	0	98.8	94.5	100
Iceland <sup>c</sup>	1.1	4.5	0.3	90.0	73.6	94.6
Israel	0.5	2.3	0.1	95.5	80.9	99.6
Japan <sup>b</sup>	0.4	0.5	0.3	95.8	95.8	95.8
Jordan	0.7	0.2	0.8	93.8	95.0	93.5
Korea, Republic of <sup>b</sup>	0.1	0.3	0.0	99.4	97.6	100.0
Kosovo <sup>a, f</sup>	0.3	1.1	0.0	97.8	91.2	99.7
Lebanon	0.3	1.2	0.0	97.2	87.3	100.0
Liechtenstein <sup>c</sup>	2.5	10.9	0.3	81.7	37.8	94.1
Mexico	1.7	8.3	0.0	90.5	57.7	99.8
Moldova <sup>b</sup>	0.0	0.2	0	98.7	94.3	100
Montenegro <sup>a</sup>	0.3	1.1	0.1	97.2	91.3	98.8
Morocco	0.1	0.5	0	99.5	97.6	100
North Macedonia, Republic of <sup>a</sup>	0.3	1.1	0.0	97.7	91.2	99.5
Norway <sup>c</sup>	2.5	10.9	0.3	81.6	38.6	93.8
Overseas Countries & Territories	0.1	0.6	0	98.7	93.9	100
Palestine	0.0	0.1	0	98.8	94.5	100
Peru <sup>b</sup>	0.7	3.2	0.0	94.2	73.6	100.0
San Marino	0.0	0.0	0.0	99.9	99.9	99.9
Serbia <sup>a</sup>	0.3	1.1	0.1	97.2	91.2	99.0
South Africa	0.8	3.4	0.0	95.4	81.3	99.4
Switzerland	2.7	10.2	0.8	81.8	39.4	93.8
Syrian Arab Republic	3.3	13.2	0.8	78.1	24.0	93.4
Tunisia	2.4	11.8	0.0	84.3	29.5	99.8
Turkey	1.6	7.8	0.0	90.3	56.4	99.9
Ukraine <sup>b</sup>	1.0	4.3	0.2	92.1	77.0	96.3
GSP+	1.8	8.7	0.0	89.1	54.0	99.0

<sup>64</sup> In a number of cases, the table indicates slightly higher simple average tariff rates and a lower percentage of duty-free lines but this is attributed to statistical anomalies due to the greater number of tariff lines in the EU schedule in 2019.

	Simple average tariff rate (%)			Duty-free lines as a percentage of total tariff lines (includes MFN duty-free lines) (%)		
	Overall	WTO agri.	WTO non-agri.	Overall	WTO agri.	WTO non-agri.
GSP	4.1	12.3	1.9	57.3	24.7	66.5
India <sup>d</sup>	4.7	12.3	2.7	48.4	24.7	55.1
Indonesia <sup>d</sup>	4.1	12.6	1.9	57.1	23.5	66.5
Kenya <sup>d</sup>	4.1	12.4	1.9	57.3	24.5	66.5
LDCs (EBA)	0.0	0	0.0	99.8	100	99.8
Cambodia and Myanmar <sup>e</sup>	0.0	0.0	0.0	99.8	99.8	99.8

- a For Albania, Bosnia and Herzegovina, Kosovo, Montenegro, North Macedonia, and Serbia, the lowest rate contained in either the West Balkan FTA or bilateral agreement was used for the calculations.
- b The tariff phase-out period is not yet over.
- c For Iceland, Liechtenstein, and Norway, the lowest rate contained in either the EEA or bilateral agreement was used for the calculations.
- d Sector graduations from the Standard GSP are taken into account.
- e Safeguard measures on rice (*Official Journal* of the European Union L 15, 16 January 2019).
- f References to Kosovo shall be understood to be in the context of Security Council Resolution 1244 (1999).

Note: All tariff calculations exclude in-quota lines. If no preferential rate was applied, the corresponding MFN rate was used for the calculations. In the case of unavailability, the *ad valorem* part was used for compound and mixed rates. 0.0 refers to >0 and <0.05; 100.0 refers to >99.55 and <100.

Source: WTO Secretariat calculations, based on the IDB database and the Eurostat database.

3.51. According to EU statistics, the share of imports under preferential tariff regimes in total EU imports is relatively low, with unilateral preferential regimes accounting for 3.8% of total imports in 2018, and preferential FTAs accounting for 13%.<sup>65</sup> Furthermore, according to a report by UNCTAD, the utilization of EU preferences by partners varies considerably, although overall it is quite high at 90%. The total value of utilized preferences by partner countries was EUR 105 billion on average during 2009-13.<sup>66</sup> Preference utilization rates were particularly high for Iceland, Egypt, and Morocco, and relatively low for Mexico and the Republic of Korea.<sup>67</sup> The value of preferential duties saved was particularly high for Turkey and Switzerland.

3.52. For the unilateral preference categories, i.e. GSP+, GSP, and EBA, there were no significant changes during the review period, except that the list of countries and the list of graduated products changed for the period 2017-19, and the safeguard measure invoked under the GSP for rice from Cambodia and Myanmar resulted in the CCT being applied.

### 3.1.4 Other charges affecting imports

3.53. Value-added tax (VAT) and excise duties continue to be the two main other charges or taxes levied on imports into the EU. Excise duties are charged on a core group of products, i.e. mainly alcohol, tobacco, and energy products, while VAT is charged on most products and services, although lower rates are typically applied on foodstuffs. Excise duty revenues amounted to about EUR 45.3 billion in 2017, or about 0.3% of GDP, with Germany and the Netherlands accounting for the largest shares<sup>68</sup>; similar figures for VAT indicate revenues of EUR 1,085 billion, or 7.0% of GDP, with Germany, France, and the United Kingdom as the largest contributors.<sup>69</sup>

<sup>65</sup> In 2016, the figures were nearly identical, with 3.9% entering under unilateral preferences and 12.5% under FTAs. Source: Eurostat.

<sup>66</sup> UNCTAD, *The Use of the EU's Free Trade Agreements - Exporter and Importer Utilization of Preferential Tariffs*. Viewed at: [https://unctad.org/en/PublicationsLibrary/EU\\_2017d1\\_en.pdf](https://unctad.org/en/PublicationsLibrary/EU_2017d1_en.pdf).

<sup>67</sup> UNCTAD, *The Use of the EU's Free Trade Agreements - Exporter and Importer Utilization of Preferential Tariffs*.

<sup>68</sup> Eurostat, *Main National Accounts Tax Aggregates (gov\_10a\_taxag)*. Viewed at: [https://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=gov\\_10a\\_taxag&lang=en](https://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=gov_10a_taxag&lang=en).

<sup>69</sup> Eurostat, *Main National Accounts Tax Aggregates (gov\_10a\_taxag)*.

3.54. The EU VAT Directive of 2006, subsequently amended by other EU Directives, sets out basic rules for VAT, including rates.<sup>70</sup> The VAT base is largely harmonized across the EU, but rates and procedures differ across member States. Concerning VAT, the standard rate is set at a minimum level of 15%, but there is no maximum; and member States may have one or two reduced rates, with a minimum level of 5%. Thus, a range of VAT rates are applied, from 17% to 25% for the standard rate, and 5% to 18% for reduced rates (Section 3.3.1.3). There are also special rates, parking (i.e. grandfathered) rates, or exceptions to the basic rules for some countries. Exports from the EU are zero-rated for VAT, while imports are generally charged VAT, although there are some exceptions.<sup>71</sup>

3.55. During the review period, there were a number of legislative developments with respect to VAT, and the EU put forth many proposals to amend different VAT provisions.<sup>72</sup> One of the more recent changes was described as four quick fixes, pending a more substantial overhaul of the VAT Directive.<sup>73</sup> Scheduled to enter into force in 2020, these amendments allow for a simplified and uniform treatment for call-off stock arrangements; require the VAT identification number of the customer to be communicated to the supplier in order for the supplier to apply the VAT exemption for intra-EU supply of goods; introduce rules to facilitate trader proof that the intra-EU transport (a condition for the exemption for intra-EU supplies of goods to apply) has taken place; and provide uniform criteria to assign the transport to a concrete supply in the case of chain transactions involving a single intra-EU transport. Another set of rules, amending the main VAT Directive, are set to enter into force in 2021, and aim to simplify VAT for e-commerce transactions.<sup>74</sup> This is expected to have an impact on trade and customs procedures, as the VAT exemption threshold of EUR 22 has been removed, and this will be accompanied by the need to submit a customs declaration for small shipments. The customs exemption of EUR 150 remains in place. However, all commercial goods entering the EU will be subject to VAT from 1 January 2021, irrespective of their value. The legislation also introduces two alternative VAT collection mechanisms: (i) the Import One Stop Shop (IOSS), which relies on traders collecting the VAT upon sale and periodical VAT payments to the tax authorities; and (ii) special arrangements for payment of VAT, which are based on current customs procedures, but allow the customs declarant, such as the post or courier operator, to pay the VAT monthly to the customs office. At the same time, to facilitate e-commerce, the threshold for customs duty relief will remain at EUR 150 and are subject to VAT. This has resulted in the necessity to change certain import procedures (Section 3.1.1).

3.56. The IOSS is a voluntary VAT collection system for traders selling goods online to customers in the EU and will be operational from 1 January 2021. The system will require the setting up of a mechanism whereby customs authorities can automatically check the validity of each VAT IOSS identification number at the moment of importation. These numbers are granted by national tax authorities and the Commission will provide the network that allows these numbers to be communicated between EU member States. In this context, it is also looking into the possible use of blockchain for ensuring the storage and transmission/availability of these IOSS VAT identification numbers.

3.57. The EU continues to harmonize three main categories of excise products — alcohol, energy and electricity, and tobacco - which are subject to minimum rates of excise duty, in order to provide a more level playing field in the internal market (Table 3.6). The general arrangements for the administration of the holding and the movement of excise goods within the EU are set out in Council

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<sup>70</sup> Council Directive No. 2006/112/EC of 28 November 2006 on the common system of value added tax. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32006L0112>.

<sup>71</sup> For example, personal and small imports, importation of goods in transit, reimportation after temporary export, diplomatic imports, etc. European Commission online information. Viewed at: [https://ec.europa.eu/taxation\\_customs/business/vat/eu-vat-rules-topic/exemptions/other-exemptions\\_en](https://ec.europa.eu/taxation_customs/business/vat/eu-vat-rules-topic/exemptions/other-exemptions_en).

<sup>72</sup> European Commission, *Other Exemptions*. Viewed at: [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/vat\\_legislation\\_proposed\\_en.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/vat_legislation_proposed_en.pdf).

<sup>73</sup> Council of the European Union, *Proposal for a Council Directive amending Directive 2006/112/EC as regards harmonising and simplifying certain rules in the value added tax system and introducing the definitive system for the taxation of trade between Member States*. Viewed at: <https://www.consilium.europa.eu/media/36518/st12564-en18.pdf>.

<sup>74</sup> Council Directive (EU) 2017/2455 of 5 December 2017 amending Directive 2006/112/EC and Directive 2009/132/EC as regards certain value added tax obligations for supplies of services and distance sales of goods. Viewed at: [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2017.348.01.0007.01.FNG&toc=OJ:L:2017:348:TOC](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2017.348.01.0007.01.FNG&toc=OJ:L:2017:348:TOC).

Directive 2008/118/EC, which did not undergo any significant changes during the review period.<sup>75</sup> Four directives cover the structure and minimum rates of excise duty for excise goods.<sup>76</sup> They were not modified significantly either during the review period. Despite efforts to harmonize, there are still reportedly significant variations in excise duties applied among the member States, that have led to implementation issues.<sup>77</sup> Goods subject to excise are subject to the tax upon their release for consumption, i.e. upon importation into the EU customs territory if imported, or at the time of their production or extraction within the territory. For transport between member States, excisable goods must be accompanied by an electronic Administrative Document (eAD) for goods under duty suspension, or a Simplified Administrative Document (SAAD) for goods on which duty has been paid. The EU continues to use the Excise Movements and Control System (EMCS) as the electronic system to monitor the movement of excise goods.<sup>78</sup> For goods not covered in the harmonized categories, the member States may charge excise on other products under certain conditions. Nearly all member States have some type of excise duty on a variety of other products (Table A3.2). From the information available, Denmark, Malta, and Romania have the largest number of excise duties on other products.

3.58. In 2018, a Council decision was taken to allow Spain to offer a reduced rate of excise duty for electricity supplied to vessels at berth in a port. The decision took effect in January 2019 for a period of six years.<sup>79</sup>

3.59. While there have not been any significant changes in the excise duty regime during the review period, the Commission proposed a new series of rules for excise duties in 2018.<sup>80</sup> One proposal is to amend the directive on excise duties on alcohol and alcoholic beverages, as it has not kept pace with the challenges and opportunities offered by new technologies and developments within the alcohol industry. It also points out that there are large variations in the duty rates between member States, and this creates incentives for tax evasion and contributes to more burdensome compliance.<sup>81</sup> Thus, the proposal makes eight specific suggestions to amend various articles of the directive to address these issues but, in particular, aims to reduce costs for small alcohol-producing businesses. The proposal is still under negotiation with the member States.

<sup>75</sup> Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1456138665149&uri=CELEX:02008L0118-20140101>; and European Commission, *Strategic Plan 2016-2020*. Viewed at: [https://ec.europa.eu/info/sites/info/files/strategic-plan-2016-2020-dg-taxud\\_march2016\\_en.pdf](https://ec.europa.eu/info/sites/info/files/strategic-plan-2016-2020-dg-taxud_march2016_en.pdf).

<sup>76</sup> For energy, Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity. Viewed at <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1564477255081&uri=CELEX:32003L0096>; for tobacco, Council Directive 2011/64/EU of 21 June 2011 on the structure and rates of excise duty applied to manufactured tobacco. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1564477389792&uri=CELEX:32011L0064>; and for alcohol, Council Directive 92/83/EEC of 19 October 1992 on the harmonization of the structures of excise duties on alcohol and alcoholic beverages. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1564477528158&uri=CELEX:31992L0083>; and Council Directive 92/84/EEC of 19 October 1992 on the approximation of the rates of excise duty on alcohol and alcoholic beverages. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1564477637856&uri=CELEX:31992L0084>.

<sup>77</sup> Ernst & Young, *EMEIA: Excise tax trends*. Viewed at: <https://www.ey.com/gl/en/services/tax/vat--gst-and-other-sales-taxes/ey-emeia-excise-tax-trends#accordion-4>.

<sup>78</sup> European Commission, *Excise Movement and Control System*. Viewed at: [https://ec.europa.eu/taxation\\_customs/business/excise-duties-alcohol-tobacco-energy/excise-movement-control-system\\_en](https://ec.europa.eu/taxation_customs/business/excise-duties-alcohol-tobacco-energy/excise-movement-control-system_en).

<sup>79</sup> Council Implementing Decision (EU) 2018/1491 of 2 October 2018 authorising Spain to apply a reduced rate of excise duty to electricity directly supplied to vessels at berth in a port, in accordance with Article 19 of Directive 2003/96/ECST/11795/2018/INIT. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1562586291390&uri=CELEX:32018D1491>.

<sup>80</sup> European Commission, *Commission proposes a series of new rules on excise duties*. Viewed at: [https://ec.europa.eu/taxation\\_customs/news/commission-proposes-series-new-rules-excise-duties\\_en](https://ec.europa.eu/taxation_customs/news/commission-proposes-series-new-rules-excise-duties_en).

<sup>81</sup> European Commission, *Proposal for a COUNCIL DIRECTIVE amending Directive 92/83/EEC on the harmonization of the structures of excise duties on alcohol and alcoholic beverages*. Viewed at: [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/25\\_05\\_2018\\_proposal\\_excise\\_duties\\_alcohol.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/25_05_2018_proposal_excise_duties_alcohol.pdf).

**Table 3.6 Minimum excise duties on EU harmonized products, 2020**

Category	Minimum rate	Unit
<b>Alcohol:</b>		
Beer	EUR 0.748 or EUR 1.87	hl per degree Plato or hl per degree alcohol
Wine	EUR 0	hl of volume
Intermediate products	EUR 45	hl of volume
Spirits	EUR 550	hl of volume
<b>Energy and electricity:</b>		
<u>For motor fuels</u>		
Leaded petrol	421	EUR per 1,000 litres
Unleaded petrol	359	EUR per 1,000 litres
Gas oil	330	EUR per 1,000 litres
Kerosene	330	EUR per 1,000 litres
LPG	125	EUR per 1,000 kg
Natural gas	2.6	EUR per gigajoule
<u>For commercial/industrial use</u>		
Gas oil		
Kerosene	21	EUR per 1,000 litres
LPG	21	EUR per 1,000 litres
Natural gas	41	EUR per 1,000 kg
<u>For heating and electricity</u>		
Gas oil	0.3	EUR per 1,000 litres
Heavy fuel oil	21	EUR per 1,000 litres
Kerosene	15	EUR per 1,000 kilos
LPG	0	EUR per 1,000 litres
Natural gas	0	EUR per 1,000 kg
Coal and coke	0.15 or 0.3 <sup>b</sup>	EUR per 1,000 litres
Electricity	0.15 or 0.3 <sup>b</sup>	EUR per 1,000 litres
	0.5 or 1.0 <sup>b</sup>	EUR per MWh
<b>Tobacco products:</b>		
Fine-cut smoking tobacco <sup>a</sup>	48% or EUR 60	Of the weighted average retail selling price per kg
Cigars and cigarillos	5% or EUR 12	Of the retail selling price per 1,000 or per kg
Other smoking tobaccos	20% or EUR 22	Of the retail selling price per kg
Cigarettes	7.5% to 76.5%	Specific component - of the total tax burden Ad valorem component - % of the maximum retail selling price Overall excise — at least EUR 90 per 1,000 cigarettes and 60% of the weighted average retail selling price

a To gradually increase to 50% or EUR 60 by 2020.

b The lower rate applies to businesses, the higher rate applies for non-businesses.

Source: European Commission, *Excise Duties on Tobacco*. Viewed at: [https://ec.europa.eu/taxation\\_customs/business/excise-duties-alcohol-tobacco-energy/excise-duties-tobacco\\_en](https://ec.europa.eu/taxation_customs/business/excise-duties-alcohol-tobacco-energy/excise-duties-tobacco_en); *Excise Duty on Alcohol*. Viewed at: [https://ec.europa.eu/taxation\\_customs/business/excise-duties-alcohol-tobacco-energy/excise-duties-alcohol\\_en](https://ec.europa.eu/taxation_customs/business/excise-duties-alcohol-tobacco-energy/excise-duties-alcohol_en); and *Excise Duty on Energy*. Viewed at: [https://ec.europa.eu/taxation\\_customs/business/excise-duties-alcohol-tobacco-energy/excise-duties-energy\\_en](https://ec.europa.eu/taxation_customs/business/excise-duties-alcohol-tobacco-energy/excise-duties-energy_en).

3.60. A second proposal, also from 2018, is aimed at addressing shortfalls in the directive on the general arrangements for goods subject to excise.<sup>82</sup> Certain shortfalls were identified, in particular for exportation, export followed by transit, importation, duty paid business-to-business, low-risk movements, and exceptional circumstances.<sup>83</sup> With respect to importation, particular difficulty was noted regarding the tracking of excisable goods moved under duty suspension between member States after importation. Therefore, the proposal focuses on implementing new procedures for tracking, in particular on the declarant to provide additional information during the import, export,

<sup>82</sup> Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC. Viewed at: <https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX:32008L0118>.

<sup>83</sup> European Commission, *Impact Assessment*. Viewed at: [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/25\\_05\\_2018\\_proposal\\_for\\_general\\_arrangements\\_for\\_excise\\_duties\\_impact\\_assessment.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/25_05_2018_proposal_for_general_arrangements_for_excise_duties_impact_assessment.pdf).

or transit processes.<sup>84</sup> Two other proposals concern administrative cooperation regarding the content of the electronic register, and computerizing the movement and surveillance of excise goods.<sup>85</sup> The proposals are still under negotiation with the member States.

### 3.1.5 Import prohibitions, restrictions, and licensing

3.61. The EU continues to have in place a number of import prohibitions, restrictions, and licensing requirements on imports. The number of these increased during the period, and none were removed. There are 12 specific groups of products subject to restrictions or prohibition (Table 3.7), 11 subject to import permits or licences (Table 3.8), and another 2 measures approved but not yet entered into force. In addition to the new measures entering into force on aluminium (surveillance), tungsten, and invasive species, there were several amendments or changes to a number of the existing regulations already in force.

3.62. The EU also has a number of surveillance mechanisms in place on imports which are not discussed in this Section. These are most notably in the agricultural sector, in order to determine quota levels or trigger prices (Section 4.1), for safeguards (Section 3.1.6.2), or for monitoring certain products pursuant to FTAs or other agreements, i.e. bananas.<sup>86</sup> There are also a number of monitoring, control, or restrictive measures put in place for TBT, SPS, labelling, and sanctions (Sections 3.1.7 and 3.3). Two measures are now in place concerning surveillance measures, i.e. steel and aluminium (Section 3.1.6.2). The EU has import prohibitions on cat and dog fur, including products thereof; and seal products.<sup>87</sup>

3.63. Previously, the EU had introduced a regulation on invasive alien species (IAS), i.e. plants, insects and animals, in 2014<sup>88</sup>, but its implementation was dependent upon a list of applicable species being identified. A first list was set out in a regulation in 2016, and a second list in 2017.<sup>89</sup> As at July 2019, a third list was under consideration and was open to public comment.<sup>90</sup> Thus, the listed IASs (49 species listed thus far) cannot be brought into the territory of the EU; be kept in, bred in, or transit through the EU; nor be sold, possessed, or released into the environment.<sup>91</sup> However, there are some exceptions, and controlled imports may be authorized for scientific research and conservation activities for example.

<sup>84</sup> European Commission, *Proposal for a COUNCIL DIRECTIVE laying down the general arrangements for excise duty (recast)*. Viewed at: [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/25\\_05\\_2018\\_proposal\\_for\\_general\\_arrangements\\_for\\_excise\\_duties.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/25_05_2018_proposal_for_general_arrangements_for_excise_duties.pdf).

<sup>85</sup> European Commission, *Proposal for a Council Regulation amending Regulation (EU) No. 389/2012 on administrative cooperation in the field of excise duties as regards the content of electronic register*. Viewed at: [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/25\\_05\\_2018\\_proposal\\_exciseduties\\_electronicregister\\_en.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/25_05_2018_proposal_exciseduties_electronicregister_en.pdf); and *Proposal for a Decision of the European Parliament and of the Council on computerising the movement and surveillance of excise goods (recast)*. Viewed at: [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/25\\_05\\_2018\\_proposal\\_on\\_emcs.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/25_05_2018_proposal_on_emcs.pdf).

<sup>86</sup> Regulation (EU) 2017/852 of the European Parliament and of the Council of 17 May 2017 on mercury, and repealing Regulation (EC) No. 1102/2008. Viewed at: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=uriserv:OJ.L\\_.2017.137.01.0001.01.ENG](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=uriserv:OJ.L_.2017.137.01.0001.01.ENG).

<sup>87</sup> The restrictions on cat and dog fur also apply for exportation.

<sup>88</sup> Regulation (EU) No. 1143/2014 of the European Parliament and of the Council of 22 October 2014 on the prevention and management of the introduction and spread of invasive alien species. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1417443504720&uri=CELEX:32014R1143>.

<sup>89</sup> Regulation (EU) 2016/1141 of 13 July 2016 adopting a list of invasive alien species of Union concern pursuant to Regulation (EU) No. 1143/2014 of the European Parliament and of the Council C/2016/4295. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016R1141>; and Commission Implementing Regulation (EU) No. 2017/1263 of 12 July 2017 updating the list of invasive alien species of Union concern established by Implementing Regulation (EU) 2016/1141 pursuant to Regulation (EU) No. 1143/2014 of the European Parliament and of the Council. Viewed at: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=uriserv:OJ.L\\_.2017.182.01.0037.01.ENG](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=uriserv:OJ.L_.2017.182.01.0037.01.ENG).

<sup>90</sup> European Commission, *Updated list of invasive non-native species in the EU*. Viewed at: [https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2019-1565888\\_en](https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2019-1565888_en).

<sup>91</sup> Publications Office of the European Union, *Invasive alien species*. Viewed at: <https://publications.europa.eu/en/publication-detail/-/publication/6f9e5ecf-c81f-11e6-a6db-01aa75ed71a1/language-en/format-PDF>.



3.64. In 2017, the EU also put in place new import prohibitions on the import of mercury and certain mercury compounds or products.<sup>92</sup> This new regulation replaces a previous one that only restricted exports (Section 3.2.3).<sup>93</sup> Thus, pursuant to the EU's Seventh Environment Action Programme and the Minamata Convention on Mercury of 2013, the EU prohibited the export, import and manufacturing of mercury, mercury compounds, and a range of mercury-added products.<sup>94</sup> However, there are certain phased-in restrictions pertaining to a number of products, in particular for dental amalgams, until 2021.

3.65. In 2019, the EU codified Regulation (EC) 1236/2005 on trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment, and its subsequent amendments, into Regulation (EU) 2019/125 (which applies to both imports and exports).<sup>95</sup> The codified Regulation does not make any changes; it merely consolidates the previous amendments. It is also noted that, prior to the codification, during the review period, Commission Delegated Regulation (EU) 2018/181 amended the list of relevant third countries in the Union General Export Authorisation (UGEA), adding the Dominican Republic, Saõ Tome and Principe, and Togo to the list of relevant countries.<sup>96</sup>

3.66. At the 17<sup>th</sup> meeting of the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) in 2016, certain amendments<sup>97</sup> were made to the Appendices to the Convention. These amendments are reflected in a Commission Regulation<sup>98</sup> of 20 January 2017 amending the EU "CITES Regulation"<sup>99</sup>, by replacing its Annexes. These Annexes generally correspond to the CITES Appendices.<sup>100</sup> Further small changes to a related Commission Regulation<sup>101</sup> were made in 2019<sup>102</sup>, by laying down detailed rules for the import or re-export of live rhinoceroses or live elephants, specifying that horn or ivory from those animals or from their progeny may not enter commercial trade or commercial activities within the EU. At the same time, the list of standard nomenclature references was also amended.

3.67. Another development during the review period was the negotiation and signing of Voluntary Partnership Agreements (VPAs), and the establishment of a Forest Law Enforcement, Governance and Trade (FLEGT) licensing scheme for imports of timber into the European Community<sup>103</sup>, which

<sup>92</sup> Regulation (EU) No. 2017/852 of the European Parliament and of the Council of 17 May 2017 on mercury, and repealing Regulation (EC) No. 1102/2008. Viewed at: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=uriserv:OJ.L\\_.2017.137.01.0001.01.ENG](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=uriserv:OJ.L_.2017.137.01.0001.01.ENG).

<sup>93</sup> Regulation (EC) No. 1102/2008 of the European Parliament and of the Council of 22 October 2008 on the banning of exports of metallic mercury and certain mercury compounds and mixtures and the safe storage of metallic mercury. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32008R1102>.

<sup>94</sup> See Annexes I and II to Regulation (EU) No. 2017/852.

<sup>95</sup> Regulation (EU) No. 2019/125 of the European Parliament and of the Council of 16 January 2019 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment. Viewed at: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=uriserv:OJ.L\\_.2019.030.01.0001.01.ENG](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=uriserv:OJ.L_.2019.030.01.0001.01.ENG).

<sup>96</sup> Commission Delegated Regulation (EU) No. 2018/181 of 18 October 2017 amending Annex IIIb to Council Regulation (EC) No. 1236/2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018R0181>.

<sup>97</sup> CITES, *Final decisions made at CoP17 on the proposals to amend CITES Appendices*. Viewed at: <https://cites.org/sites/default/files/eng/cop/17/Decisions-on-amendment-proposals.pdf>.

<sup>98</sup> Commission Regulation (EU) 2017/160 of 20 January 2017 amending Council Regulation (EC) No. 338/97 on the protection of species of wild fauna and flora by regulating trade therein. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1490275269610&uri=CELEX:32017R0160>.

<sup>99</sup> Council Regulation (EC) No. 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein, which is transposing the CITES provisions at EU level. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1484753427128&uri=CELEX:01997R0338-20170204>.

<sup>100</sup> The EU has, in some cases, adopted stricter measures than what is required by CITES, by including non-CITES-listed species or setting stricter import conditions for listed species.

<sup>101</sup> Commission Regulation (EC) No. 865/2006 of 4 May 2006 laying down detailed rules concerning the implementation of Council Regulation (EC) No. 338/97 on the protection of species of wild fauna and flora by regulating trade therein. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1484753534360&uri=CELEX:02006R0865-20190227>.

<sup>102</sup> Commission Regulation (EU) 2019/220 of 6 February 2019 amending Regulation (EC) No. 865/2006 laying down detailed rules concerning the implementation of Council Regulation (EC) No. 338/97 on the protection of species of wild fauna and flora by regulating trade therein. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019R0220>.

<sup>103</sup> Council Regulation (EC) No. 2173/2005 of 20 December 2005 on the establishment of a FLEGT licensing scheme for imports of timber into the European Community. Viewed at: <https://eur->

is part of the FLEGT Action Plan.<sup>104</sup> The Plan sets out the EU response to combatting illegal harvesting of timber and associated trade, by improving forest governance, strengthening law enforcement and promoting trade in legally-harvested timber and timber products. Under the VPA, partner countries develop systems to verify the legality of their timber exports to the EU and a licensing system to provide assurance that timber imported into the EU has been harvested in compliance with the legal requirements of the partner country, as set out in the relevant FLEGT VPA. To date, the EU has signed VPAs with Ghana, the Republic of Congo, Cameroon, Indonesia, the Central African Republic, Liberia, and Viet Nam.<sup>105</sup> As of September 2019, Indonesia was the only VPA country with an operational FLEGT licensing scheme.<sup>106</sup> The EU concluded negotiations and initialled VPAs with Honduras<sup>107</sup> and Guyana.<sup>108</sup> It is in the process of conducting negotiations with a further six countries.<sup>109</sup> Each VPA generally contains provisions on a list of products covered by the HS code, rules for the licensing scheme, monitoring and evaluation, and reporting and communication provisions.

3.68. The regulation on the export and import of hazardous chemicals was amended twice during the review period, to amend the annexes containing the chemicals covered.<sup>110</sup> Basically, chemicals were added to the lists of those subject to requirements or restrictions on export, due to changes in EU law or in the underlying conventions, i.e. the Rotterdam Convention on the Prior Informed Consent Procedure for certain hazardous chemicals and pesticides in international trade, and the Stockholm Convention on Persistent Organic Pollutants.

3.69. Licences or permits for products subject to licensing are handled by certain EU services, e.g. DG Agriculture and Rural Development, or relevant authorities in the member States. For certain products, e.g. steel, aluminium, and wood<sup>111</sup>, they are tracked and monitored by the *Système Intégré de Gestion de Licences (SIGL)*, which provides updated information on steel quotas pursuant to the safeguard action, for example.<sup>112</sup>

3.70. The EU and other participants to the Kimberley Process on rough diamonds have been covered under a WTO waiver for certain GATT 1994 provisions, both for importation and exportation. This waiver was recently extended to cover the period 2019-24.<sup>113</sup> The EU continued to require import licences for the importation of certain sugar products from certain EBA beneficiaries during the review period, but this provision expired in September 2017.<sup>114</sup>

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[lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32005R2173](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32005R2173); and Commission Regulation (EC) No. 1024/2008 of 17 October 2008 laying down detailed measures for the implementation of Council Regulation (EC) No. 2173/2005 on the establishment of a FLEGT licensing scheme for imports of timber into the European Community. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32008R1024>.

<sup>104</sup> Communication from the Commission to the Council and the European Parliament - Forest Law Enforcement, Governance and Trade (FLEGT) - Proposal for an EU Action Plan. Viewed at: <https://eur-lex.europa.eu/legal-content/SL/TXT/?uri=CELEX:52003DC0251>.

<sup>105</sup> European Commission, *FLEGT Regulation – FLEGT Voluntary Partnership Agreements (VPAs)*. Viewed at: <http://ec.europa.eu/environment/forests/flegt.htm>.

<sup>106</sup> EUR-Lex, *Voluntary Partnership Agreement between the European Union and the Republic of Indonesia on forest law enforcement, governance and trade in timber products into the European Union*. Viewed at: [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2014.150.01.0252.01.ENG](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2014.150.01.0252.01.ENG).

<sup>107</sup> The EU and Honduras concluded negotiations and initialled the VPA on 15 June 2018.

<sup>108</sup> The EU and Guyana concluded negotiations and initialled the VPA on 23 November 2018.

<sup>109</sup> European Commission, *FLEGT Regulation – FLEGT Voluntary Partnership Agreements (VPAs)*. Viewed at: <http://ec.europa.eu/environment/forests/flegt.htm>.

<sup>110</sup> Commission Delegated Regulation (EU) No. 2018/172 of 28 November 2017 amending Annexes I and V to Regulation (EU) No. 649/2012 of the European Parliament and of the Council concerning the export and import of hazardous chemicals. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32018R0172>; and Commission Delegated Regulation (EU) 2019/330 of 11 December 2018 amending Annexes I and V to Regulation (EU) No. 649/2012 of the European Parliament and of the Council concerning the export and import of hazardous chemicals. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32019R0330>.

<sup>111</sup> Pursuant to the Russian Federation's export TRQ.

<sup>112</sup> European Commission, *Système Intégré de Gestion de Licences*. Viewed at: <https://webgate.ec.europa.eu/siglbo/public/reports>.

<sup>113</sup> WTO document WT/L/1039, 30 July 2018.

<sup>114</sup> Commission Implementing Regulation (EU) No. 2015/1550 of 17 September 2015 laying down rules for the application of Regulation (EU) No. 1308/2013 of the European Parliament and of the Council as regards the import and refining of sugar products of CN code 1701 under preferential agreements, for the marketing

3.71. Similar to the aim of the Kimberley Process, the EU implemented a new regulation in 2017 to apply the Organisation for Economic Cooperation and Development (OECD) Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, in order to limit human rights abuses and prevent the financing of armed groups in resource-rich areas.<sup>115</sup> The Conflict Minerals Regulation (CMR) applies to EU importers of tin, tungsten, tantalum and gold. As of 1 January 2021, EU importers of these metals and minerals with annual import volumes above a certain threshold must undertake supply chain due diligence. This implies that they must identify and mitigate the risk of conflict-financing in their supply chains; and they must also keep detailed records of suppliers, country of origin, and quantities and dates of extraction of the minerals or metals imported. These records are subject to compliance and *ex post* checks by specially-designated competent authorities in each member State. Annex I to the CMR sets out the applicable import thresholds. For five minerals and metals, though (e.g. tantalum, gold ores and concentrates, tin oxides), the thresholds will be established at the latest by July 2020.

3.72. Furthermore, the EU introduced a proposal for a single-use plastics directive in 2018. This Directive was adopted on 5 June 2019.<sup>116</sup> Member States must transpose the Directive into law by 3 July 2021. The Directive would restrict certain plastic products, e.g. plates, cutlery, beverage containers, from being placed on the EU market, and impose an extended producer responsibility for the cost of clean-up activities on a list of similar plastic products used mainly in the food and beverage sector, as well as tobacco products, fishing gear, and balloons.<sup>117</sup>

3.73. Another regulation that entered into force in July concerns the prohibition of certain persistent organic pollutants.<sup>118</sup> The EU put in place these measures pursuant to its participation in the Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on Persistent Organic Pollutants, and the Stockholm Convention on Persistent Organic Pollutants. The annex to the regulation currently identifies about 26 chemicals where the manufacture, placing on the market, and use is prohibited; it also has certain waste management provisions, i.e. recovery and disposal. It should be noted that this regulation is a recast of an earlier regulation adopted in 2004 (Regulation (EC) No. 850/2004 on persistent organic pollutants).

3.74. The EU continued to update Council Regulation (EU) No. 111/2005 of 22 December 2004 on the monitoring of trade for drug precursors by the addition of substances to be scheduled for control and monitoring. The scheduling of such substances is carried out so as to achieve a proportionate balance between the level of threat posed by each specific substance and the burden on licit trade. Both Commission Delegated Regulation (EU) No. 2016/1443 of 29 June 2016 and Commission Delegated Regulation (EU) No. 2018/729 of 26 February 2018 included certain drug precursors in the list of scheduled substances in the Annex of Regulation (EU) No. 111/2005.

3.75. A new regulation that was approved on 17 April 2019 concerns the import of cultural goods, which will prohibit the introduction into the EU of cultural goods illicitly exported from third countries ("general prohibition" rule) and will lay down the conditions and procedures for the import of cultural goods into the EU. The import of cultural goods – i.e. their release for free circulation or their placement under special customs procedures – will be subject to (i) an import licence issued by a member State competent authority for archaeological objects and parts of monuments; or (ii) for less-sensitive cultural goods, the submission to customs of an importer statement. The regulation

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years 2015/16 and 2016/17. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015R1550&rid=1>.

<sup>115</sup> Regulation (EU) 2017/821 of the European Parliament and of the Council of 17 May 2017 laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017R0821>.

<sup>116</sup> European Commission, *Proposal for a Directive of the European Parliament and of the Council on the reduction of the impact of certain plastic products on the environment*. Viewed at: [http://ec.europa.eu/environment/circular-economy/pdf/single-use\\_plastics\\_proposal.pdf](http://ec.europa.eu/environment/circular-economy/pdf/single-use_plastics_proposal.pdf). Directive (EU) 2019/904 of the of the European Parliament and of the Council of 5 June 2019 on the reduction of the impact of certain plastic products on the environment. Viewed at: [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2019.155.01.0001.01.ENG&toc=OJ:L:2019:155:TOC](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2019.155.01.0001.01.ENG&toc=OJ:L:2019:155:TOC).

<sup>117</sup> European Commission, *Annex to the Proposal for a Directive of the European Parliament and of the Council on the reduction of the impact of certain plastic products on the environment*. Viewed at: [http://ec.europa.eu/environment/circular-economy/pdf/single-use\\_plastics\\_proposal\\_annex.pdf](http://ec.europa.eu/environment/circular-economy/pdf/single-use_plastics_proposal_annex.pdf).

<sup>118</sup> Regulation (EU) 2019/1021 of the European Parliament and of the Council of 20 June 2019 on persistent organic pollutants. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1562229423179&uri=CELEX:32019R1021>.

will be supported by a centralized electronic system. Most provisions of the regulation will apply six years after its entry into force, i.e. once the electronic system becomes operational. In the meantime, one provision, namely the general prohibition rule, will apply 18 months after the entry into force.

**Table 3.7 Prohibitions or restrictions on imports, 2019**

Product	Measure	Rationale	Legislation
Substances that deplete the ozone layer	Prohibition/restriction	Montreal Protocol	Regulation (EC) No. 1005/2009
Certain hazardous chemicals	Prohibition/restriction	Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade	Regulation (EU) No. 649/2012; Commission Implementing Decision of 10 October 2018
Persistent organic pollutants	Prohibition/restriction	Stockholm Convention on Persistent Organic Pollutants	Regulation (EU) 2019/1021
Cultural goods	Prohibition	To protect against the trafficking of such materials	Regulation (EU) 2019/880
Certain animal and plant species	Prohibition/restriction	CITES	Council Regulation (EC) No. 338/97
Fluorinated greenhouse gases	Prohibition/restriction	Targeted reduction of greenhouse gases pursuant to the Intergovernmental Panel on Climate Change (IPCC) of the United Nations Framework Convention on Climate Change (UNFCCC)	Regulation (EU) No. 517/2014
Invasive alien species (IAS)	Prohibition/restriction	To prevent negative consequences to the environment	Regulation (EU) No. 1143/2014; Regulation (EU) 2016/1141; and Commission Implementing Regulation (EU) 2017/1263
Mercury and mercury products	Prohibited <sup>a</sup>	Minamata Convention on Mercury	Regulation (EU) 2017/852
Certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment	Prohibition	Protection of human life or health, protection of public morals	Regulation (EU) 2019/125
Waste	Prohibition/restriction	Basel Convention for the Control of Transboundary Movements of Hazardous Waste and their Disposal  OECD Decision on the control of transboundary movements of wastes destined for recovery operations	Regulation (EC) No. 1013/2006 and its subsequent amendments
Bluefin tuna	Prohibition/restriction	International Convention for the Conservation of Atlantic Tunas	Regulation (EU) No. 640/2010

Product	Measure	Rationale	Legislation
Fish of vessels from Cambodia, Comoros, and Saint Vincent and the Grenadines	Prohibition	Protection of animal life and health and the environment, and conservation of natural resources	Regulation (EC) No. 1005/2008; Council Implementing Decision of 24 March 2014; Council Implementing Decision (EU) 2017/1332; Council Implementing Decision (EU) 2017/1333; and Council Implementing Decision (EU) 2016/1818

a The import ban is gradually being phased in, depending on the type of product, from 2018 to 2021.

Source: WTO document G/MA/QR/N/EU/4, 28 September 2018; and information compiled from the TARIC.

**Table 3.8 Products subject to import licensing, 2019**

Product	Regime	Automatic/ non- automatic	Legislation
Textiles	Autonomous regime governing imports from the Democratic People's Republic of Korea; outward processing traffic arrangements; surveillance regime	Non-automatic	Regulation (EU) 2015/936; Regulation (EU) No. 2016/2148; and Regulation (EU) No. 2017/1509
The EU maintains licensing requirements only for the following products: <ul style="list-style-type: none"> <li>rice;</li> <li>hemp seeds for sowing, raw hemp, hemp seeds not for sowing;</li> <li>ethyl alcohol of agricultural origin.</li> </ul> However, when it comes to the management of agricultural TRQs, the EU manages them through a licensing system for the following products: <ul style="list-style-type: none"> <li>cereals and rice;</li> <li>sugar;</li> <li>milk and milk products;</li> <li>beef and veal;</li> <li>pigmeat;</li> <li>poultry meat;</li> <li>eggs and products in the egg sector and egg albumin;</li> <li>garlic;</li> <li>preserved mushrooms;</li> <li>ethyl alcohol from agricultural origin; and</li> <li>hemp</li> </ul>	To monitor trade flows and administer TRQs	Non-automatic	Regulation (EU) No. 2016/1237; and Regulation (EU) 2016/1239

Product	Regime	Automatic/ non- automatic	Legislation
Steel <sup>a</sup>	Surveillance system and safeguard	Automatic and non-automatic	Commission Implementing Regulation (EU) No. 2016/670; Regulation (EU) 2015/755; Regulation (EU) 2015/478; and Commission Implementing Regulation (EU) 2019/159
Aluminium	Surveillance system	Automatic	Commission Implementing Regulation (EU) 2018/640
Fluorinated gases including hydrofluorocarbons (HFCS)	Licensing and quota system	Non-automatic	Regulation (EU) No. 517/2014; and Regulation (EU) No. 2019/661
Ozone-depleting substances (ODS) (controlled substances)	To control prohibited or restricted ODS goods	Non-automatic	Regulation (EC) No. 1005/2009
Rough diamonds	To implement the Kimberley Process Certification Scheme	Non-automatic	Regulation (EC) No. 2368/2002
Waste shipment	To control the import of waste and hazardous waste pursuant to the Basel Convention	Automatic	Regulation (EC) No. 1013/2006
Timber and timber products	To ensure that only legally-harvested timber, and products made thereof, is exported to the EU from countries operating the FLEGT licensing scheme	Automatic	Council Regulation No. 2173/2005; and Commission Regulation (EC) No. 1024/2008
Endangered species (CITES)	To control imports of endangered species listed in CITES	Non-automatic	Council Regulation (EC) No. 338/97; Commission Regulation (EC) No. 865/2006; Commission Implementing Regulation (EU) No. 792/2012; and Commission Implementing Regulation (EU) No. 2017/1915
Drug precursors	To monitor trade and authorize imports of drug precursors	Automatic	Commission Delegated Regulation 2016/1443 of 29 June 2016; and Commission Delegated Regulation 2018/729 of 26 February 2018

a Those subject to the safeguard are not subject to surveillance.

Source: WTO document G/LIC/N/3/EU/8, 25 September 2019; and information provided by the authorities.

### 3.1.6 Anti-dumping, countervailing, and safeguard measures

#### 3.1.6.1 Anti-dumping and anti-subsidy measures

3.76. The EU has emphasized the importance of WTO trade remedy rules as a legitimate tool to combat trade distortions and unfair trade practices by others and, through its legislation, applies these measures with rigour and consistency.<sup>119</sup> Indeed, the EU is a significant user of trade remedy measures as, historically, it ranks third overall among WTO Members in the imposition of anti-dumping measures since the WTO's inception and second for countervailing (CVD) measures, or anti-subsidy measures as the EU legislation refers to them.<sup>120</sup> At the same time, the EU has generally been a low recipient of anti-dumping or CVD measures by other Members, i.e. ranking

<sup>119</sup> European Commission, Commission Staff Working Document accompanying the 37<sup>th</sup> Annual Report from the Commission to the European Parliament and the Council on the EU's Anti-Dumping, Anti-Subsidy and Safeguard activities. Viewed at: [http://trade.ec.europa.eu/doclib/docs/2019/march/tradoc\\_157811.pdf](http://trade.ec.europa.eu/doclib/docs/2019/march/tradoc_157811.pdf).

<sup>120</sup> WTO, *Anti-dumping Measures: By Reporting Member*. Viewed at: [https://www.wto.org/english/tratop\\_e/adp\\_e/AD\\_MeasuresByRepMem.pdf](https://www.wto.org/english/tratop_e/adp_e/AD_MeasuresByRepMem.pdf); and *Countervailing Measures: By Reporting Member*. Viewed at: [https://www.wto.org/english/tratop\\_e/scm\\_e/CV\\_MeasuresByRepMem.pdf](https://www.wto.org/english/tratop_e/scm_e/CV_MeasuresByRepMem.pdf).

12<sup>th</sup> overall for anti-dumping and 4<sup>th</sup> for CVD measures.<sup>121</sup> According to the Commission, about 0.29% of total imports were impacted by anti-dumping or anti-subsidy measures in 2018.<sup>122</sup>

3.77. The last Review enumerated the main EU rules on anti-dumping and anti-subsidies which had been replaced by new codified versions in 2016 (Regulations (EU) 2016/1036 and (EU) 2016/1037); these remain in place and continue to form the basic rules on anti-dumping and anti-subsidy measures for the EU.<sup>123</sup> However, there have been significant developments, with two new regulations entering into force, resulting in the amendment of these Regulations.

3.78. The first set of changes were introduced in 2017, and added language with respect to "normal value". In essence, this allows for the normal value to be determined by another method where there are state-induced distortions in the exporting country. In such circumstances, normal value is determined on the basis of costs of production and sale reflecting undistorted prices, or of benchmarks such as international prices or costs in another representative country.<sup>124</sup> A different methodology for determining the normal value is set out for non-WTO Members.

3.79. The changes set out in the second amendment in 2018 are more numerous and diverse; the main elements are outlined in Box 3.2.<sup>125</sup> As illustrated, the changes involve procedural aspects, such as shortening the time-period for provisional measures, and more substantial aspects, such as how the injury margins are calculated. For example, in calculating the non-injurious price, a minimum profit of 6% is included. Another new development is the ability to take into account the presumably higher costs of EU industry compliance with social and environmental standards.

### Box 3.2 Main elements of the trade remedy modernization, 2018

- More transparency and predictability	Interested parties are informed three weeks in advance of the imposition of provisional measures.
- Faster anti-dumping investigations	The time-period for the introduction of provisional measures was reduced from 9 to normally 7 or maximum 8 months.
- Additional support for EU SMEs	A dedicated webpage and helpdesk were established for SMEs.
- A change in injury margin calculation method	New rules for the non-injurious price were put in place, reflecting profitability, future expenses, etc.
- Inclusion of social and environmental considerations	Implementation of social and environmental standards are taken into account: - in determining target price for EU industry; and - in considering undertaking offers.

<sup>121</sup> WTO, *Anti-dumping Sectoral Distribution of Measures: By Exporting Country*. Viewed at: [https://www.wto.org/english/tratop\\_e/adp\\_e/AD\\_Sectoral\\_MeasuresByExpCty.pdf](https://www.wto.org/english/tratop_e/adp_e/AD_Sectoral_MeasuresByExpCty.pdf); and *Countervailing Measures: By Exporting Country*. Viewed at: [https://www.wto.org/english/tratop\\_e/scm\\_e/CV\\_MeasuresByExpCty.pdf](https://www.wto.org/english/tratop_e/scm_e/CV_MeasuresByExpCty.pdf).

<sup>122</sup> European Commission, *36th Annual Report from the Commission to the Council and the European Parliament on the EU's Anti-Dumping, Anti-Subsidy and Safeguard activities (2017)*. Viewed at: [http://trade.ec.europa.eu/doclib/docs/2018/july/tradoc\\_157212.pdf](http://trade.ec.europa.eu/doclib/docs/2018/july/tradoc_157212.pdf); and information provided by the authorities.

<sup>123</sup> 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. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016R1036>; and 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. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016R1037>.

<sup>124</sup> Regulation (EU) No. 2017/2321 of the European Parliament and of the Council of 12 December 2017 amending Regulation (EU) 2016/1036 on protection against dumped imports from countries not members of the European Union and Regulation (EU) 2016/1037 on protection against subsidised imports from countries not members of the European Union. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017R2321>.

<sup>125</sup> Regulation (EU) No. 2018/825 of the European Parliament and of the Council of 30 May 2018 amending Regulation (EU) 2016/1036 on protection against dumped imports from countries not members of the European Union and Regulation (EU) 2016/1037 on protection against subsidised imports from countries not members of the European Union. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018R0825>.

- Changes to the use of the lesser duty rule (LDR)	- In anti-dumping cases, raw material distortions will result in a modulation of the LDR - In CVD cases, the LDR will not apply unless it is against the EU interest.
- Better response to threats of retaliation	Clarification that threats of retaliation to industry qualify as one of the special circumstances justifying <i>ex officio</i> investigations.
- Participation of trade unions in investigations	The rules now allow trade unions to be interested parties in investigations.
- New rules in the EU continental shelf and exclusive economic zones	Allows for trade remedy measures to be applicable to these regions of the EU.
- Reimbursement of duties	Repayment of duties collected while an expiry review is ongoing, if that review is terminated without the extension of the measures.

Source: European Commission, *Commission Staff Working Document accompanying the 37<sup>th</sup> Annual Report from the Commission to the European Parliament and the Council on the EU's Anti-Dumping, Anti-Subsidy and Safeguard activities (2018)*. Viewed at: [http://trade.ec.europa.eu/doclib/docs/2019/march/tradoc\\_157811.pdf](http://trade.ec.europa.eu/doclib/docs/2019/march/tradoc_157811.pdf); and information provided by the authorities.

3.80. There were also other developments in other EU legislation relating to trade remedies. The EU has long-standing legislation on unfair pricing and subsidies for airline services from 2004 that was being reviewed at the time of the last Review.<sup>126</sup> In 2019, a new regulation on safeguarding competition in air transport entered into force, and replaced the previous one from 2004.<sup>127</sup> The new legislation aims to address concerns about unfair practices by third countries and third-country entities, in particular those that may benefit from subsidies or other forms of state aid. An investigation may be initiated by a member State, an EU airline, an association of EU airlines, or by the Commission itself. Procedurally, it follows the main trade remedy rules of initiation, conducting an investigation, determining injury or threat of injury, and adoption of redressive measures. The redressive measures can be either financial duties or any operational measure of equivalent or lesser value, such as the suspension of concessions, of services owed, or of other rights of the third-country air carrier.

3.81. Pursuant to a decision of the President of the European Commission in 2019, the specific function and terms of reference of a "hearing officer" were updated to reinforce the transparency and fairness of trade proceedings.<sup>128</sup> In particular, the hearing officer is to safeguard the procedural rights of the interested parties in a variety of trade-related regulations, in particular to the rules governing anti-dumping, anti-subsidy, and safeguard investigations.<sup>129</sup> For example, the hearing officer has a role in organizing and conducting hearings on behalf of interested parties.

<sup>126</sup> Regulation (EC) No. 868/2004 of the European Parliament and of the Council of 21 April 2004 concerning protection against subsidisation and unfair pricing practices causing injury to Community air carriers in the supply of air services from countries not members of the European Community. Viewed at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32004R0868&from=EN>.

<sup>127</sup> Regulation (EU) No. 2019/712 of the European Parliament and of the Council of 17 April 2019 on safeguarding competition in air transport, and repealing Regulation (EC) No. 868/2004. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1562259754125&uri=CELEX:32019R0712>.

<sup>128</sup> Decision (EU) No. 2019/339 of the President of the European Commission of 21 February 2019 on the function and terms of reference of the hearing officer in certain trade proceedings. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1562238230941&uri=CELEX:32019D0339>.

<sup>129</sup> Regulation (EU) No. 2016/1036 and, in particular, Arts. 5(10) and (11), 6(5)-(8), 8(3), (4) and (9), and 18-21 thereof; Regulation (EU) 2016/1037 and, in particular, Arts. 10(12) and (13), 11(5)-(8) and (10), 13(3), (4) and (9), and 28-31 thereof; Regulation (EU) 2015/478 of the European Parliament and of the Council (6) and, in particular, Arts. 5 and 8 thereof; Regulation (EU) 2015/755 of the European Parliament and of the Council (7) and, in particular, Arts. 3 and 5 thereof; Regulation (EU) 2015/1843 of the European Parliament and of the Council (8) and, in particular, Arts. 9 and 10 thereof; Regulation (EU) 2016/1035 of the European Parliament and of the Council (9) and, in particular, Arts. 5(12) and (13), 6(5)-(8), and 12, 13 and 14 thereof; Regulation (EC) No. 868/2004 of the European Parliament and of the Council (10) and, in particular, Arts. 7 and 8 thereof; Regulation (EU) No. 978/2012 of the European Parliament and of the Council (11) and, in particular, Art. 24 thereof; Commission Delegated Regulation (EU) No. 155/2013 (12) and, in particular, Art. 6 thereof; Commission Delegated Regulation (EU) No. 1083/2013 (13) and, in particular, Art. 5 thereof; and Regulation (EU) 2015/476 of the European Parliament and of the Council (14) and, in particular, Arts. 1(2) and 2(2) thereof.



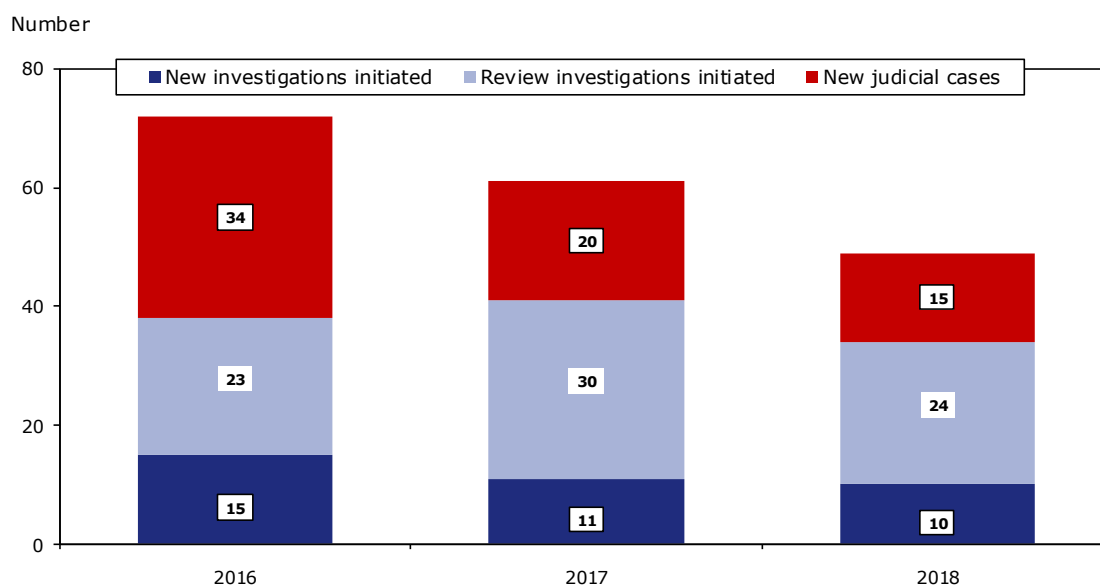
3.82. Most recently, in July 2019, the Commission implemented new rules to extend the reach of trade remedy laws to the continental shelf and exclusive economic zones of member States.<sup>130</sup> This allows for the operationalization of the rules that were included in the 2018 modernization.<sup>131</sup>

3.83. The 2016 legislation pertaining to the injurious pricing of vessels, i.e. specific to ship-building purchase transactions, was put in place by regulation, but has not been applied, as it is linked to the entry into force of the OECD Shipbuilding Agreement, which has not occurred to date.<sup>132</sup> Discussions are ongoing at the OECD.

3.84. The EU notified the WTO of the two main amendments to its trade remedy laws.<sup>133</sup>

3.85. During the review period there was a general decline in anti-dumping and anti-subsidy activity in the EU, as measured by initiations. The number of new investigations declined from 15 in 2016 to 10 in 2018 and, over the same period, judicial cases declined more markedly from 34 to 15 cases. Review investigations remained relatively constant (Chart 3.2).

**Chart 3.2 Overview of anti-dumping and anti-subsidy activity, 2016-18**



Source: Annual Reports from the Commission to the European Parliament and the Council on the EU's Anti-Dumping, Anti-Subsidy and Safeguard activities (2016-18) and accompanying Commission Staff Working Documents. Viewed at: [http://trade.ec.europa.eu/doclib/docs/2018/july/tradoc\\_157218.pdf](http://trade.ec.europa.eu/doclib/docs/2018/july/tradoc_157218.pdf), [http://trade.ec.europa.eu/doclib/docs/2019/march/tradoc\\_157776.PDF](http://trade.ec.europa.eu/doclib/docs/2019/march/tradoc_157776.PDF), and [http://trade.ec.europa.eu/doclib/docs/2019/march/tradoc\\_157811.pdf](http://trade.ec.europa.eu/doclib/docs/2019/march/tradoc_157811.pdf).

<sup>130</sup> European Commission, *EU extends trade defence rules to continental shelf and exclusive economic zones of Member States*. Viewed at: <http://trade.ec.europa.eu/doclib/press/index.cfm?id=2043>.

<sup>131</sup> Commission Implementing Regulation (EU) No. 2019/1131 of 2 July 2019 establishing a customs tool in order to implement Article 14a of Regulation (EU) 2016/1036 of the European Parliament and of the Council and Article 24a of Regulation (EU) 2016/1037 of the European Parliament and of the Council. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2019:179:FULL&from=EN>.

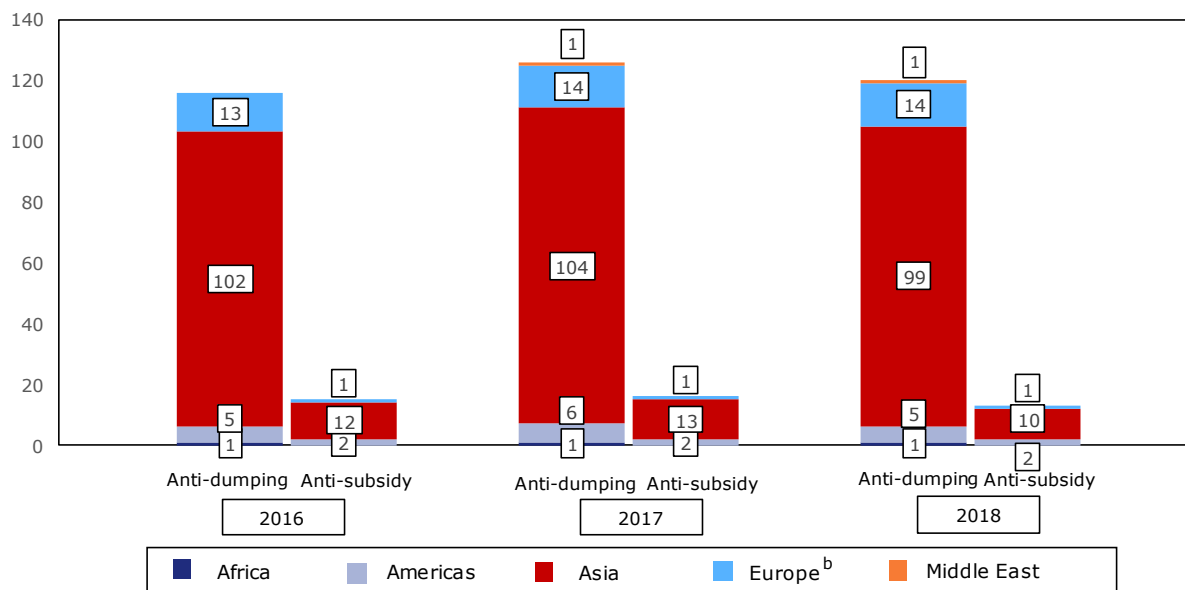
<sup>132</sup> Regulation (EU) No. 2016/1035 of the European Parliament and of the Council of 8 June 2016 on protection against injurious pricing of vessels. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1562254581936&uri=CELEX:32016R1035>.

<sup>133</sup> WTO documents G/ADP/N/1/EU/3/Suppl.2, 18 April 2017; G/SCM/N/1/EU/2/Suppl.2, 23 January 2018; G/ADP/N/1/EU/3/Suppl.3, 2 July 2018; and G/SCM/N/1/EU/2/Suppl.3, 2 July 2018.

3.86. The overall number of measures in force remained relatively constant during the review period (Chart 3.3). This is due to the offsetting effect of lower initiations but relatively higher extensions from expiry reviews (see below). Also, the regional distribution of the measures remained unchanged, with Asia, in particular China, accounting for the vast majority of both anti-dumping and anti-subsidy cases. There are very few measures concerning countries in Africa, the Americas, and the Middle East, while non-EU European countries account for the second-largest group after Asia (Chart 3.3).

**Chart 3.3 Anti-dumping and anti-subsidy measures in force<sup>a</sup>, by region, 2016-18**

Number of measures, including extensions (Cumulated)



a Including extensions.

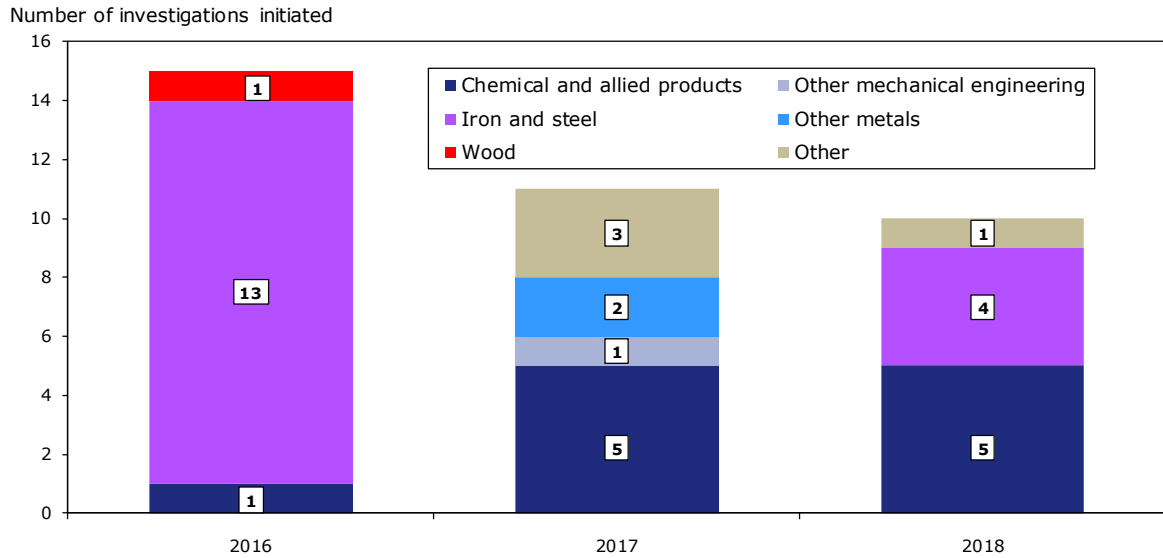
b Non-EU European countries include: Belarus, the Russian Federation, Turkey, and Ukraine.

Source: Annual Reports from the Commission to the European Parliament and the Council on the EU's Anti-Dumping, Anti-Subsidy and Safeguard activities (2016-18), and accompanying Commission Staff Working Documents. Viewed at: [http://trade.ec.europa.eu/doclib/docs/2018/july/tradoc\\_157218.pdf](http://trade.ec.europa.eu/doclib/docs/2018/july/tradoc_157218.pdf), [http://trade.ec.europa.eu/doclib/docs/2019/march/tradoc\\_157776.PDF](http://trade.ec.europa.eu/doclib/docs/2019/march/tradoc_157776.PDF), and [http://trade.ec.europa.eu/doclib/docs/2019/march/tradoc\\_157811.pdf](http://trade.ec.europa.eu/doclib/docs/2019/march/tradoc_157811.pdf).

3.87. There were a few shifts in the sectors impacted by anti-dumping and anti-subsidy investigations during the review period. There was a significant decline in investigations of the iron and steel sector, from 13 to zero between 2016 and 2017, with a slight rebound to four in 2018. These shifts can likely be attributed to the surveillance and safeguard measures on steel that were in place, or were put in place, during the period. Another trend was a steady increase in initiations in the chemical and allied product sector (Chart 3.4).

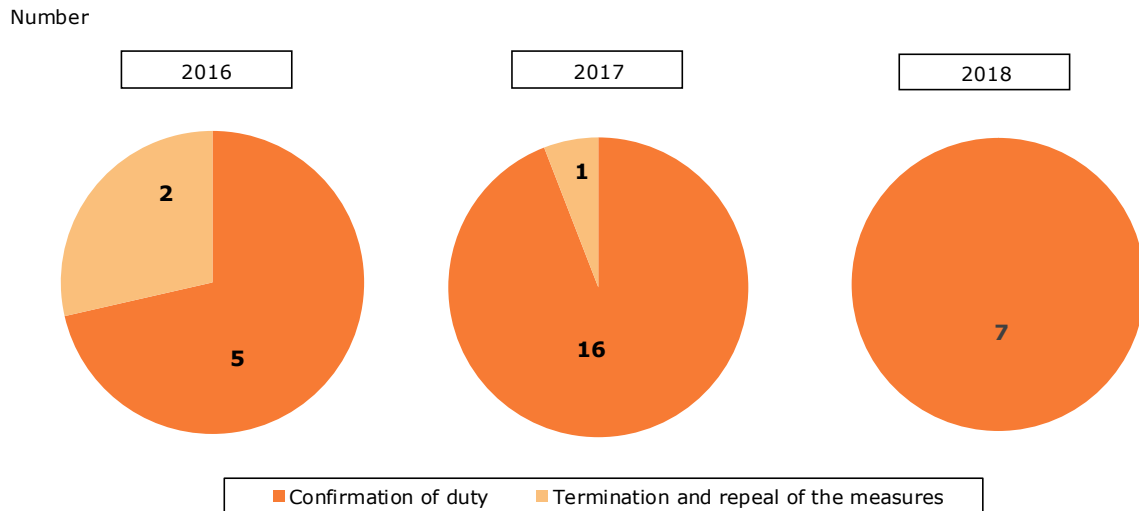
3.88. Pursuant to EU trade remedy rules, anti-dumping and anti-subsidy measures generally expire after five years unless an expiry review demonstrates the need for the continuation of the measure. The number of expiry review investigations in any given year depends, to a large extent, on the number of measures that were imposed five years before. In 2016, about 71% of the measures were confirmed and extended, whereas in 2018, this had increased to 100% (Chart 3.5).

**Chart 3.4 Anti-dumping and anti-subsidy investigations initiated, by product sector, 2016-18**



Source: Annual Reports from the Commission to the European Parliament and the Council on the EU's Anti-Dumping, Anti-Subsidy and Safeguard activities (2016-18), and accompanying Commission Staff Working Documents. Viewed at: [http://trade.ec.europa.eu/doclib/docs/2018/july/tradoc\\_157218.pdf](http://trade.ec.europa.eu/doclib/docs/2018/july/tradoc_157218.pdf), [http://trade.ec.europa.eu/doclib/docs/2019/march/tradoc\\_157776.PDF](http://trade.ec.europa.eu/doclib/docs/2019/march/tradoc_157776.PDF), and [http://trade.ec.europa.eu/doclib/docs/2019/march/tradoc\\_157811.pdf](http://trade.ec.europa.eu/doclib/docs/2019/march/tradoc_157811.pdf).

**Chart 3.5 Outcome of expiry reviews concluded, 2016-18**



Source: Annual Reports from the Commission to the European Parliament and the Council on the EU's Anti-Dumping, Anti-Subsidy and Safeguard activities (2016-18), and accompanying Commission Staff Working Documents. Viewed at: [http://trade.ec.europa.eu/doclib/docs/2018/july/tradoc\\_157218.pdf](http://trade.ec.europa.eu/doclib/docs/2018/july/tradoc_157218.pdf), [http://trade.ec.europa.eu/doclib/docs/2019/march/tradoc\\_157776.PDF](http://trade.ec.europa.eu/doclib/docs/2019/march/tradoc_157776.PDF), and [http://trade.ec.europa.eu/doclib/docs/2019/march/tradoc\\_157811.pdf](http://trade.ec.europa.eu/doclib/docs/2019/march/tradoc_157811.pdf).

### 3.1.6.2 Safeguards

3.89. Safeguards are part of the EU's framework on trade remedies, and the EU maintains rules for global safeguards pursuant to the WTO Agreement on Safeguards, as well as bilateral safeguard provisions in most of its bilateral FTAs. Historically, the EU has not been a significant user of safeguards in the WTO framework, and has only initiated six safeguard cases since the inception of

the WTO, with only three resulting in measures being put in place.<sup>134</sup> Although it resumed the use of safeguards in 2018 with measures put in place on steel products, it has not initiated any other cases since 2010.

3.90. The EU's basic rules for safeguards that were consolidated in 2015 have not changed, and they continue to form the basic framework for investigations and the imposition of safeguards by the Commission. Three basic laws apply, one for WTO Members, one for non-WTO Members, and one specific to textile products, as follows:

- Regulation (EU) 2015/478 of the European Parliament and of the Council of 11 March 2015 on common rules for imports (codification), i.e. imports from WTO Members;
- Regulation (EU) 2015/755 of the European Parliament and of the Council of 29 April 2015 on common rules for imports from certain third countries (recast), i.e. imports from non-WTO Members; and
- Regulation (EU) 2015/936 of the European Parliament and of the Council of 9 June 2015 on common rules for imports of textile products from certain third countries not covered by bilateral agreements, protocols or other arrangements, or by other specific Union import rules (recast), i.e. rules for textiles.

3.91. In 2019, the EU issued Regulation (EU) 2019/287, the horizontal bilateral safeguard regulation, allowing for the implementation of bilateral safeguard clauses and other mechanisms for the temporary withdrawal of tariff preferences in certain FTAs.<sup>135</sup> The Regulation currently has three annexes for the FTAs with Singapore, Viet Nam, and Japan, thus operationalizing and establishing procedures for these bilateral safeguard clauses. It contains provisions on monitoring, initiation of an investigation, prior surveillance measures, imposition of provisional and definitive safeguards, confidentiality, etc. In future, it is expected to be expanded to other FTAs. This Regulation brings about a change in practice and a rationalization as, previously, the EU established separate arrangements for each FTA.<sup>136</sup>

3.92. In March 2018, the EU initiated procedures for a safeguard investigation on 26 product categories of steel, pursuant to its safeguard rules in Regulations (EU) 2015/478 and (EU) 2015/755<sup>137</sup>; the scope of the investigation was later expanded to 28 product categories. The Commission cited an increasing trend of imports of these products, the situation of the EU steel industry, and the risk of trade diversion from US measures besides overcapacity and increased use of trade-restrictive practices as the reasons for the initiation of the safeguard measure.<sup>138</sup> Provisional safeguard measures were put in place in July 2018, and definitive measures in February 2019.<sup>139</sup> The implementing regulation was amended in November 2018 to remove several countries (Botswana, Cameroon, Eswatini, Fiji, Ghana, Côte d'Ivoire, Lesotho, Mozambique, Namibia, and South Africa) from the scope of the measures.<sup>140</sup> The final safeguard measures put in place involve

<sup>134</sup> It is noted that this figure does not include EU member States before they joined the EU. Some member States were more extensive users of safeguard measures prior to joining the EU. WTO. Viewed at: [https://www.wto.org/english/tratop\\_e/safeg\\_e/SG-InitiationsByRepMember.pdf](https://www.wto.org/english/tratop_e/safeg_e/SG-InitiationsByRepMember.pdf) and [https://www.wto.org/english/tratop\\_e/safeg\\_e/SG-MeasuresByRepMember.pdf](https://www.wto.org/english/tratop_e/safeg_e/SG-MeasuresByRepMember.pdf).

<sup>135</sup> Regulation (EU) No. 2019/287 of the European Parliament and of the Council of 13 February 2019 implementing bilateral safeguard clauses and other mechanisms allowing for the temporary withdrawal of preferences in certain trade agreements concluded between the European Union and third countries. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1562174174671&uri=CELEX:32019R0287>.

<sup>136</sup> See previous Review, WTO document WT/TPR/S/357/Rev.1, 13 October 2017, para. 3.71.

<sup>137</sup> Commission Notice No. 2018/C 111/10, Notice of initiation of a safeguard investigation concerning imports of steel products. Viewed at: [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C\\_.2018.111.01.0029.01.ENG&toc=OJ:C:2018:111:TOC](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2018.111.01.0029.01.ENG&toc=OJ:C:2018:111:TOC).

<sup>138</sup> Commission Implementing Regulation (EU) No. 2018/1013 of 17 July 2018 imposing provisional safeguard measures with regard to imports of certain steel products. Viewed at: [https://eur-lex.europa.eu/eli/reg\\_impl/2018/1013/oj](https://eur-lex.europa.eu/eli/reg_impl/2018/1013/oj).

<sup>139</sup> Commission Implementing Regulation (EU) No. 2019/159 of 31 January 2019 imposing definitive safeguard measures against imports of certain steel products. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1562174174671&uri=CELEX:32019R0159>; and Commission Implementing Regulation (EU) No. 2018/1013 of 17 July 2018 imposing provisional safeguard measures with regard to imports of certain steel products. Viewed at: [https://eur-lex.europa.eu/eli/reg\\_impl/2018/1013/oj](https://eur-lex.europa.eu/eli/reg_impl/2018/1013/oj).

<sup>140</sup> Commission Implementing Regulation (EU) No. 2018/1712 of 13 November 2018 amending Implementing Regulation (EU) 2018/1013 imposing provisional safeguard measures with regard to imports of

26 categories of steel products whereby TRQs have been established based on the level of imports over the last three-year period (2015-17) plus 5%. In some cases, the TRQs were specifically allocated to a country, i.e. based on historical imports; otherwise, a general TRQ is allocated on a first-come-first-served basis. An additional duty rate of 25% is applicable for out-of-quota imports. The safeguard measure is expected to be in place for slightly less than three years; it is set to expire on 30 June 2021. This measure was notified to the WTO.<sup>141</sup>

3.93. As noted in the previous Review, the EU imposed steel surveillance measures which continued to be in place during the review period, pursuant to Commission Implementing Regulation (EU) 2016/670.<sup>142</sup> The Regulation was amended in 2017 by Commission Implementing Regulation (EU) 2017/1092, in order to amend the product coverage, clarify the procedures for the surveillance document, exclude small shipments whose weight does not exceed 5,000 kg classified in HS heading 7318, and to encourage the use of electronic versions of the surveillance document.<sup>143</sup> For the products covered by the safeguard measures, the surveillance measures were suspended.

3.94. Similar to the surveillance measure that was put in place for steel products in 2016, the EU invoked a surveillance measure on certain aluminium products<sup>144</sup> originating in certain third countries, from April 2018 until May 2020.<sup>145</sup> The Commission Implementing Regulation cites "recent trends in imports of aluminium products, the current excess capacity, the current vulnerable situation of the Union industry and the potential trade diversion triggered by the United States measures" as the reasons for imposing such a measure. Thus, pursuant to the EU's safeguard rules as set out in Regulations (EU) 2015/478 and (EU) 2015/755, certain aluminium products whose net weight exceeds 2,500 kg require surveillance documents issued by the competent authorities before the product can be put in free circulation.

3.95. In addition to the notification of the safeguard measure noted above on steel products, the EU made a notification under Article 12.5 of the Agreement on Safeguards to the Council for Trade in Goods (CTG) of a proposed suspension of concessions and other obligations referred to in paragraph 2 of Article 8 (Section 3.1.7).<sup>146</sup> In 2019, the EU imposed a safeguard measure under the GSP for Indica rice from Cambodia and Myanmar (Section 2). The agricultural special safeguard is discussed in Section 4.1.1.2.3.

### 3.1.7 Other measures affecting imports

3.96. The EU continues to maintain a number of restrictive measures or "sanctions", pursuant to the objectives of the EU Common Foreign and Security Policy (CFSP) and per UN Security Council Resolutions. The EU's policy is that sanctions are one of the tools used to promote its objectives of peace, democracy and respect for the rule of law, human rights and international law. EU sanctions are put in place after a decision by the CFSP Council, in unanimity; UN measures are transposed into EU legislation, ensuring uniform application throughout the EU territory. Application and enforcement of EU sanctions fall under the responsibility of the member States. Import or export bans are identified in the TARIC, and are enforced at the border by the customs authorities.

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certain steel products. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1562174174671&uri=CELEX:32018R1712>.

<sup>141</sup> WTO documents G/SG/N/8/EU/1, 4 January 2018; G/SG/N/10/EU/1, 4 January 2019; G/SG/N/11/EU/1/Suppl.1, 4 January 2019; G/SG/N/8/EU/1/Suppl.1, 7 February 2019; G/SG/N/10/EU/1/Suppl.1 7 February 2019; G/SG/N/11/EU/1/Suppl.2, 7 February 2019; G/SG/N/10/EU/1/Suppl.2, 21 May 2019; G/SG/N/7/EU/1, 18 July 2018; and G/SG/N/11/EU/1, 18 July 2018.

<sup>142</sup> Commission Implementing Regulation (EU) No. 2016/670 of 28 April 2016 introducing prior Union surveillance of imports of certain iron and steel products originating in certain third countries. Viewed at: <https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX:32016R0670>.

<sup>143</sup> Commission Implementing Regulation (EU) No. 2017/1092 of 20 June 2017 amending Implementing Regulation (EU) 2016/670 introducing prior Union surveillance of imports of certain iron and steel products originating in certain third countries. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2017:158:FULL&from=EN>.

<sup>144</sup> HS codes 7601, 7604, 7605, 7606, 7607, 7608, 7609, and 7616.99.

<sup>145</sup> The regulation exempts EEA countries. Commission Implementing Regulation (EU) 2018/640 of 25 April 2018 introducing prior Union surveillance of imports of certain aluminium products originating in certain third countries. Viewed at: [http://trade.ec.europa.eu/doclib/docs/2018/april/tradoc\\_156832.products\\_surveillance.en.L106-2018.pdf](http://trade.ec.europa.eu/doclib/docs/2018/april/tradoc_156832.products_surveillance.en.L106-2018.pdf).

<sup>146</sup> WTO documents G/L/1237 and G/SG/N/12/EU/1, 18 May 2018.

3.97. Up-to-date information on sanctions adopted by the EU, including sanctions regimes imposed by the UN Security Council and implemented by the EU, can be found on the EU's "Sanction Map" webpage, which shows the measures by country or by type of restriction.<sup>147</sup> The measures take many forms, such as the prohibited export of certain goods, travel restrictions, freezing of assets, restrictions on the import or brokering of specific goods, restrictions on financial services. As at July 2019, the EU had 44 sanctions regimes in place, both geographical (targeting behaviour occurring in a particular country) and thematic (targeting behaviour unrelated to a specific country, such as terrorism, chemical attacks or cyber attacks).

3.98. In May and June 2018, the EU issued two regulations on certain commercial policy measures concerning certain products originating in the United States.<sup>148</sup> The first refers to certain tariff increases on imports into the United States of certain steel and aluminium products, and the EU's rights regarding the application and enforcement of international trade rules. The effective date of the tariff increases for the EU was initially 22 March 2018, but was subsequently deferred to 1 May 2018 and then further deferred to 1 June 2018, whereby it was implemented and continues with unlimited duration. The regulation states that "[c]onsultations between the United States and the Union as envisaged in Articles 8 and 12.3 of the WTO Agreement on Safeguards did not reach any satisfactory solution".<sup>149</sup> In response to the US imposition of measures on steel and aluminium products, the second regulation explains that the EU gave written notice to the WTO CTG<sup>150</sup> in order to suspend certain concessions under GATT 1994 with respect to the United States. The list of products whereby the EU initially imposed additional duties is set out in Annex I of the first regulation, which was replaced by Annex I in the second regulation. Thus, the EU has in place additional duties ranging from 10% to 25% on 182 tariff lines on products from the United States, in a variety of sectors, i.e. agriculture, steel, aluminium, pleasure boats, etc. The regulations envisage that further additional duties may be put in place on another list of products (Annex II) as of 23 March 2021 or upon determination of WTO inconsistency of the US measures.

3.99. Another piece of EU legislation on the matter is Regulation (EC) 2271/96 (the "Blocking Statute"), as a measure to counter third-country legislation preventing trade. The Regulation has been in force since 1996 and was amended in 2008. Among others, it prohibits the recognition in the EU of any foreign decision based on the foreign acts set out in its Annex, and allows EU persons to recover losses suffered as a result of those acts and actions.

## 3.2 Measures Directly Affecting Exports

### 3.2.1 Customs procedures and requirements

3.100. When goods leave the EU customs' territory, they must follow procedures for export as outlined in the Union Customs Code (UCC). The basic rules that define the applicable procedures and formalities are laid down in Title VIII on Goods taken out of the customs territory of the Union.<sup>151</sup> Prior to exportation, the exporter is required, in most circumstances, to file a pre-departure declaration with the customs authorities. This declaration can take the form of a customs declaration, a re-export declaration, or an exit summary declaration. When goods are to leave the customs territory, they are subject to customs supervision, and may be subject to customs controls. Under certain conditions, the customs authorities may determine the route to be taken and/or set certain time parameters. If an export declaration or re-export declaration was not filed as part of the pre-departure process, an exit summary declaration must be filed at the customs office of exit. The

<sup>147</sup> EU Sanctions Map. Viewed at: <https://sanctionsmap.eu/#/main>.

<sup>148</sup> Commission Implementing Regulation (EU) No. 2018/724 of 16 May 2018 on certain commercial policy measures concerning certain products originating in the United States of America. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1562567645097&uri=CELEX:32018R0724>; and Commission Implementing Regulation (EU) No. 2018/886 of 20 June 2018 on certain commercial policy measures concerning certain products originating in the United States of America and amending Implementing Regulation (EU) 2018/724. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1562567645097&uri=CELEX:32018R0886>.

<sup>149</sup> Commission Implementing Regulation (EU) No. 2018/724 of 16 May 2018 on certain commercial policy measures concerning certain products originating in the United States of America. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1562567645097&uri=CELEX:32018R0724>.

<sup>150</sup> WTO documents G/L/1237 and G/SG/N/12/EU/1, 18 May 2018.

<sup>151</sup> Regulation (EU) No. 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code. Viewed at: <https://eur-lex.europa.eu/eli/reg/2013/952/oj>.

UCC also contains provisions on the re-exportation of non-Union goods. This requires exporters to submit a re-export declaration to the appropriate customs authorities upon exportation.

3.101. With the move towards a paperless environment and the gradual implementation of the customs electronic systems pursuant to the UCC, the EU has gradually implemented new electronic systems for exports. It implements the Automated Export System (AES) that has distributed information technology (IT) architecture and is developed by all the member States based on common technical specifications issued by DG TAXUD. Technical System Specifications are under preparation and are planned to be finalized by the end of 2019. Regarding the UCC Work Programme and the Multi-annual Strategic Plan, a deployment time-window will be available for EU member States to be able to implement the AES functionalities between March 2021 and December 2023 in a production environment. The REX system was implemented as of 2017, to aid in trade and origin requirements under the GSP (Section 3.1.1). However, to date, the Export Control System (ECS) is still used as the main electronic system for the filing and control of customs export procedures until the deployment of the AES, which will be aligned with UCC requirements from December 2023 in all the member States.

3.102. As noted in Section 3.1.1, there were some changes to the definition of exporter and registered exporter in the UCC legislation during the period. Changes were made to allow greater flexibility to businesses, regarding the person who may act as exporter, so that one individual does not have to meet all the criterion. Clarifications were also made for registered exporters, to make it easier for them to make origin declarations for preferential trade agreements.<sup>152</sup>

### 3.2.2 Taxes, charges, and levies

3.103. The EU does not currently impose any taxes, charges or levies on exports, although the UCC contains provisions and procedures for the collection of export duties, similar to those for import duties.

### 3.2.3 Export prohibitions, restrictions, and licensing

#### 3.2.3.1 Prohibitions, restrictions, and licensing

3.104. The EU maintains export prohibitions or restrictions on about 11 categories of products (Table 3.9). Many of these are pursuant to international agreements or arrangements, e.g. CITES, and the Montreal Protocol, while others are EU measures. There were several developments during the review period on products subject to export controls, but most are also covered by import controls; these changes are examined in Section 3.1.5.

3.105. A new regulation on mercury and mercury products entered into force during the period, replacing the previous regulation from 2008. The new regulation (Regulation (EU) 2017/852) expands the scope of the export prohibition to more mercury products, and also includes new restrictions on imports and manufacture (Section 3.1.5).<sup>153</sup>

3.106. The regulations on certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment were replaced and codified into Regulation 2019/125.<sup>154</sup>

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<sup>152</sup> Commission Delegated Regulation (EU) No. 2018/1063 of 16 May 2018 amending and correcting Delegated Regulation (EU) 2015/2446 supplementing Regulation (EU) No. 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1562827757662&uri=CELEX:32018R1063>.

<sup>153</sup> Regulation (EU) No. 2017/852 of the European Parliament and of the Council of 17 May 2017 on mercury, and repealing Regulation (EC) No. 1102/2008. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R0852&rid=1>.

<sup>154</sup> Regulation (EU) No. 2019/125 of the European Parliament and of the Council of 16 January 2019 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment. Viewed at: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=uriserv:OJ.L\\_.2019.030.01.0001.01.ENG](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=uriserv:OJ.L_.2019.030.01.0001.01.ENG).

3.107. Regulation (EC) No. 1013/2006 lays down rules on the export of waste from the EU. They are based on the provisions of the Basel Convention for the Control of Transboundary Movements of Hazardous Waste and their Disposal, but are stricter in a number of instances. At the 14<sup>th</sup> Conference of the Parties of the Basel Convention in May 2019, new rules were adopted with regard to international trade in plastic waste, which will enter into force in 2021. For the EU, this means that, from 2021, the export of plastic waste to non-OECD countries will be banned, except for plastic wastes which are easy to recycle.

3.108. Pursuant to a Commission Guidance document<sup>155</sup>, the EU has given guidance to member States to not issue re-export certificates for raw ivory, except in exceptional cases, since 1 July 2017. This temporary suspension is in response to a surge in elephant poaching, a significant increase in the legal trade in ivory from the EU in recent years, and various EU initiatives taken against wildlife trafficking pursuant to CITES. The Guidance document also puts in place more stringent measures on intra-EU trade in ivory.

3.109. During the review period, the EU also had in place an export licence regime for sugar (Section 4.1.1.2.2), which ended in 2017.<sup>156</sup> It is noted that, in addition to sanctions on imports (Section 3.1.7), the EU also has sanctions on exports that are outlined in its Sanction Map webpage.<sup>157</sup> In addition, EU exporters may also face certain sanctions in other countries.

**Table 3.9 Prohibitions, restrictions or licensing on exports, 2019**

Product	Measure	Rationale	Legislation
Substances that deplete the ozone layer	Prohibition/restriction	Montreal Protocol	Regulation (EC) No. 1005/2009
Certain hazardous chemicals	Prohibition/restriction	Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade  Stockholm Convention on Persistent Organic Pollutants	Regulation (EU) No. 649/2012
Certain animal and plant species	Prohibition/restriction	CITES	Council Regulation (EC) No. 338/97; and Commission Regulation (EC) No. 865/2006
Mercury and mercury products	Prohibited	Minamata Convention on Mercury	Regulation (EU) No. 2017/852
Certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment	Prohibition/licensing	Protection of human life or health, protection of public morals	Regulation (EU) No. 2019/125

<sup>155</sup> Commission Notice No. 2017/C 154/06. Viewed at: [https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1561989389633&uri=CELEX:52017XC0517\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1561989389633&uri=CELEX:52017XC0517(01)).

<sup>156</sup> Commission Implementing Regulation (EU) No. 2017/545 of 22 March 2017 fixing an acceptance percentage for the issuing of export licences, rejecting export-licence applications and suspending the lodging of export-licence applications for out-of-quota sugar. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1562235075533&uri=CELEX:32017R0545>.

<sup>157</sup> EU Sanctions Map. Viewed at: <https://sanctionsmap.eu/#/main>.



Product	Measure	Rationale	Legislation
Waste	Prohibition/restriction	Basel Convention for the Control of Transboundary Movements of Hazardous Waste and their Disposal  OECD Decision on the control of transboundary movements of wastes destined for recovery operations	Regulation (EC) No. 1013/2006 and its subsequent amendments; and Regulation (EC) No. 1418/2007
Rough diamonds	Licensing	Kimberley Process certification scheme for rough diamonds	Council Regulation (EC) No. 2368/2002
Certain cultural goods	Restriction	Protection of treasures of artistic, historic or archaeological value	Council Regulation (EC) No. 116/2009
Bluefin tuna	Prohibition/restriction	International Convention for the Conservation of Atlantic Tunas	Regulation (EU) No. 640/2010
Fish of vessels from Cambodia and Guinea	Prohibition	Protection of the environment	Regulation (EC) No. 1005/2008; and Council Implementing Decision of 24 March 2014

Source: WTO document G/MA/QR/N/EU/4; TARIC; and European Commission, *Tariff rate quotas*. Viewed at: [https://ec.europa.eu/agriculture/tariff-rate-quotas-trqs\\_en](https://ec.europa.eu/agriculture/tariff-rate-quotas-trqs_en).

### 3.2.3.2 Export controls

3.110. The EU continues to regulate the export of certain products, pursuant to its export control legislation on dual-use goods.<sup>158</sup> This regulation, from 2009, and its amendments implement controls on the products as identified in various international agreements, i.e. the Wassenaar Arrangement, the Missile Technology Control Regime (MTCR), the Nuclear Suppliers' Group (NSG), the Australia Group, UN Security Council Resolution 1540, the Nuclear Non-Proliferation Treaty, the Biological Weapons Convention, and the Chemical Weapons Convention (CWC). The regulation sets out the customs procedures, control measures, and other provisions, and products covered are listed in its annexes. According to Commission estimates, exports of controlled dual-use products amounted to about 2.3% of total EU exports<sup>159</sup> in 2017.

3.111. The EU's export control regulations set out a common list of export control rules applied on the EU common list of dual-use items; member States may set out more stringent controls due to public security or human rights issues.<sup>160</sup> The EU common list of dual-use goods are categorized in ten sectors, and their numbers have varied over the period, from 1,892 items in 2016 to 1,846 in 2018.<sup>161</sup> EU export controls are administered through four basic types of authorizations: EU General Export Authorisations (EUGEAs), National General Export Authorisations (NGEAs), global licences, and individual licences. The regulation also sets out specific rules for brokering transactions and goods transiting through the EU.

<sup>158</sup> Council Regulation (EC) No. 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items. Viewed at: <https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX:32009R0428>. Dual-use goods are defined as items, including software and technology, which can be used for both civil and military purposes, and include all goods which can be used for both non-explosive uses and assisting in any way in the manufacture of nuclear weapons or other nuclear explosive devices.

<sup>159</sup> Extra-EU exports.

<sup>160</sup> A list of national measures is published in the Official Journal. Viewed at: [http://trade.ec.europa.eu/doclib/docs/2016/august/tradoc\\_154880.pdf](http://trade.ec.europa.eu/doclib/docs/2016/august/tradoc_154880.pdf).

<sup>161</sup> The ten categories are: nuclear materials, facilities, and equipment; special materials and related equipment; materials processing; electronics; computers; telecommunications and "information security"; sensors and lasers; navigation and avionics; marine; and aerospace and propulsion.

3.112. The developments during the review period include two amendments to the regulation, in 2017 and 2018, basically to update the annexes reflecting changes in the international arrangements, but also requiring consequential changes to the Union and National General Export Authorisation provisions.<sup>162</sup> There was also further progress towards the development of the Dual-use e-System (DUeS), an electronic system from the Commission to support the exchange of information between member State export control authorities and the Commission, in particular on enhanced functionality and better online management. Following a licensing feasibility study in 2018, a pilot project was launched in 2019 to develop an electronic licensing system that can be deployed in member States where appropriate. The system's deployment is expected to start in early 2020.

3.113. In 2013, the Commission launched procedures for the review of the export control regime, that resulted in a legislative proposal in 2016 to upgrade the existing rules in order to face new challenges. The approach taken by the Commission in its proposal was to modernize and upgrade the existing framework, in particular focusing on cyber-surveillance technologies and human rights aspects.<sup>163</sup> Specifically, it would require authorization for exports of specific cyber-surveillance technologies, even if exported electronically; modernize existing control provisions, including for intangible technology transfers; tackle illicit trade through certain controls, such as anti-circumvention; harmonize licensing processes; and improve transparency and outreach. The Parliament adopted its position on the proposal in January 2018, while the Council agreed on its position in June 2019; thus, trilogue discussions were underway with a view to completing the legislative process and agreeing on a new regulation.

3.114. The EU adopted a regulation in 2019 on granting an EUGEA to the United Kingdom of Great Britain and Northern Ireland, as they are an important destination for dual-use items and are party to the relevant international treaties. The regulation is in force but it will only be applied in case of withdrawal from the EU without an agreement, and from the day after the Treaties cease to apply to the United Kingdom pursuant to Article 50(3) of the TFEU.<sup>164</sup>

3.115. In December 2017, the Commission adopted a Report on the evaluation of the application of Regulation (EU) No. 258/2012 on the import and export of firearms. This Report concluded that it is necessary to identify measures and actions which strengthen the system of export authorizations around firearms, to control the conditions for legal trade and thus better fight illegal firearm trafficking. In April 2018, the Commission adopted a Recommendation which calls for the strengthening of the EU rules to improve the traceability and the security of export and import control procedures of firearms, and the cooperation between authorities in the fight against firearms trafficking.<sup>165</sup> Preparatory works were ongoing to assess future policy options for a possible modernization of this Regulation. In June 2018, the Commission proposed a new EU strategy against illicit firearms, small arms and light weapons (SALW) and their ammunition, with a number of suggested actions.<sup>166</sup>

3.116. The volume and value of EU controlled dual-use exports remained relatively steady at about 45,000 applications accounting for about 45 billion euros during the period, but there were some

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<sup>162</sup> Commission Delegated Regulation (EU) No. 2017/2268 of 26 September 2017 amending Council Regulation (EC) No. 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items. Viewed at: [https://eur-lex.europa.eu/eli/reg\\_del/2017/2268/oj](https://eur-lex.europa.eu/eli/reg_del/2017/2268/oj); and Commission Delegated Regulation (EU) No. 2018/1922 of 10 October 2018 amending Council Regulation (EC) No. 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1562530564583&uri=CELEX:32018R1922>.

<sup>163</sup> Proposal for a regulation of the European Parliament and of the Council setting up a Union regime for the control of exports, transfer, brokering, technical assistance and transit of dual-use items. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1476175365847&uri=CELEX:52016PC0616>.

<sup>164</sup> Regulation (EU) 2019/496 of the European Parliament and of the Council of 25 March 2019 amending Council Regulation (EC) No. 428/2009 by granting a Union general export authorisation for the export of certain dual-use items from the Union to the United Kingdom. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1562541197875&uri=CELEX:32019R0496>.

<sup>165</sup> European Commission, *Commission Recommendation of 17 April 2018 on immediate steps to improve security of export, import and transit measures for firearms, their parts and essential components and ammunition*. Viewed at: [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-security/20180417\\_commission-recommendation-immediate-steps-improve-security-firearms-ammunition\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-security/20180417_commission-recommendation-immediate-steps-improve-security-firearms-ammunition_en.pdf).

<sup>166</sup> EUR-Lex, *Elements towards an EU Strategy against illicit Firearms, Small Arms & Light Weapons and their Ammunition "Securing Arms, Protecting Citizens"*. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1562235075533&uri=CELEX:52018JC0017>.

fluctuations (Table 3.10). The number of denials remains relatively low, at about 1.5% of applications. The majority of EU exports of dual-use goods were destined for the United States, followed by China, and Switzerland. Most authorizations were obtained through individual licenses (Table 3.10).

**Table 3.10 Controlled dual-use exports, 2015-17**

	2015	2016	2017
Controlled export volume (number)			
Applications	45,994	44,450	48,243
Authorizations	27,479	27,043	28,633
Denials	640	690	631
Controlled export value (EUR billion)			
Applications	44	45.7	50.2
Authorizations	33.7	33.1	36.7
Top three destinations	United States; China; Switzerland	United States; China; Switzerland	United States; China; Switzerland
Top three licence types (%)	Individual licence (75%); EUGEAs (13%); NGEAs (4%)	Individual licence (74%); EUGEAs (14%); NGEAs (4%)	Individual licence (74%); EUGEAs (14%); NGEAs (3%)

EUGEAs EU General Export Authorisations.

NGEAs National General Export Authorisations.

Source: Reports from the Commission to the European Parliament and the Council on the implementation of Regulation (EC) No. 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items, 2017-18; and information provided by the authorities. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1562520757452&uri=CELEX:52018DC0852> and <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1562522859621&uri=CELEX:52017DC0679>.

### 3.2.4 Export support and promotion

3.117. Export or trade promotion activities are generally within the realms of the member States. The Commission, however, provides information for exporters through its Market Access Database.<sup>167</sup> It provides basic trade information by product and country. For example, information on tariffs, other taxes, trade flows, procedures and documentation, trade barriers, food safety rules, and rules of origin is available. The Commission also works closely with EU member States and stakeholders in their Market Access Partnership, to identify and overcome trade barriers in other markets, the results of which are summarized in the annual Report on Trade and Investment Barriers.<sup>168</sup> The EU's export support activities are outlined in Section 3.2.5.

3.118. Trade, and often investment, promotion activities are typically conducted by government agencies in member States, at national or sub-national level (Table 3.11). The roles of these agencies can be quite diverse but most are involved in organizing trade fair participation, identifying new market possibilities, highlighting certain sectors of the economy, providing information on export rules, providing information on aid or incentives, and arranging networks and contacts. The EU-wide organization, European Trade Promotion Organisations (ETPO), coordinates the promotional activities of the national bodies.<sup>169</sup>

<sup>167</sup> European Commission, *Exporting from the EU – what you need to know*. Viewed at: <https://madb.europa.eu/madb/>.

<sup>168</sup> European Commission, *Report from the Commission to the Parliament and the Council on Trade and Investment Barriers*. Viewed at: [http://trade.ec.europa.eu/doclib/docs/2019/june/tradoc\\_157929.pdf](http://trade.ec.europa.eu/doclib/docs/2019/june/tradoc_157929.pdf).

<sup>169</sup> ETPO, *Introducing ETPO*. Viewed at: <https://www.europe-tpo.com/>.

**Table 3.11 Export promotion authorities, 2019**

Member State	Organization	Link
Austria	WKO	<a href="https://www.wko.at/">https://www.wko.at/</a>
Belgium	Flanders Trade; Bruxelles Invest & Export; Wallonia Export and Investment	<a href="https://www.awex.be/fr-BE/L'exportpratique/conseil-export/Introduction/Pages/Introduction.aspx">https://www.awex.be/fr-BE/L'exportpratique/conseil-export/Introduction/Pages/Introduction.aspx</a> ; <a href="http://invest-export.brussels/fr_FR/nos-services">http://invest-export.brussels/fr_FR/nos-services</a> ; <a href="http://www.flandersinvestmentandtrade.com/export/internationaal">http://www.flandersinvestmentandtrade.com/export/internationaal</a>
Bulgaria	Bulgarian Small and Medium Enterprises Promotion Agency (BSMEPA)	<a href="http://www.sme.government.bg/">http://www.sme.government.bg/</a>
Croatia	Izvozni portal	<a href="https://izvoz.gov.hr/">https://izvoz.gov.hr/</a>
Cyprus	Trade Service	<a href="http://www.mcit.gov.cy/mcit/trade/ts.nsf/index_gr/index_gr?OpenDocument">http://www.mcit.gov.cy/mcit/trade/ts.nsf/index_gr/index_gr?OpenDocument</a>
Czech Republic	Czech Trade	<a href="https://www.czechtrade.cz/sluzby">https://www.czechtrade.cz/sluzby</a>
Denmark	The Trade Council	<a href="https://thetradecouncil.dk/">https://thetradecouncil.dk/</a>
Estonia	Enterprise Estonia	<a href="https://www.eas.ee/">https://www.eas.ee/</a>
Finland	Business Finland	<a href="https://www.businessfinland.fi/en/do-business-with-finland/home/">https://www.businessfinland.fi/en/do-business-with-finland/home/</a>
France	Business France	<a href="http://export.businessfrance.fr/default.html">http://export.businessfrance.fr/default.html</a>
Germany	Germany Trade & Invest	<a href="http://www.gtai.de/GTAI/Navigation/DE/welcome#trade">http://www.gtai.de/GTAI/Navigation/DE/welcome#trade</a>
Greece	Enterprise Greece	<a href="https://www.enterprisegreece.gov.gr">https://www.enterprisegreece.gov.gr</a>
Hungary	Hungarian National Trading House; Hungarian Investment Promotion Agency	<a href="http://www.tradehouse.hu/">http://www.tradehouse.hu/</a> ; <a href="http://www.hipa.hu/">http://www.hipa.hu/</a>
Ireland	Enterprise Ireland	<a href="https://www.enterprise-ireland.com/en/Export-Assistance/">https://www.enterprise-ireland.com/en/Export-Assistance/</a>
Italy	Italian Trade & Investment Agency	<a href="https://www.ice.it/it">https://www.ice.it/it</a>
Latvia	LIIA	<a href="http://eksports.liaa.gov.lv/">http://eksports.liaa.gov.lv/</a>
Lithuania	Versli Lietuva	<a href="http://www.verslilietuva.lt/lt/eksportas">http://www.verslilietuva.lt/lt/eksportas</a>
Luxembourg	Luxembourg Trade & Invest	<a href="https://www.tradeandinvest.lu">https://www.tradeandinvest.lu</a>
Malta	Malta Enterprise	<a href="http://www.maltaenterprise.com/support/trade-promotion">http://www.maltaenterprise.com/support/trade-promotion</a>
Netherlands	Netherlands Enterprise Agency	<a href="http://www.rvo.nl/onderwerpen/internationaal-ondernemen">http://www.rvo.nl/onderwerpen/internationaal-ondernemen</a>
Poland	Polish Investment & Trade Agency	<a href="http://www.paih.gov.pl/">http://www.paih.gov.pl/</a>
Portugal	aicep Portugal Global	<a href="http://www.portugalglobal.pt/PT/Internacionalizar/Paginas/MenuInternacionalizar.aspx">http://www.portugalglobal.pt/PT/Internacionalizar/Paginas/MenuInternacionalizar.aspx</a>
Romania	Romania Trade & Investment	<a href="http://www.ghidul.ro/traderom/produse-servicii">http://www.ghidul.ro/traderom/produse-servicii</a>
Slovak Republic	SARIO Slovak Investment and Trade Development Agency	<a href="http://www.sario.sk/sk/exportujte-do-zahranicia">http://www.sario.sk/sk/exportujte-do-zahranicia</a>
Slovenia	SPIRIT Slovenija	<a href="http://www.izvoznookno.si/">http://www.izvoznookno.si/</a>
Spain	ICEX	<a href="http://www.icex.es/icex/es/navegacion-principal/exportadores-habituales/index.html">http://www.icex.es/icex/es/navegacion-principal/exportadores-habituales/index.html</a>
Sweden	Business Sweden - The Trade & Invest Council	<a href="http://www.business-sweden.se/Export/tjanster/">http://www.business-sweden.se/Export/tjanster/</a>
United Kingdom	Exporting is GREAT	<a href="https://www.great.gov.uk/?utm_source=govuk&amp;utm_medium=homepagelink&amp;utm_campaign=FIG">https://www.great.gov.uk/?utm_source=govuk&amp;utm_medium=homepagelink&amp;utm_campaign=FIG</a>

Source: European Commission, *Questions about Trade?*. Viewed at: [http://ec.europa.eu/trade/trade-policy-and-you/contacts/#\\_exports](http://ec.europa.eu/trade/trade-policy-and-you/contacts/#_exports).

### 3.2.5 Export finance, insurance, and guarantees

3.119. Most EU member States have some form of officially-supported export financing, credits, insurance or guarantees. These are provided by the member States through designated export-credit agencies, financial institutions, export-import (EXIM) banks, or similar (Table A3.3). As such, 26 EU member States offer export credits or guarantees through approximately 30 entities, although there are fluctuations year-to-year.<sup>170</sup> While the operation and delivery of these products

<sup>170</sup> The number of entities varies from year to year. For example, Bulgaria, Croatia and Romania had export-credit support activities in 2013, 2015 and 2016; and Romania in 2017. No information was available on Cyprus and Malta. This includes medium-, long- and short-term support (Table A3.3).

is at the national level, the EU has a number of provisions at the supranational level, to harmonize certain aspects or create a level playing field; it also plays a coordinating role on policy.

3.120. The Council of the European Union has an Exports Credit Group that was established in 1960 to coordinate financing, guarantees, insurance and reinsurance of export transactions among EU member States.<sup>171</sup> The Group formulates EU export-credit policy, harmonizes measures on export credits, and works with the OECD on related legislative matters. In addition, the Policy Coordination Group for Credit Insurance, Credit Guarantees and Financial Credits is another body, mainly for coordination purposes.<sup>172</sup> For example, it discusses and coordinates the EU positions on official export-credit support policy matters in the meetings of the Participants to the OECD Arrangement on Officially Supported Export Credits, but does not decide on specific export-credit support operations, as that is the purview of the member States for their respective agencies.

3.121. The EU has several provisions on export credit, insurance or guarantee instruments but does not have any all-encompassing legislation, except on short-term official export-credit support, i.e. with a repayment time of up to two years. The various instruments that impose rules in this area are outlined in Table 3.12. Regulation (EU) No. 1233/2011 provides certain guidelines in the field of officially-supported export credits for EU member States. It basically has two functions: it legally incorporates the Arrangement on Officially Supported Export Credits (the Arrangement) of the OECD into EU law, and it provides for annual reporting of export-credit activities to the Commission in order to increase transparency.<sup>173</sup> The Arrangement, established in 1978, has been described as a gentleman's agreement among a number of OECD member States, that aims to provide a level playing field on export credits, and works towards the elimination of subsidies and trade distortions for officially-supported credits. The transparency aspect was incorporated into the Regulation in 2011 but it did not become operational until later, with data in its annual reports for 2015 and 2016 becoming available in 2018. Furthermore, the Regulation was amended once during the review period, to replace Annex II, which now contains the updated text of the Arrangement.<sup>174</sup>

3.122. The Communication from the Commission to the member States on the application of Articles 107 and 108 of the TFEU to short-term export-credit (STEC) insurance provides guidelines for state insurers which are providing cover for STECs. The Communication provides for a list of so called "marketable risk countries", and lays down conditions that need to be fulfilled for insurance of STEC risks with respect to those countries, as well for insurance of so called "temporarily non marketable risks".<sup>175</sup> In 2018, the Commission prolonged the Communication without substantial changes until the end of 2020, and concluded that, as regards Greece, STEC risks remain temporarily non-marketable until the end of 2019. In January 2019, the Commission launched the evaluation of the Communication in accordance with its Better Regulation Guidelines. The evaluation will be operated under the overall "fitness check" of a number of state aid rules, with the purpose of identifying whether it can be further prolonged or possibly updated. The evaluation is ongoing, with expected results in early 2020.

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<sup>171</sup> European Council, *Exports Credit Group*. Viewed at: <https://www.consilium.europa.eu/en/council-eu/preparatory-bodies/exports-credit-group/>.

<sup>172</sup> Established pursuant to OJ 66, 27 October 1960.

<sup>173</sup> Regulation (EU) No. 1233/2011 of the European Parliament and of the Council of 16 November 2011 on the application of certain guidelines in the field of officially supported export credits and repealing Council Decisions 2001/76/EC and 2001/77/EC. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32011R1233>; and OECD, *Arrangement on Officially Supported Export Credits*. Viewed at: <https://www.oecd.org/trade/topics/export-credits/arrangement-and-sector-understandings/>.

<sup>174</sup> Commission Delegated Regulation (EU) 2018/179 of 25 September 2017 amending Regulation (EU) No. 1233/2011 of the European Parliament and of the Council on the application of certain guidelines in the field of officially supported export credits. Viewed at: <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:32018R0179>. Furthermore, the EU has been in negotiations since 2012 in the OECD International Working Group of Export Credits for a successor agreement to the OECD Arrangement.

<sup>175</sup> EUR-Lex, *Communication from the Commission to the Member States on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to short-term export-credit insurance*. Viewed at: [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C\\_.2012.392.01.0001.01.ENG&toc=OJ:C:2012:392:TOC#ntr1-C\\_2012392EN.01000101-F0001](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2012.392.01.0001.01.ENG&toc=OJ:C:2012:392:TOC#ntr1-C_2012392EN.01000101-F0001).

3.123. In a related development, EU financial institutions subject to the European capital requirement regulations are no longer required to include export credits in their leverage ratios.<sup>176</sup> This came about due to problems related to Basel III implementation, whereby export finance banks were essentially penalized for having government-backed export credits as part of their portfolio. Thus, in 2019, the regulation was amended to remove the guaranteed part of exposures arising from export credits from the total exposure measure if certain conditions were met.<sup>177</sup> Thus, if the exposures in the form of guarantees for officially-supported export credits are provided by an export-credit agency in the local currency, they are totally exempt and, for those offerings in other currencies, they may be partially or fully exempt depending on the export-credit agency's credit rating. This is expected to give a boost to the export-credit business and to the banks that offer export credits, and also improve liquidity.

**Table 3.12 Overview of legislation pertaining to export credits, guarantees or insurance**

Legislation	Title	Overview	Link
Council Decision of 10 December 1982 (No. 82/854/EEC)	Rules applicable, in the fields of export guarantees and finance for export, to certain subcontracts with parties in other Member States of the European Communities or in non-member countries	Includes specific rules on subcontracts when there are parties other than member States involved in an undertaking.	<a href="https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:31982D0854">https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:31982D0854</a>
Council Directive No. 98/29/EC of 7 May 1998	Harmonisation of the main provisions concerning export-credit insurance for transactions with medium and long-term cover	Harmonizes cover, premiums and cover policy for export-credit insurance, guarantees or refinancing products that have the support of a member State.	<a href="https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:31998L0029">https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:31998L0029</a>
Council Decision of 13 November 2006 (No. 2006/789/EC)	Consultation and information procedures in matters of credit insurance, credit guarantees and financial credits	Establishes a set of Community norms on credit in its Annex that cannot be departed from without consultation. These include credit duration, per cent of local expenditure, and leasing contracts.	<a href="https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:32006D0789">https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:32006D0789</a>
Regulation (EU) No. 1233/2011; and Commission Delegated Regulation (EU) No. 2018/179	The application of certain guidelines in the field of officially supported export credits	Applies the OECD's Arrangement on Officially Supported Export Credits to member States, and establishes transparency and reporting measures. The Regulation from 2018 updates and replaces the Annex containing the Arrangement to reflect changes in that agreement.	<a href="https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:32011R1233">https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:32011R1233</a>  <a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1562013388827&amp;uri=CELEX:32018R0179">https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1562013388827&amp;uri=CELEX:32018R0179</a>

<sup>176</sup> Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No. 648/2012. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013R0575>.

<sup>177</sup> Regulation (EU) 2019/876 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No. 575/2013 as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements, and Regulation (EU) No. 648/2012. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019R0876>.

Legislation	Title	Overview	Link
Communication from the Commission on short-term export-credit insurance	Rules on application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to short-term export-credit insurance	Sets out conditions for member States insuring STEC risks, thereby addressing distortions of competition among export-credit insurers as well as exporters in different member States.	<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52012XC1219(01)&amp;from=EN">https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52012XC1219(01)&amp;from=EN</a>
OECD Arrangement <sup>a</sup>	Arrangement on Officially Supported Export Credits	It seeks to foster a level playing field for official support, to encourage competition among exporters. It sets terms and conditions; classifies countries; has provisions on interest rates, premium rates and other fees; and has rules for tied aid. There are also six Annexes containing sectoral understandings. <sup>b</sup>	<a href="https://www.oecd.org/trade/topics/export-credits/arrangement-and-sector-understandings/">https://www.oecd.org/trade/topics/export-credits/arrangement-and-sector-understandings/</a>

a Incorporated through Regulation (EU) No. 1233/2011.

b Sectoral understandings include: Ships; Nuclear Power Plants; Civil Aircraft; Renewable Energy, Climate Change Mitigation and Adaptation, and Water Projects; Rail Infrastructure; and Coal-Fired Electricity Generation Projects.

Source: Compiled from the various instruments listed.

3.124. There is limited comparable data on the size or activities of the export-credit sector in the EU. Regulation (EU) No. 1233/2011 is the first instrument that requires EU reporting, although it does not provide comprehensive figures for all member States. The OECD also has some statistics on export-credit cash flows from OECD members of the Working Party on Export Credits and Credit Guarantees (Table 3.14). As the data show, Italy, Germany, Sweden, and France stand out as the largest providers of export credit. Many of the more recently-acceded member States have generally no export-credit programmes, or relatively small ones. If figures available from the OECD are an indication of the export-credit market, given that they collect information on medium- and long-term Arrangement official export credits, about USD 37.8 billion in credits was provided by EU member States in 2016 (Table 3.13).

**Table 3.13 Export-credit statistics, as reported to the OECD, 2016-17**

	Official export credit offered <sup>a</sup>	Net operating cash flow <sup>b</sup> (all types, all maturities)		Net operating cash flow <sup>b</sup> (insurance/ guarantee products)		Net operating cash flow <sup>b</sup> (direct lending products)	
	2016	2016	2017	2016	2017	2016	2017
Austria	483	145.7	84.0	156.2	93.7	0	0
Belgium	520	73.7	-143.5	87.7	-131.8	..	..
Bulgaria	-	-	-	-	-	-	-
Croatia	-	-	-	-	-	-	-
Cyprus	-	-	-	-	-	-	-
Czech Republic	152	-78.7	-6.8	-122.7	-46.0	60.9	57.1
Denmark	1,653	65.2	-39.1	61.2	-47.1	22.7	27.6
Estonia	-	0	0.2	-	-	0	..
Finland	1,090	-216.5	35.4	-208.6	43.5	0	0
France	2,961	1,351.5	637.3	1,351.5	655.7	0	0
Germany	10,246	939.5	115.1	1,008.8	184.4	..	..
Greece	-	-	-	-	-	-	-
Hungary	219	63.3	6.4	11.7	-2.1	42.0	24.9
Ireland	-	-	-	-	-	-	-
Italy	10,321	667.2	566.0	725.4	629.5	0	..
Latvia	-	-0.3	-0.4	-0.1	-0.1	0	0

	Official export credit offered <sup>a</sup>	Net operating cash flow <sup>b</sup> (all types, all maturities)		Net operating cash flow <sup>b</sup> (insurance/ guarantee products)		Net operating cash flow <sup>b</sup> (direct lending products)	
	2016	2016	2017	2016	2017	2016	2017
Lithuania	-	-	-	-	-	-	-
Luxembourg	-	-13.0	-5.2	-12.2	-4.4	..	..
Malta	-	-	-	-	-	-	-
Netherlands	1,546	252.6	151.0	263.9	163.1	..	..
Poland	203	-35.6	-22.6	-33.8	-20.5	0	0
Portugal	-	14.3	3.0	17.8	3.9	..	..
Romania	-	-	-	-	-	-	-
Slovak Republic	107	16.6	4.1	0.2	0.5	13.7	9.0
Slovenia	-	0.7	-11.5	2.2	-9.8	..	..
Spain	1,366	144.6	22.2	162.1	36.0	..	..
Sweden	6,083	47.9	-0.9	68.4	18.3	..	..
United Kingdom	888	260.3	166.4	282.5	153.1	7.1	43.8

- Null or none.

.. Not available.

a USD millions. As defined by the OECD Arrangement.

b SDR millions.

Source: OECD, *Export Credit Statistics – Trends and Cashflow*. Viewed at: <https://www.oecd.org/trade/topics/export-credits/statistics/>; and <https://www.oecd.org/trade/topics/export-credits/documents/2017-oecd-export-credits-cashflow-results-en.pdf>; and information provided by the authorities.

### 3.3 Measures Affecting Production and Trade

#### 3.3.1 Incentives

3.125. The EU provides incentives in the form of subsidies and state aid. It notified its subsidies programmes to the WTO in 2019. These are granted both out of the EU budget and by member States through state aid. The most recent information and statistical data refers to subsidies granted in 2017-18; subsidies granted by individual member States are contained in addenda to that notification.<sup>178</sup>

##### 3.3.1.1 EU-level subsidies

3.126. At the EU level, as has been the case in the last years, the two largest areas of expenditure over 2017-18 were agriculture and structural operations, mainly through the European Structural and Investment Funds (ESIF). Another notable area of expenditure is research.

3.127. The ESIF amount to EUR 644 billion during 2014-20, 71.6% of which is EU financing (EUR 461 billion) and 28.4% is EU-28 co-financing (EUR 183 billion). They are composed of six funds: the European Regional Development Fund (ERDF) (43.3% of total ESIF budget); the European Agricultural Fund for Rural Development (EAFRD) (23.5%); the European Social Fund (ESF) (18.7%); the Cohesion Fund (CF) (11.6%); the European Maritime and Fisheries Fund (EMFF) (2.0%); and the Youth Employment Initiative (YEI) (1%).<sup>179</sup>

3.128. The ERDF aims to strengthen economic and social cohesion by correcting imbalances between EU regions. It focuses its investments on four priority areas: innovation and research; the digital agenda; support for SMEs; and a low-carbon economy. ERDF resources depend on the category of the region: in more developed regions, at least 80% of funds must focus on at least two of these priorities; in transition regions, 60%; and in less developed regions, 50%. Also, some ERDF

<sup>178</sup> WTO document G/SCM/N/343/EU, 13 September 2019.

<sup>179</sup> European Commission, *European Structural and Investment Funds: EU Overview*. Viewed at: <https://cohesiondata.ec.europa.eu/overview>.



resources must be channeled towards low-carbon economy projects: more developed regions, 20%; transition regions, 15%; and less-developed regions, 12%.<sup>180</sup>

3.129. The EAFRD is worth EUR 100 billion over 2014-20, with a further EUR 61 billion of public funding in EU countries. Member States and regions draw up their rural development programmes, based on the needs of their territories and addressing at least four of the following six EU priorities: fostering knowledge transfer and innovation in agriculture, forestry and rural areas; enhancing the viability and competitiveness of all types of agriculture, and promoting innovative farm technologies and sustainable forest management; promoting food chain organization, animal welfare and risk management in agriculture; restoring, preserving and enhancing ecosystems related to agriculture and forestry; promoting resource efficiency and supporting the shift towards a low-carbon and climate-resilient economy in the agriculture, food and forestry sectors; and promoting social inclusion, poverty reduction and economic development in rural areas.<sup>181</sup>

3.130. The ESF investments cover all EU regions. More than EUR 80 billion is earmarked for human capital investment in member States in 2014-20. In 2014-20, the ESF will focus on four of the cohesion policy's thematic objectives: promoting employment and supporting labour mobility; promoting social inclusion and combatting poverty; investing in education, skills and lifelong learning; and enhancing institutional capacity and an efficient public administration. In addition, 20% of ESF investments will be committed to activities improving social inclusion and combatting poverty.<sup>182</sup>

3.131. The CF covers member States whose gross national income per inhabitant is less than 90% of the EU average<sup>183</sup>, and, *inter alia*, funds projects in the field of transport and environmental infrastructure. The CF's overall policy goal is to support job creation, business competitiveness, economic growth, and sustainable development in all regions. It allocates a total of EUR 63.4 billion to activities under trans-European transport networks (TEN-E) and the environment.<sup>184</sup>

3.132. The EMFF helps fishermen in the transition towards sustainable fishing; supports coastal communities in diversifying their economies; finances projects that create new jobs and improve quality of life along European coasts; supports sustainable aquaculture developments; and makes it easier for applicants to access financing. It is used to co-finance projects, along with national funding. Each member State is allocated a share of the total EMFF budget, based on the size of its fishing industry. Once the Commission approves this fund, it is up to the national authorities to select the operations eligible for funding. The national authorities and the Commission are jointly responsible for the implementation of the fund.<sup>185</sup>

3.133. The YEI supports young people living in regions where youth unemployment was higher than 25% in 2012. It was topped up in 2017 for regions with youth unemployment higher than 25% in 2016. It exclusively supports young people who are not in education, employment or training, including the long-term unemployed or those not registered as job-seekers. The YEI's total budget is EUR 8.8 billion for 2014-20.<sup>186</sup> Of the total budget, EUR 4.4 billion comes from a dedicated Youth Employment budget line, complemented by EUR 4.4 billion more from ESF national allocations.<sup>187</sup>

3.134. In 2017, the European Commission published an overview of subsidy disclosure practices in EU member States. The report reviewed 336 subsidy programmes over the period 2010-14, and set

<sup>180</sup> WTO document G/SCM/N/343/EU, 13 September 2019.

<sup>181</sup> European Commission, *Rural Development 2014-2010*. Viewed at: [https://ec.europa.eu/agriculture/rural-development-2014-2020\\_en](https://ec.europa.eu/agriculture/rural-development-2014-2020_en).

<sup>182</sup> European Commission, *European Social Fund*. Viewed at: [https://ec.europa.eu/regional\\_policy/en/funding/social-fund/](https://ec.europa.eu/regional_policy/en/funding/social-fund/).

<sup>183</sup> For 2014-20, these are: Bulgaria, Croatia, Cyprus, the Czech Republic, Estonia, Greece, Hungary, Latvia, Lithuania, Malta, Poland, Portugal, Romania, the Slovak Republic, and Slovenia.

<sup>184</sup> European Commission, *Cohesion Fund*. Viewed at: [https://ec.europa.eu/regional\\_policy/en/funding/cohesion-fund/](https://ec.europa.eu/regional_policy/en/funding/cohesion-fund/).

<sup>185</sup> European Commission, *European Maritime and Fisheries Fund*. Viewed at: <https://ec.europa.eu/fisheries/cfp/emff/>.

<sup>186</sup> The YEI's initial budget was EUR 6.4 billion; however, in September 2016, given the still high levels of youth unemployment, the European Commission proposed to increase this budget, and EUR 2.4 billion was added for eligible member States for the period 2017-20.

<sup>187</sup> European Commission, *Youth Employment Initiative (YEI)*. Viewed at: <https://ec.europa.eu/social/main.jsp?catId=1176>.

up a methodology to be used with any future dataset. According to findings, all member States are giving information about the availability of subsidies and the ways to apply for them. The study also provided some recommendations on, *inter alia*, data versioning, improving the disclosure of tax incentives, and improving the functionality of existing tools.<sup>188</sup>

### 3.3.1.2 State aid

3.135. State aid by member States is regulated under Articles 107 to 109 of the TFEU. According to these provisions, state aid is prohibited, unless it is approved by the Commission (either following an individual notification of plans to grant aid, or on the basis of *ex ante*-defined compatibility conditions laid down in a block exemption regulation), serves an objective of common interest, and meets other strict conditions:

- objective of common interest: the aid must promote a specific objective of common interest, e.g. research, development and innovation (R&D&I), or environmental protection;
- need for state intervention: state aid is targeted towards bringing about a material improvement that the market alone cannot deliver, for example by remedying a well-defined market failure;
- appropriateness of the aid: the proposed aid measure is an appropriate policy instrument to address the objective of common interest;
- incentive effect: the aid changes the behaviour of the undertaking(s) concerned in such a way that it engages in additional activity which it would not carry out without the aid, or which it would carry out in a restricted or different manner;
- proportionality of the aid: the amount of aid is limited to the minimum needed to incentivize the additional investment or activity in the area concerned;
- avoidance of undue negative effects on competition and trade between member States: the negative effects of aid are limited so that the overall balance of the measure is positive; and
- transparency of aid.

3.136. Since 2012, the Commission has implemented a major reform of EU state aid rules, the State Aid Modernization (SAM). It allows member States to implement state aid that fosters investment, economic growth and job creation more quickly, while leaving the Commission to focus its State aid control on cases most liable to distort competition. As part of the SAM, the Commission has revised a considerable number of State aid rules since 2013. The Commission is currently evaluating most of the state aid rules in order to take stock of the results of the SAM and whether the rules are fit for purpose. The objective is to allow the Commission to take evidence-based policy decisions as regards the design of state aid rules in the EU in the future.

3.137. As previous Secretariat reports point out, member States are, in principle, required to notify state aid measures to the Commission, which must approve the measures before they can be implemented. State aid measures are exempted from the notification requirement if they meet the requirements of regulations defining *ex ante* compatibility conditions, for example the Commission's General Block Exemption Regulation (GBER<sup>189</sup>), which was renewed in July 2014, and updated in 2017. The GBER applies to all sectors of the economy, with some exceptions. Sectoral restrictions are set out in Article 1, paragraphs 3-5 of the Regulation, and include specific activities in fisheries

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<sup>188</sup> European Commission, *An Overview of Subsidy Disclosure Practices in EU Member States*. Viewed at: <http://ec.europa.eu/competition/publications/reports/kd0617273enn.pdf>.

<sup>189</sup> European Commission, General Block Exemption Regulations (GBER). Viewed at: [https://ec.europa.eu/competition/state\\_aid/legislation/block.html](https://ec.europa.eu/competition/state_aid/legislation/block.html).

and aquaculture<sup>190</sup>, in the primary production of agricultural products, and the coal sector. The steel sector, shipbuilding, and the synthetic fibres sector cannot receive investment aid.

3.138. The GBER allows for aid in favour of: regional investment; SMEs and access to finance for SMEs; environmental protection; consultancy in favour of SMEs; Research Development and Innovation (R&D&I); training; employment of disadvantaged and disabled workers; culture and heritage conservation; local infrastructures; broadband infrastructures; sport and multifunctional recreational infrastructures; and transport for residents of promoted regions. Each of the GBER articles which cover the activities listed above lists the eligible costs which may be assisted and the aid intensities (limits) which apply to these activities.

3.139. A sector-specific framework of state aid rules was set up for state aid control relating to agriculture, forestry and certain non-agricultural activities in rural areas. That framework comprises Guidelines for the Commission's assessment of notified aid, an Agricultural Block Exemption Regulation (ABER), and a regulation on *de minimis* aid to farmers. The provisions laid down in the ABER and the Guidelines largely mirror the rules on EARDF support.

3.140. If the member State forgets or neglects to notify the aid measure and puts it into effect without prior Commission approval, or if a measure exempted from the notification obligation is not in line with the respective rules (notably the GBER), the Commission can start an *ex officio* investigation of the aid. If the aid does not meet the requirements of the EU state aid rules, the Commission, after a formal investigation procedure, can order the member State to recover the aid. This means that the undertaking that received the aid must reimburse the aid with interest to the member State in question. National courts of the EU member States also play a role when it comes to such unlawful aid, as they also can order the company to reimburse the aid.

3.141. In November 2017, the Commission published an *ex post* assessment of the impact of state aid on competition, looking at four specific cases of state aid granted five to ten years ago. The report indicates different areas of aid that might affect competition, such as the relative amount and breadth of the aid, market definitions, and the effect on adjacent markets.<sup>191</sup>

3.142. In 2018, the European Court of Auditors initiated a high-priority performance audit to assess the efficiency and effectiveness of EU state aid procedures and of fund aid for banks. The audit report on state aid to banks is planned for the first quarter of 2020.

### **Non-crisis state aid**

3.143. The Commission publishes, annually, a state aid scoreboard based on expenditure reports by member States.<sup>192</sup> According to the latest report, in 2017, EUR 116.2 billion (i.e. 0.76% of EU GDP) were provided for non-crisis state aid (excluding rail transport), against EUR 106.6 billion or 0.72% of EU GDP in 2016. About 53% of total spending was attributed to state aid for environmental and energy savings. In 2017, about 94% of total state aid spending was allocated to horizontal objectives of common interest or "good aid" (e.g. environmental protection, R&D&I and regional development). On the contrary, state aid spending for rescuing and restructuring companies in difficulty decreased significantly over the last five years, by about 15% annually. In addition, in 2017, EUR 43.6 billion was provided for rail transport (half for public service obligations and pensions, and half for infrastructure and other aid). Member States used mainly grants (around EUR 71 billion) as instruments for state aid, followed by tax exemptions (Table 3.14).<sup>193</sup>

<sup>190</sup> For fisheries, the Fisheries Block Exemption Regulation (FIBER) (Commission Regulation (EU) No. 1388/2014) was adopted on 16 December 2014 and entered into force on 1 January 2015.

<sup>191</sup> European Commission, *Ex post assessment of the impact of state aid on competition*. Viewed at: <http://ec.europa.eu/competition/publications/reports/kd0617275enn.pdf>.

<sup>192</sup> Article 6(1) of Commission Regulation (EC) No. 794/2004. Expenditure refers to all active aid measures to industries, services, agriculture and fisheries, for which the Commission adopted a formal decision or received an information sheet from the member States in relation to measures qualifying for exemption under the GBER. Figures in the scoreboard do not include funding granted in line with the *de minimis* rules, since this spending is not deemed to constitute state aid. They also exclude most of the aid to railways and services of general economic interest.

<sup>193</sup> European Commission, *State Aid Scoreboard 2018: Results, trends and observations regarding EU28 State Aid expenditure reports for 2017*. Viewed at: [http://ec.europa.eu/competition/state\\_aid/scoreboard/state\\_aid\\_scoreboard\\_2018.pdf](http://ec.europa.eu/competition/state_aid/scoreboard/state_aid_scoreboard_2018.pdf).

**Table 3.14 Non-crisis related state aid, 2013-17**

(EUR million)

	2013	2014	2015	2016	2017
<b>Total state aid (excluding railways)</b>	<b>68,350.6</b>	<b>98,654.6</b>	<b>101,178.6</b>	<b>106,609.1</b>	<b>116,213.6</b>
<b>Non-agricultural aid</b>	<b>60,365.7</b>	<b>91,295.2</b>	<b>94,621.0</b>	<b>101,298.5</b>	<b>110,685.0</b>
of which (by objective)					
Closure aid	1,534.4	1,582.1	1,568.4	1,451.5	1,554.5
Compensation for damages caused by natural disasters	236.1	433.9	389.7	601.1	589.6
Culture	2,686.3	3,553.4	4,737.3	5,478.6	5,686.2
Employment	2,898.3	2,723.5	2,552.8	2,295.7	2,519.7
Environmental protection, including energy saving	15,822.1	42,394.0	46,805.3	57,104.8	61,278.1
Heritage conservation	575.2	532.3	572.5	28.4	24.0
Promotion of export and internationalization	251.0	172.7	78.1	54.0	788.0
Regional development	13,034.3	14,782.1	11,337.6	8,499.1	9,888.2
Rescue and restructure	585.9	651.3	623.3	133.7	244.9
R&D including innovation	9,189.5	9,235.7	8,793.9	9,453.8	8,814.9
Sectoral development	5,314.4	4,978.4	5,248.6	4,921.3	5,111.8
SMEs, including risk capital	3,572.4	3,795.0	4,631.8	4,492.7	5,782.3
Social support to consumers	3,335.8	5,348.1	5,682.4	4,033.3	3,944.1
Training	824.5	641.2	762.5	479.9	525.1
Other	505.6	471.5	836.7	2,270.6	3,933.6
of which (by aid instrument)					
Equity participation	545.9	645.3	749.3	531.8	473.9
Grant	32,264.0	57,484.6	57,731.8	62,482.7	70,686.7
Guarantee	3,353.9	2,677.6	1,876.7	284.0	290.9
Soft loan	1,268.4	1,790.6	1,258.6	778.1	1,427.7
Tax deferral	41.5	34.6	26.5	0.6	0.5
Tax exemption	22,339.1	28,197.7	30,892.1	32,432.5	32,455.3
Other	558.6	464.8	2,085.9	4,789.0	5,350.1
of which					
Co-financed <sup>a</sup>	5,992.0	9,350.5	8,634.0	8,342.2	12,545.6
Not co-financed	54,373.8	81,944.6	85,987.0	92,956.3	98,139.4
<b>Agricultural aid</b>	<b>7,984.8</b>	<b>7,359.5</b>	<b>6,557.6</b>	<b>5,310.6</b>	<b>5,528.6</b>
of which					
Agriculture and rural development	7,914.9	7,318.8	6,524.1	5,273.9	5,499.9
Aid granted to fisheries and aquaculture	69.9	40.7	33.5	36.7	28.7
<b>Transport aid (excluding railways)</b>	<b>1,615.6</b>	<b>1,908.1</b>	<b>2,114.3</b>	<b>2,164.6</b>	<b>1,701.2</b>
of which					
Road	109.8	83.3	550.0	725.4	370.0
Maritime transport	1,237.4	1,158.4	1,226.1	1,231.3	1,075.3
Inland water transport	27.0	56.6	50.6	50.4	60.9
Air transport	196.5	537.7	205.9	89.3	135.3
Other transport	44.8	72.2	81.6	68.2	59.8
<b>Railway support<sup>b</sup></b>	<b>42,386.5</b>	<b>43,232.6</b>	<b>46,254.1</b>	<b>41,191.9</b>	<b>43,577.8</b>
Public service obligations and pensions	19,008.3	21,321.1	21,890.6	21,906.9	22,264.1
Infrastructure and other aid	23,425.0	21,911.6	24,363.5	19,285.0	21,313.7

a Member States are required, since 2014, to indicate for co-financed schemes: (i) the percentage of aid that is co-financed; and (ii) the total amount of aid that is co-financed including both national and EU structural funds expenditure. Before 2014, only national expenditure was reported for aid measures that were co-financed by Community funding.

b The Commission notes that railway support includes a significant amount that is not classified as state aid.

Source: European Commission, *State Aid Scoreboard 2018: Results, trends and observations regarding EU28 State Aid expenditure reports for 2017*. Viewed at: [http://ec.europa.eu/competition/state\\_aid/scoreboard/state\\_aid\\_scoreboard\\_2018.pdf](http://ec.europa.eu/competition/state_aid/scoreboard/state_aid_scoreboard_2018.pdf).

3.144. The observed uptake of expenditure under the GBER is attuned with EU policy initiatives such as the Europe 2020 Strategy; the Programme for the Competitiveness of Enterprises and SMEs (COSME); ensuring enough flexibility and high amounts of R&D&I aid in a context of strong global

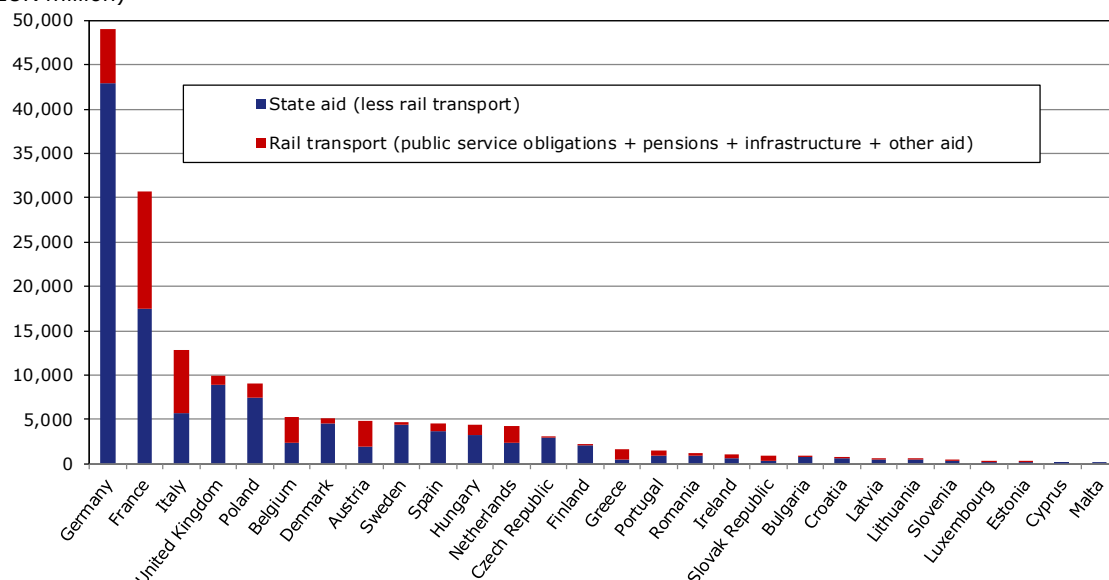
competition; and supporting easier deployment of broadband in line with the EU Digital Agenda that sets ambitious goals for broadband infrastructure development to support growth in Europe.<sup>194</sup>

3.145. According to the Commission, while the time needed to assess notified measures has remained stable, notified measures that might seriously harm competition or fragment the single market are subject to more scrutiny and tend to cover bigger budgets and spending than in the past, in line with the Commission's approach to be "big on big and small on small". In 2017, about 230 cases were notified to the Commission. The average annual budget of notified measures implemented was around EUR 230 million, an increase of about 18% compared to 2015.<sup>195</sup>

3.146. In 2017, Germany (EUR 43 billion) and France (EUR 17 billion) provided over 50% of the total of non-crisis related state aid in the EU (Chart 3.6). In Germany's case, 80% of total state aid (less railways) was devoted to environmental protection, including energy saving. In France, a significant proportion was for public service obligations, pensions and infrastructure for railways. The United Kingdom (EUR 9 billion), Poland (EUR 7 billion), and Italy (EUR 6 billion) are the next biggest providers of state aid.<sup>196</sup>

**Chart 3.6 State aid, 2017**

(EUR million)



Source: European Commission, *State Aid Scoreboard 2018: Results, trends and observations regarding EU28 State Aid expenditure reports for 2017*.

### **Crisis-related state aid**

3.147. As covered in previous Secretariat reports, in relation to financial institutions, the Commission updated and prolonged a series of communications adopted during the crisis in 2008-09. The amount of aid approved in relation to financial institutions decreased over the period 2008-17 (Table 3.15). In 2017, the level of state aid to the financial sector, both approved and used, was at its lowest level since the beginning of the financial crisis, except for capital aid instruments where around EUR 12.1 billion were employed to address legacy cases requiring recapitalization aid. The

<sup>194</sup> European Commission, *State Aid Scoreboard 2018: Results, trends and observations regarding EU28 State Aid expenditure reports for 2017*. Viewed at: [http://ec.europa.eu/competition/state\\_aid/scoreboard/state\\_aid\\_scoreboard\\_2018.pdf](http://ec.europa.eu/competition/state_aid/scoreboard/state_aid_scoreboard_2018.pdf).

<sup>195</sup> European Commission, *State Aid Scoreboard 2018: Results, trends and observations regarding EU28 State Aid expenditure reports for 2017*.

<sup>196</sup> European Commission, *State Aid Scoreboard 2018: Results, trends and observations regarding EU28 State Aid expenditure reports for 2017*.

European banking sector relies less and less on government guarantees, as shown by the reduced use of liquidity aid support.<sup>197</sup>

**Table 3.15 Use of crisis-related state aid, 2008-17**

(EUR billion)

	Belgium	Denmark	Germany	Ireland	Greece	Spain	France	Italy	Netherlands	Austria	Portugal	United Kingdom	Total EU-28
<b>Recapitalizations</b>													
2008	14.4	0.5	20.0	-	-	-	13.2	-	14.0	0.9	-	49.4	115.2
2009	3.5	8.0	32.9	11.0	3.8	1.3	9.3	4.1	-	5.9	-	9.7	90.7
2010	-	1.9	6.7	35.3	-	9.5	-	-	4.8	0.6	-	34.6	93.5
2011	-	0.3	3.6	16.5	2.6	8.5	-	-	-	-	-	3.2	35.0
2012	2.9	-	0.9	-	30.9	40.4	2.6	2.0	-	2.0	6.8	-	90.8
2013	-	-	-	-	3.5	2.1	-	1.9	4.2	1.8	1.1	3.3	20.5
2014	-	-	-	-	-	-	-	-	-	0.8	4.9	-	7.6
2015	-	-	-	-	5.8	-	-	3.6	-	-	1.8	-	11.3
2016	-	-	-	-	-	-	-	-	-	-	-	-	-
2017	-	-	-	-	-	-	-	11.3	-	-	-	-	11.3
2008-17	20.8	10.8	64.2	62.8	46.7	61.9	25.0	22.8	23.0	11.8	14.5	100.1	475.9
<b>Impaired asset measures</b>													
2008	-	-	9.8	-	-	-	-	-	-	-	-	-	9.8
2009	7.7	-	24.8	-	-	-	1.2	-	5.0	0.4	-	40.4	79.5
2010	-	-	45.0	2.6	-	2.9	-	-	-	-	3.1	-	54.0
2011	-	-	-	-	-	-	-	-	-	-	-	-	-
2012	9.4	-	0.4	-	-	25.5	-	-	-	0.1	-	-	35.4
2013	4.7	0.3	-	-	-	4.5	-	-	-	-	-	-	9.5
2014	-	-	-	-	-	-	-	-	-	-	-	-	0.3
2015	-	-	-	-	-	-	-	-	-	-	-	-	0.3
2016	-	-	-	-	-	-	-	0.3	-	0.1	-	-	0.4
2017	-	-	-	-	-	-	-	-	-	-	-	-	-
2008-17	21.8	0.3	80.0	2.6	-	32.9	1.2	0.3	5.0	0.5	3.2	40.4	189.2
<b>Guarantees on liabilities</b>													
2008	9.0	145.0	18.7	180.3	-	-	8.7	-	0.9	2.4	1.2	33.5	400.4
2009	46.8	6.4	135.0	284.3	1.5	36.1	92.7	-	36.0	15.5	5.2	158.2	835.8
2010	32.8	22.3	132.0	196.3	26.7	55.8	91.5	-	40.9	19.3	5.0	150.7	799.8
2011	26.4	23.0	34.7	110.5	56.3	61.7	71.8	10.9	33.2	17.1	8.5	115.2	589.0
2012	45.6	1.2	10.0	83.5	62.3	72.0	53.4	85.7	19.4	11.8	16.6	21.9	492.1
2013	36.9	0.7	3.0	37.2	47.8	53.6	46.9	81.7	12.4	2.4	14.4	9.1	352.3
2014	37.6	-	2.0	10.6	60.0	11.1	36.1	22.0	-	4.1	3.5	14.1	204.5
2015	33.7	-	-	2.9	54.8	7.3	42.0	6.8	-	4.8	3.5	10.3	170.6
2016	35.7	-	-	2.4	16.9	4.7	41.4	6.6	-	5.5	3.1	6.2	126.1
2017	36.0	-	-	2.2	2.3	-	40.1	24.3	-	2.2	-	1.2	110.8
2008-17	340.5	198.6	335.4	910.2	328.6	302.3	524.6	238.0	142.8	85.1	61.0	520.7	1,188.1
<b>Liquidity measures, other than guarantees on liabilities</b>													
2008	-	0.6	3.6	-	0.5	2.3	-	-	13.2	-	1.1	-	22.2
2009	-	2.0	-	-	4.3	19.3	-	-	30.4	-	3.7	6.9	70.1
2010	-	0.7	4.7	-	6.9	19.0	-	-	7.9	-	3.8	18.5	62.6
2011	-	-	-	0.1	6.6	13.5	-	-	3.8	-	2.5	33.3	60.6
2012	-	-	-	0.7	2.8	3.5	-	-	3.8	-	0.2	32.7	44.3
2013	-	0.0	-	0.9	2.3	0.2	-	-	3.8	-	-	26.8	34.6
2014	-	0.2	-	-	2.2	-	-	-	4.7	-	-	24.0	31.6
2015	-	0.1	-	-	2.2	-	-	-	1.8	-	-	17.2	21.8
2016	-	0.1	-	-	-	-	-	-	0.8	-	-	11.0	12.4
2017	-	-	-	-	-	-	-	-	0.8	3.4	-	6.3	10.9
2008-17	-	3.7	8.3	1.7	27.8	57.8	-	-	71.0	3.4	11.2	176.7	108.4

Note: - refers to zero. Other member States either did not use crisis-related aid (Bulgaria, Croatia, Czech Republic, Estonia, Malta, and Romania) or relatively small amounts (Finland, Hungary, Lithuania, Luxembourg, Poland, the Slovak Republic, and Slovenia).

Source: European Commission, *State Aid Scoreboard 2018: Results, trends and observations regarding EU28 State Aid expenditure reports for 2017*. Viewed at: [http://ec.europa.eu/competition/state\\_aid/scoreboard/state\\_aid\\_scoreboard\\_2018.pdf](http://ec.europa.eu/competition/state_aid/scoreboard/state_aid_scoreboard_2018.pdf).

### 3.3.1.3 Taxation

3.148. Taxation is classified by the European system of accounts into three main categories: indirect taxes, defined as taxes linked to production and imports (notably VAT, excise duties and customs

<sup>197</sup> European Commission, *State Aid Scoreboard 2018: Results, trends and observations regarding EU28 State Aid expenditure reports for 2017*.

duties); direct taxes, consisting of current taxes on income and on capital; and net social contributions by employers and households. Because of differing national tax structures, these three categories vary considerably in importance across EU member States in terms of the revenue they generate.

3.149. Between 2014 and 2017, taxes on production and imports, as a ratio to GDP, remained stable at 13.5%, while current taxes on income and wealth amounted to 13.1% of GDP in 2017 (12.8% in 2014).<sup>198</sup> Net social contributions to GDP was 13.3% in 2017 (13.3% in 2014).

3.150. Tax revenue (including social contributions) in the EU-28 accounted for 40.1% of GDP in 2017 (39.6% in 2015), i.e. EUR 6,180 billion (Table 3.16). In 2017, tax revenue represented around 90% of the EU's total general government revenue. As a percentage of GDP, in 2017, tax revenue was highest in France (48.4%), Belgium (47.3%), and Denmark (46.5%), and lowest in Ireland (23.5%), Romania (25.8%), and Bulgaria (29.5%).<sup>199</sup>

**Table 3.16 Taxes and social contributions in the EU-28, 2014-17**

(EUR billion)

	2014	2015	2016	2017
Total receipts from taxes and social contributions (including imputed social contributions) after deduction of amounts assessed but unlikely to be collected	5,603	5,879	5,970	6,180
<b>Total tax receipts</b>	<b>3,749</b>	<b>3,957</b>	<b>4,004</b>	<b>4,145</b>
Taxes on production and imports	1,905	2,007	2,023	2,084
Taxes on products	1,560	1,648	1,672	1,724
Value added type taxes (VAT)	977	1,033	1,045	1,085
Taxes and duties on imports excluding VAT	60	63	68	70
Import duties	21	24	24	24
Taxes on imports excluding VAT and import duties	39	39	44	46
Taxes on products, except VAT and import taxes	523	552	560	570
Other taxes on production	346	359	351	359
Current taxes on income, wealth, etc.	1,808	1,910	1,936	2,018
Taxes on income	1,675	1,770	1,798	1,880
of which:				
Taxes on individual or household income including holding gains	1,322	1,389	1,391	1,446
Taxes on the income or profits of corporations including holding gains	340	365	390	418
Other current taxes	133	141	139	139
Capital taxes	35	40	44	43
Net social contributions	1,867	1,937	1,979	2,047
of which:				
Employers' actual social contributions	984	1,022	1,037	1,076
Households' actual social contributions	759	790	814	843
Capital transfers from general government to relevant sectors representing taxes and social contributions assessed but unlikely to be collected	14	15	12	11

Note: Includes taxes collected by the institutions of the EU in the context of the customs union.

Source: Eurostat database.

3.151. The main priorities of EU tax policy remain overhauling the way in which companies are taxed in the single market, eliminating tax barriers to cross-border economic activity, and combatting harmful tax competition, tax evasion, and tax fraud. To this end, in October 2016, the European Commission proposed two directives, currently under discussion with member States: on a common corporate tax base (CCTB), and on a common consolidated corporate tax base (CCCTB).<sup>200</sup> A key change would be making the CCCTB mandatory for companies with a turnover of more than EUR 750 million.

<sup>198</sup> Eurostat, *Tax revenue statistics*. Viewed at: [https://ec.europa.eu/eurostat/statistics-explained/index.php/Tax\\_revenue\\_statistics](https://ec.europa.eu/eurostat/statistics-explained/index.php/Tax_revenue_statistics).

<sup>199</sup> Eurostat, *Tax revenue statistics*.

<sup>200</sup> European Commission, Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB). Viewed at: [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/com\\_2016\\_683\\_en.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/com_2016_683_en.pdf).

3.152. The Commission wants member States to first agree on the common tax base before tackling the EU-wide consolidation of tax returns. Companies operating across borders in the EU would no longer have to deal with different sets of national rules when calculating their taxable profits. Consolidation means that there would be a "one-stop-shop" – the principal tax authority – where one of the companies of a group, that is, the principal taxpayer, would file a tax return. To distribute the tax base among member States concerned, a formulary apportionment system would be introduced. The legislative proposal falls under the special decision-making procedure and is now in the hands of the Council.<sup>201</sup>

### Value Added Tax (VAT)

3.153. The importance of VAT to member State government revenues differs significantly across member States, ranging from 4.5% of GDP in Ireland to 13.2% in Croatia (Table 3.17). In principle, supplies of goods and services are subject to a standard rate of at least 15% but member States may apply reduced rates of at least 5% on goods and services listed in Annex III to the 2006 VAT Directive (Council Directive No. 2006/112/EC). They are also required to exempt from VAT activities listed in Articles 132-137 of the VAT Directive (principally activities in the public interest (e.g. postal services, hospital and medical care, and children's education) as well as some financial transactions).<sup>202</sup>

**Table 3.17 VAT in the EU-28**

(% of GDP for 2017, tax rates 2019)

	VAT (% of GDP)	Standard rate (%)	Reduced rate (%)	Zero-rated
Austria	7.7	20.0	10/13	
Belgium	6.8	21.0	6/12	Yes
Bulgaria	9.0	20.0	9.0	
Croatia	13.2	25.0	5/13	
Cyprus	9.5	19.0	5/9	
Czech Republic	7.7	21.0	10/15	
Denmark	9.5	25.0		Yes
Estonia	9.1	20.0	9.0	
Finland	9.1	24.0	10/14	Yes
France	7.1	20.0	5.5/10	
Germany	6.9	19.0	7.0	
Greece	8.1	24.0	6/13	
Hungary	9.5	27.0	5/18	
Ireland	4.5	23.0	9/13.5	Yes
Italy	6.3	22.0	4/5/10	
Latvia	8.0	21.0	12.0	
Lithuania	7.8	21.0	5/9	
Luxembourg	6.3	17.0	3/8/14	
Malta	7.3	18.0	5/7	Yes
Netherlands	6.8	21.0	6.0	
Poland	7.8	23.0	5/8	
Portugal	8.6	23.0	6/13	
Romania	6.2	19.0	5/9	
Slovak Republic	7.0	20.0	10.0	
Slovenia	8.1	22.0	9.5	

<sup>201</sup> European Parliament, *Common consolidated corporate tax base (CCCTB)*. Viewed at: [http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS\\_BRI\(2017\)599395](http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_BRI(2017)599395).

<sup>202</sup> Subject to certain conditions and procedures, member States may also apply a reduced rate on the supply of natural gas, electricity and district heating. By way of a derogation from the normal rules, certain member States have been authorized to maintain reduced rates, including those lower than the minimum or zero rates, in certain areas. These derogations were granted during the negotiations preceding the adoption of the VAT Rates Directive of 1992 or the Acts of Accession to the EU. The main objective of these derogations is to ensure the gradual transition towards the application of uniform rules. Council Directive No. 2006/112/EC of 28 November 2006 on the common system of value added tax, p. 1. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32006L0112&from=EN>.



	VAT (% of GDP)	Standard rate (%)	Reduced rate (%)	Zero-rated
Spain	6.5	21.0	4/10	
Sweden	9.3	25.0	6/12	Yes
United Kingdom	6.8	20.0	5.0	Yes

Source: Eurostat, *Main national accounts tax aggregates*. Viewed at: [http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=gov\\_10a\\_taxag&lang=en](http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=gov_10a_taxag&lang=en). European Commission (2019), *VAT Rates Applied in the Member States of the European Union, Situation at 1 January 2019, taxud.c.1(2019)*, Brussels.

3.154. The common VAT system was set up in 1967, implemented in 1977 and reformed in 1993 in order to adapt it to the entry into force of the internal market. The existing rules governing trade between member States were always intended to be transitory. In 2018, the Commission proposed to amend the VAT Directive to introduce detailed technical measures of the definitive VAT system for intra-EU business to business (B2B) trade in goods as a first step towards creating a single EU VAT area, which the Commission announced in its 2016 VAT action plan.<sup>203</sup> The definitive VAT system should be fully based on the principle of taxation in the country of destination. Under the current transitional rules, this principle has already been introduced for most supplies of services since 2010.

3.155. In 2018, the Commission made two proposals, aiming to meet demands from member States to have more flexibility to set VAT rates and to extend VAT exemptions that exist for domestic companies to small companies trading cross-border. There is also a proposal for a Council Regulation on combatting VAT fraud. The proposal on VAT rates will prevent certain existing reduced rates expiring with the introduction of the definitive VAT system. It will also allow all other member States to apply similar VAT rates if they so wish.<sup>204</sup>

3.156. With the aim of creating a single EU VAT area, the Commission proposed to modify the 2006 VAT Directive. In its 2016 VAT action plan<sup>205</sup>, the Commission announced its plan to move from the current system, where VAT is paid in the member State where the goods or services originate, to a system based on the principle of taxation in the country of destination. For the current system to work, VAT rates in different member States need to be as similar as possible so that unfair competition between countries is kept to a minimum. The current process by which a member State can seek to alter the rules on VAT rates requires unanimous agreement by all member States. There are also historical exemptions that apply in some countries, but not others.

3.157. Under the new Commission proposal, while a minimum standard VAT rate of at least 15% will continue to apply, member States may apply a range of rates to products: two separate reduced rates of between 5% and the standard rate chosen by the member State; one exemption from VAT (or "zero rate"); and one reduced rate set at between 0% and the reduced rate. At the same time, the Commission proposes to abolish the list of goods and services to which reduced rates can currently be applied. Instead, there is now a list of products to which reduced rates cannot be applied, ensuring that products such as alcohol, weapons, tobacco and gambling will always be taxed at the standard rate or above. According to the Commission, that will give member States more freedom in setting VAT rates, as per their request.<sup>206</sup>

3.158. Under current VAT rules, member States can exempt sales by small companies from VAT, provided their turnover is below a national threshold (different in each member State). While the current national exemption thresholds in member States would remain, the proposal by the

<sup>203</sup> European Commission, *Communication on an action plan on VAT: Towards a single EU VAT area – Time to decide*. Viewed at: [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/com\\_2016\\_148\\_en.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/com_2016_148_en.pdf).

<sup>204</sup> European Commission, *Proposal for a Council Directive amending Directive 2006/112/EC as regards rates of value added tax*. Viewed at: [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/18012018\\_proposal\\_vat\\_rates\\_en.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/18012018_proposal_vat_rates_en.pdf).

<sup>205</sup> European Commission, *Communication on an action plan on VAT: Towards a single EU VAT area – Time to decide*. Viewed at: [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/com\\_2016\\_148\\_en.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/com_2016_148_en.pdf).

<sup>206</sup> Safeguards will be introduced to avoid potential risks like revenue erosion, distortion of competition, unnecessary complexity, and legal uncertainty. Member States will be required to ensure that reduced rates benefit the final consumer and, in order to protect revenues, that the average VAT rate applied to those transactions for which VAT cannot be deducted always exceeds 12%. European Commission, *Questions and Answers on the VAT Package*. Viewed at: [https://ec.europa.eu/commission/presscorner/detail/en/MEMO\\_18\\_186](https://ec.europa.eu/commission/presscorner/detail/en/MEMO_18_186).

Commission would introduce: a EUR 2 million revenue threshold across the EU, under which small businesses would benefit from simplification measures, whether or not they have already been exempted from VAT; the possibility for member States to free all small businesses that qualify for a VAT exemption from obligations relating to identification, invoicing, accounting or returns; and a turnover threshold of EUR 100,000 which would allow companies operating in more than one member State to benefit from the VAT exemption. According to the Commission, these changes will reduce SME VAT compliance costs by up to 18% per year, leading to an increase in their cross-border trading activity by about 13%.<sup>207</sup>

### Income tax

3.159. Income tax varies across EU member States, with different categories of income subject to income tax, different rates of tax, and different treatment of expenses that may be deducted from gross income. In addition, local taxes on income may also apply, and can represent a considerable part of the charge on income. In 2017, income tax (for individuals and households, including holding gains), as percentage of GDP, ranged from 3.1% in Cyprus to 25.4% in Denmark (Table 3.18).

**Table 3.18 Personal income taxes and households' social contributions**

(% of GDP for 2017, tax rates 2019)

Member State	Income tax <sup>a</sup> (% of GDP)	Households' actual social contributions (% of GDP)	Tax system	Top rate of income tax (%)	Income for maximum income tax (single person)
Austria	9.3	7.8	Progressive 6 brackets	50 <sup>b</sup>	EUR 90,000
Belgium	12.1	5.5	Progressive 5 brackets	50	EUR 38,080
Bulgaria	3.3	3.3	Flat rate	10	
Croatia	3.3	5.9	Progressive 2 brackets	36	EUR 4,019
Cyprus	3.1	2.8	Progressive 5 brackets	35	EUR 60,000
Czech Republic	4.0	5.3	Flat rate	15	
Denmark	25.4	0.7	Hybrid system	55.8 <sup>c</sup>	EUR 68,811
Estonia	5.7	0.6	Flat rate	20	
Finland	12.6	4.3	Progressive 4 brackets	31.25	EUR 76,100
France	8.7	5.6	Progressive 5 brackets	45	EUR 156,245
Germany	9.4	9.0	Progressive formula	45	EUR 260,533
Greece	6.2	6.8	Progressive 4 brackets	45	EUR 40,000
Hungary	5.1	5.9	Flat rate	15	
Ireland	7.3	1.4	Progressive 2 brackets	40	EUR 35,300
Italy	11.8	4.3	Progressive 5 brackets	43	EUR 75,000
Latvia	6.6	2.4	Progressive 3 brackets	31.7	EUR 62,800
Lithuania	3.9	3.9	Progressive 2 brackets	27	EUR 136,344
Luxembourg	9.1	6.5	Progressive 23 brackets	42	EUR 200,003
Malta	7.0	2.9	Progressive 4 brackets	35	EUR 60,000
Netherlands	8.3	8.7	Progressive 4 brackets	51.75	EUR 68,507
Poland	5.0	7.8	Progressive 2 brackets	32	EUR 20,543
Portugal	6.5	3.9	Progressive 5 brackets	48	EUR 80,640
Romania	3.5	3.2	Flat rate	10	
Slovak Republic	3.4	6.1	Progressive 2 brackets	25	EUR 36,256
Slovenia	5.1	8.9	Progressive 5 brackets	50	EUR 70,907
Spain	7.5	3.3	Progressive 5 brackets	43.5 <sup>d</sup>	EUR 60,000
Sweden	15.8	0.1	Progressive 2 brackets	25 <sup>e</sup>	EUR 70,134
United Kingdom	9.2	3.1	Progressive 3 brackets	45	GBP 150,000

a Taxes on individual or household income including holding gains.

b Additional temporary rate of 55% is applicable for incomes above EUR 1 million until 2020.

c Includes local tax (average 24.91%).

d Using as reference the region of Madrid.

e Including local taxes.

Source: Eurostat, *Main national accounts tax aggregates*. Viewed at: [http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=gov\\_10a\\_taxag&lang=en](http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=gov_10a_taxag&lang=en); and European Commission, *Income Taxes Abroad*. Viewed at: [https://europa.eu/youreurope/citizens/work/taxes/income-taxes-abroad/index\\_en.htm](https://europa.eu/youreurope/citizens/work/taxes/income-taxes-abroad/index_en.htm).

<sup>207</sup> European Commission, *Questions and Answers on the VAT Package*.

### Corporation tax

3.160. Corporation tax rates still differ significantly within the EU, with the nominal rate ranging from 10% in Bulgaria to 35% in Malta (Table 3.19). In 2017, corporation tax, as a percentage of GDP, ranged from 1.5% in Estonia and Lithuania to 5.9% in Malta. However, as in many other jurisdictions, differences in calculating allowable expenses, depreciation allowances, and other factors can mean that the effective tax on profits may be different to the nominal rate of tax. In addition to corporation tax, employers usually make significant social contributions which, for most member States, are greater than their corporation tax payments.

**Table 3.19 Corporation tax and employer's actual social contributions**

(% of GDP for 2017, tax rates 2019)

Member State	Corporation tax <sup>a</sup> (% GDP)	Employer social contributions (% GDP)	Nominal rate (%)	Profit tax (%)	Labour taxes (%)	Other (%)
Austria	2.5	6.8	25.0	17.0	34.2	0.6
Belgium	4.1	8.2	29.6	10.3	46.2	0.6
Bulgaria	2.2	5.1	10.0	5.0	20.2	1.9
Croatia	2.3	5.9	18.0	0.0	19.4	1.2
Cyprus	5.7	5.9	12.5	8.1	13.4	1.2
Czech Republic	3.5	9.7	19.0	9.1	38.4	2.5
Denmark	3.0	0	22.0	17.7	3.8	2.7
Estonia	1.5	10.6	20.0	7.9	38.8	2.0
Finland	2.7	7.9	20.0	11.7	25.4	1.3
France	2.9	11.3	32.0	0.7	51.1	10.4
Germany	2.7	6.6	29.9	23.2	21.4	4.3
Greece	1.9	4.7	28.0	23.0	28.0	0.7
Hungary	2.7	6.9	0.8	9.9	34.3	2.3
Ireland	2.8	2.4	12.5	12.4	12.2	1.4
Italy	2.1	8.5	7.8	23.3	23.2	1.5
Latvia	1.6	6.0	20.0	6.3	26.6	3.0
Lithuania	1.5	8.3	15.0	5.9	35.2	1.6
Luxembourg	5.2	4.6	24.9	4.2	15.5	0.8
Malta	5.9	2.5	35.0	32.3	11.1	0.5
Netherlands	3.3	5.1	25.0	20.5	19.8	0.4
Poland	1.9	5.1	19.0	14.5	25.0	1.0
Portugal	3.2	5.3	31.5	12.5	26.8	0.5
Romania	2.0	5.3	16.0	11.6	25.8	1.0
Slovak Republic	3.5	8.5	21.0	10.5	39.7	1.4
Slovenia	1.8	5.6	19.0	12.7	18.2	0.1
Spain	2.3	8.4	25.0	10.6	35.6	0.7
Sweden	2.9	3.1	21.4	13.1	35.4	0.6
United Kingdom	2.8	4.7	19.0	18.1	10.9	1.7

a Taxes on the income or profits of corporations including holding gains.

Note: The last three columns relate to the PwC/World Bank indicators for the Total Tax Rate. This measures the amount of taxes and mandatory contributions borne by businesses in the second year of operation, expressed as a share of commercial profit. Nominal rates do not include various surcharges (e.g. regional surcharges).

Source: Eurostat, *Main national accounts tax aggregates*. Viewed at: [http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=gov\\_10a\\_taxag&lang=en](http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=gov_10a_taxag&lang=en);  
European Commission (2019), *Taxation trends in the European Union - Data for the EU Member States, Iceland and Norway, 2019 Edition*. Viewed at: [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/taxation\\_trends\\_report\\_2019.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/taxation_trends_report_2019.pdf);  
European Commission, *Taxes in Europe Database*: [http://ec.europa.eu/taxation\\_customs/tedb/taxSearch.html](http://ec.europa.eu/taxation_customs/tedb/taxSearch.html); and World Bank/PwC (2018), *Paying Taxes 2018*, pp. 90-93. Viewed at: <https://www.pwc.com/payingtaxes>.

### 3.3.2 Standards and technical requirements

3.161. During the review period, there were some important changes to the basic legislative framework regarding technical requirements, standards, conformity assessment and accreditation. They include new rules on the mutual recognition of goods lawfully marketed in member States and a new EU framework on market surveillance.

3.162. The principal legislation setting the basis for these measures is described in Table 3.20. The EU framework of technical requirements, standards and conformity assessment is described in the Blue Guide on the implementation of EU product rules. This document provides guidance on the application of product-related directives and regulations, which serve as harmonization legislation for non-food and non-agricultural products destined for the EU market. The latest update to the Guide was published in July 2016.<sup>208</sup>

**Table 3.20 Principal TBT legislation, 2019**

Legislation	Note
Regulation (EC) No. 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and repealing Regulation (EEC) No. 339/93	Lays down rules on the organization and operation of accreditation for conformity assessment bodies. The Regulation also lays down the general principles for CE marking.
Decision No. 768/2008/EC of the European Parliament and of the Council of 9 July 2008 on a common framework for the marketing of products, and repealing Council Decision No. 93/465/EEC	Sets out a common framework for the marketing of products. The Decision is a political commitment rather than applicable legislation, but it does require the European Parliament, Council, and Commission to adhere to its principals when preparing legislation.
Regulation (EC) No. 764/2008 of the European Parliament and of the Council of 9 July 2008 laying down procedures relating to the application of certain national technical rules to products lawfully marketed in another member State, and repealing Decision 3052/95/EC	Lays down the rules and procedures to be followed by the competent authorities of a member State for decisions which may hinder the free movement of a product lawfully marketed in another member State. The Regulation also provides for the establishment of product contact points in the member States.
Regulation (EU) No. 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European standardization, amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/105/EC of the European Parliament and of the Council and repealing Council Decision 87/95/EEC and Decision 1673/2006/EC of the European Parliament and of the Council	Establishes rules for cooperation between European standardization organizations, national standardization bodies, member States, and the Commission. It also sets out rules for the establishment of European standards and European standardization deliverables for products and services, the identification of information and communications technology (ICT) technical specifications eligible for referencing, the financing of European standardization, and stakeholder participation in European standardization.
Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety	Applies principally to products which are not covered by harmonization legislation and sets up the rapid alert system (RAPEX) between the member States and the Commission and associated measures for products deemed to be dangerous.
Regulation (EU) 2019/515 of the European Parliament and of the Council of 19 March 2019 on the mutual recognition of goods lawfully marketed in another member State and repealing Regulation (EC) No. 764/2008	Lays down the rules and procedures to be followed by the competent authorities of a member State for decisions that may hinder the free movement of a product lawfully marketed in another member State.
Regulation (EU) 2019/1020 of the European Parliament and of the Council of 20 June 2019 on market surveillance and compliance of products and amending Directive 2004/42/EC and Regulations (EC) 765/2008 and (EU) 305/2011	Lays down a framework for market surveillance and controls on products from third countries.

Source: European Commission.

3.163. In addition to the legislation described in Table 3.20, several other provisions constitute the backbone of the EU basic legislation in the context of the development and application of standards

<sup>208</sup> European Commission, *The "Blue Guide" on the implementation of EU product rules 2016*. Viewed at: [https://ec.europa.eu/growth/content/%E2%80%98blue-guide%E2%80%99-implementation-eu-product-rules-0\\_en](https://ec.europa.eu/growth/content/%E2%80%98blue-guide%E2%80%99-implementation-eu-product-rules-0_en).

and technical requirements. These provisions include the TFEU articles prohibiting quantitative restrictions and measures with equivalent effect (Articles 34-36), and case law from the CJEU on the general principle of the free movement of goods and mutual recognition.

3.164. Generally, goods not subject to harmonization legislation and lawfully put on the market in one EU member State are subject to the principle of mutual recognition, which allows them to be marketed in another member State even if they do not conform to the second member's technical regulations. The only exceptions to this principle are restrictions introduced for reasons specified in Article 36 of the TFEU, or for other overriding reasons of public interest that are proportionate to the aim pursued.

### 3.3.2.1 New Legislative Framework

3.165. Most of the EU product-related directives and regulations are drafted following the "New Approach" – called the New Legislative Framework (NLF) and described in the previous EU TPR.<sup>209</sup> The NLF calls for common basic requirements for a particular product/sector and addresses a particular risk to be made mandatory by legislation; technical specifications aimed at achieving these requirements are contained in voluntary harmonized standards. As per Regulation (EU) No. 1025/2012, a harmonized standard "means a European standard adopted on the basis of a request made by the Commission for the application of EU harmonized legislation". In the absence of EU harmonized technical regulations, member States may develop and apply national technical regulations subject to specific procedures.<sup>210</sup>

3.166. The initial NLF package consisted of three main regulatory rules: (i) Regulation (EC) No. 765/2008 setting out the requirements for accreditation and the market surveillance of products; (ii) Decision No. 768/2008 on a common framework for the marketing of products, which includes references provisions to be incorporated whenever product legislation is revised. In effect, it is a template for future product harmonization legislation; and (iii) Regulation (EC) No. 764/2008 laying down procedures relating to the application of certain national technical rules to products lawfully marketed in another EU country.

3.167. During the review period, certain of these regulatory rules were reviewed and/or replaced as a follow-up to the "Goods Package" adopted by the Commission in December 2017, to make it easier for companies, especially small and medium-sized enterprises (SMEs), to sell their products across the EU, and to strengthen controls by national and customs authorities and to prevent unsafe products from being sold to European consumers.<sup>211</sup>

3.168. With the aim of making the principle on the mutual recognition of goods faster, simpler and ensure its correct application in individual cases, Regulation (EU) 2019/515<sup>212</sup> was adopted on 19 March 2019 and will apply as of 19 April 2020 replacing Regulation (EC) No. 764/2008. Pursuant to the new Regulation, member States that use existing technical regulations to restrict market access for products lawfully marketed in another member State must justify their position with technical and scientific evidence and must grant the economic operators affected an opportunity to provide comments. Under the new Regulation, companies will know if their products can be sold in another EU country in a few months, rather than years. They will also be able to use a voluntary declaration to demonstrate that their products meet all the relevant requirements in their country. This will make it easier for authorities to assess whether mutual recognition principle should apply. Furthermore, a problem resolution mechanism is expected to allow for a faster resolution of disputes between companies and national authorities.

3.169. As part of the "Goods Package" and in order to address the matter of non-compliant products that do not meet EU requirements being placed on the EU market, thereby endangering consumers, the Commission also proposed a new regulation on compliance and enforcement to create a fairer

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<sup>209</sup> Formally launched in 1985 through the Council Resolution on a new approach to technical harmonization and standards (85/C 136/01) of 7 May 1985.

<sup>210</sup> WTO document WT/TPR/S/317/Rev.1, 21 October 2015, Section 3.1.8.

<sup>211</sup> European Commission, *The Goods Package: Reinforcing trust in the single market*. COM(2017) 0787 final, 19 December 2017.

<sup>212</sup> Regulation (EU) 2019/515 on the mutual recognition of goods lawfully marketed in another Member State and repealing Regulation (EC) No. 764/2008. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32019R0515&from=EN>.

internal market for goods through more cooperation among national market surveillance authorities. This new regulation was adopted on 20 June 2019 as Regulation (EU) 2019/1020<sup>213</sup> and partially repeals Regulation (EC) No. 765/2008. It provides for information-sharing mechanisms between national market surveillance authorities regarding illegal products and ongoing investigations. It will also help national authorities improve checks on products entering the EU. Since 30% of goods in the EU are imported, the Regulation also provides for the reinforcement of inspections at ports and external borders.

3.170. Under the NLF, one of the main tasks of the Commission is to bring harmonization legislation in line with the reference provisions of Decision No. 768/2008/EC. The following directives and regulations were aligned with these reference provisions since the last Review: Medical devices – Regulation (EU) 2017/745; In vitro diagnostic medical devices – Regulation (EU) 2017/746; Unmanned aircraft systems – Delegated Regulation (EU) 2019/945; Accessibility requirements for products and services – Directive (EU) 2019/882; and Fertilising products – Regulation (EU) 2019/1009.

3.171. An NLF directive requires member States to implement the legislation at national level within a set time-frame. This is expected to give more flexibility to the member States, as they can reflect the principles of the legislation within their own legal and administrative frameworks.

3.172. The alternative approach to product legislation in the EU (known as the "Old Approach"), where the authorities drew up detailed regulations containing all the required technical and administrative requirements for each type of product is still employed for certain products, such as motor vehicles. Other specific approaches to EU harmonization were developed in certain sectors (e.g. pharmaceuticals, chemicals, cosmetics, and construction products), and tailored to their particular needs.

3.173. Other key regulatory elements governed by the NLF are conformity assessment, product marking and accreditation. Conformity assessment is carried out before the product is placed on the EU market. A manufacturer can only place a product on the EU market when it meets all the applicable requirements. The Commission's main objective is to help ensure that unsafe or otherwise non-compliant products do not find their way on to the EU market. The purpose of conformity assessment is to ensure consistency of compliance from design to production, and to allow acceptance of the final product. Conformity assessment procedures in the EU product legislation range from a self-certification examination and production quality control system, to a full quality assurance system, depending on the impact of the product on the protection of public interest (health, safety, environment, etc.). Several pieces of EU legislation require the involvement of a notified body in the conformity assessment process.

3.174. Conformity assessment bodies that have been notified by the national authorities in the member State of their establishment to provide conformity assessment prescribed by EU harmonized legislation are listed in the New Approach Notification and Designated Organizations (NANDO) information system.

3.175. To sell products in the EU-28 and in Norway, Liechtenstein and Iceland, foreign suppliers are required to apply CE marking if their product is covered by specific product legislation that provides for this. The CE marking is the manufacturer's declaration that a product meets the requirements of the applicable EC directives. It is the responsibility of manufacturers both within and outside the EU to ensure that their products, where applicable, comply with the relevant directives before affixing the CE marking and placing the product the market in Europe.

3.176. Only products that fall within the scope of at least one of the NLF directives require the CE marking. The marking is addressed primarily to the national control authorities of the member States, and its use simplifies the task of essential market surveillance of regulated products. The marking is not intended to include detailed technical information on the product<sup>214</sup>, but there must

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<sup>213</sup> Regulation (EU) 2019/1020 on market surveillance and compliance of products. Viewed at: <https://www.europeansources.info/record/regulation-eu-2019-1020-on-market-surveillance-and-compliance-of-products/>.

<sup>214</sup> This detailed information should not appear next to the CE marking, but rather on the declaration of conformity (which the manufacturer or authorized representative must be able to provide at any time, together with the products technical file), or the documents accompanying the product.

be enough information to enable the inspector to trace the product back to the manufacturer or the local contact established in the EU.

3.177. Accreditation is the last level of public control in the EU conformity assessment system and is designed to ensure that conformity assessment bodies have the technical competence to carry out their duties. The European cooperation for Accreditation (EA) represents the national accreditation bodies. Membership of the EA is open to the national accreditation bodies in countries in the European geographical area that can demonstrate that they operate an accreditation system compatible with appropriate International Organization for Standardization (ISO)/International Electrotechnical Commission (IEC) standards and EU legal requirements.

### **3.3.2.2 Institutional framework**

3.178. The European standardization system is based on a unique system of privileged public-private partnership between the Commission and the European Standardization Organizations (ESOs), reflecting the provisions of Regulation (EU) 1025/2012. The three ESOs recognized in this regulation are the European Committee for Standardization (CEN), the European Committee for Electrotechnical Standardization (CENELEC), and the European Telecommunications Standards Institute (ETSI).

3.179. The members of CENELEC and CEN include the national standards bodies (NSBs) of 33 European countries, including all the member States of the EU, EFTA countries, and those countries candidates for EU membership that fulfil the membership criteria. It is a condition of membership of both CEN and CENELEC that at least 80% of European standards are adopted identically by each member.

3.180. ETSI's membership includes global industry players and NSBs. ETSI allows direct participation in its technical committees by businesses, including non-EU companies that have interests in Europe, and its standards are freely available on its website.

3.181. The ESOs are the only organizations authorized to create European standards. As at September 2019, a total of 22,773 European standards had been created by CEN and CENELEC for products and services, of which 3,297 (about 15%) are defined as harmonized standards. In addition, as at July 2019, there were 20,131 standardization deliverables by ETSI (including standards, guides, and technical specifications).

3.182. Standards are created or modified by experts in technical committees or working groups. European standards are implemented as national standards by each of the 34 national members of CEN/CENELEC/ETSI and "conflicting national standards shall be withdrawn", which results in a single standard for accessing the EU single market. CEN and CENELEC rules require that, when work is started on a European standard, a "standstill" procedure applies, and members cannot start or continue national work on the same subject. National standards' development must be reported at least annually by each NSB under Regulation (EU) 1025/2012 to provide transparency on national work programmes. In the case of harmonized standards, standstill and withdrawal are compulsory.

3.183. CEN and CENELEC standards are aligned with ISO and IEC standards. Participation in international standards development is arranged by the NSB of each country via their membership of the ISO, the IEC, the CEN or the CENELEC.

3.184. In addition to the three ESOs, the Commission plays a role in standardization by funding participation in the standardization process by SMEs and non-governmental organizations (NGOs), such as environmental and consumer groups and trade unions. The Commission issues standardization requests for harmonized standards in support of EU policy and legislation, and financially supports the work of the ESOs, but is not involved in the process of standard-setting, which is carried out by the ESOs. EU-funded research and innovation projects also make their results available to the standardization work of the standards-setting organizations.

3.185. In October 2018, the Commission identified a number of strategic priorities for European standardization in support of Union legislation and policies in the fields of ICT, climate, circular economy, defence, space and security, among others. The 2019 Annual Union Work Programme for European standardization (AUWP) defines the key orientations for the future developments of this

partnership, including the principle of inclusiveness.<sup>215</sup> The 2020 Annual Union Work Programme for European standardization should be published before the end of 2019 in the EU's Official Journal.

3.186. Since the adoption of the Communication on European standards for the 21st century on 1 June 2016, the Commission has worked closely with its partners from industry, public authorities, NGOs and academia to implement the initiatives proposed by the communication, including a governance cycle to strengthen the dialogue with the EU co-legislators, and the development of the Joint Initiative on Standardisation (JIS), signed on 13 June 2016. It was officially terminated after three years of activities on 7 June 2019.<sup>216</sup>

3.187. The JIS, as foreseen under the Single Market Strategy, sets out an innovative way of achieving priorities through open public-private cooperation. It sets out a shared vision for European standardization in order to take steps to better prioritize and modernize the current system, as well as to strive for the timely delivery of standardization deliverables. It focuses, in particular, on the following key elements: promoting faster standards development, closing the gap between research priorities and European standardization, clearer prioritisation, and stronger international presence.

3.188. The participants of the JIS are the Commission; EU member States; EFTA countries; ESOs, CEN, CENELEC, and ETSI; NSBs; European industry also represented by several associations including SMEs; and societal stakeholders, i.e. representing environmental interests, trade unions and consumers. JIS activities include a wide range of actions, such as programmes for education in standardization, improvement standardization awareness in national public authorities, a pilot project on aiding the implementation of the Construction Products Regulation (CPR) through standards, and another pilot project on the increased use of standards in public procurement.<sup>217</sup>

3.189. On 30 April 2019, the Commission published its recommendations for the EU's next Strategic Agenda 2019-24. CEN and CENELEC aim to enhance the competitiveness of European industries and contribute to the removal of barriers to trade in the global market. In 2018, their members identified specific priority countries and regions where standardization cooperation could reinforce trade relations with Europe. This exercise was strengthened with the launch of a dialogue with the Commission to ensure that standardization priorities are coordinated and reflected in EU trade agreements.

3.190. On 9 April 2019, CEN and CENELEC also launched the "Standards Build Trust" Declaration. It shows the extent to which European standardization shares the priorities identified by the Commission, and highlights the important contribution of European standardization in supporting the objectives of policy makers. In particular, the Declaration identifies five strategic priorities on which standards can provide effective support to European policymaking in the coming years. CEN and CENELEC will focus on: a harmonized single market; a competitive European industry ready to lead in international trade; trust in new technologies; enhanced innovation for Europe; and the sustainable development goals of the UN 2030 Agenda.<sup>218</sup>

3.191. The Industry Advisory Forum (IAF) was established in October 2018 to further strengthen engagement of industry in European standardization. The aim of the Forum, participated in by industry representatives, is to provide a platform for dialogue with industry to advise on key standardization strategic issues and ensure that standards provide an adequate response to market needs. In 2019, the following standardization-relevant priorities were selected: fostering digital transformation; focusing on international aspects; improving the standardization process; establishing a pilot project on the CPR; strengthening CEN and CENELEC's position on European priority policy topics (e.g. cybersecurity); aligning industries' actions towards the EC with the ESO's actions, to pass coherent messages; and addressing competition with standards developing

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<sup>215</sup> European Commission, *The annual Union work programme for European standardisation for 2019*. Viewed at: <http://ec.europa.eu/transparency/reqdoc/rep/1/2018/EN/COM-2018-686-F1-EN-MAIN-PART-1.PDF>.

<sup>216</sup> The official brochure detailing the main deliverables can be found at European Commission, *The Joint Initiative on Standardisation 2019*. Viewed at: <https://ec.europa.eu/docsroom/documents/35781>.

<sup>217</sup> European Commission, *Summary of Actions from the Joint Initiative on Standardisation*. Viewed at: <https://ec.europa.eu/docsroom/documents/36321>; and *The Joint Initiative Standardisation 2019*. Viewed at: <https://ec.europa.eu/docsroom/documents/35781>.

<sup>218</sup> CEN/CENELEC, *On the Road to Sibiu: standards help implement the EU's Strategic Agenda 2019-2024*. Viewed at: [https://www.cencenelec.eu/News/brief\\_News/Pages/TN-2019-030.aspx](https://www.cencenelec.eu/News/brief_News/Pages/TN-2019-030.aspx).



organisations (SDOs) consortia. The IAF will also provide strategic input to governance to further guide the CEN-CENELEC Work Programme, feeding also into the AUWP.

3.192. After a careful process based on a set of criteria defined to ensure balanced and due representation, the 16 Members of the IAF were selected from a pool of 36 nominees proposed by CEN and CENELEC members. The selection was also based on the expert's particular experience and knowledge in relevant areas, such as electrical and industrial power grids, the construction, steel, digital, and automotive industries, and civil aviation security.

### 3.3.2.3 The role of standardization for digital technologies

3.193. The Commission recognizes the rapid evolution of technology and the role of new products and services, such as Internet of Things (IoT) or the Cloud, in market transformation. Therefore, it seeks to ensure that innovative state-of-the-art global information and communications technology (ICT) specifications are used as enablers for growth and development. The standardization needs in support of EU policies are outlined in the annually-updated Rolling Plan for ICT Standardization, published by the Commission. The 2019 version identifies 170 actions organized around four thematic areas: key enablers, societal challenges, innovation for the single market, and sustainable growth.<sup>219</sup>

3.194. Creating the right conditions for digital networks and services to flourish is one of the three pillars of the EU Digital Single Market Strategy. Standardization is supporting it in 2019 by focusing on the IoT, big data, blockchain, cooperative intelligent transport systems and autonomous driving, eHealth, smart cities, accessibility, e-Government and artificial intelligence (AI). Good progress has been made in the harmonization of the 5G spectrum, and the first global 5G standards are now available, as foreseen in the 5G Action Plan. However, further work in global 5G standardization is needed in the next few years, notably to promote investments in 5G networks supporting industrial applications. The planned European partnership on Smart Networks and Services under Horizon Europe is expected to be instrumental in driving this standardization agenda.

3.195. On 1 February 2018, the Commission launched the EU Blockchain Observatory and Forum, whose Working Group on Blockchain Policy and Framework Conditions aims to address, among others, issues on technological and ecosystem developments such as interoperability, where standardization could provide solutions.<sup>220</sup> It also aims to identify any blockchain standardization needs at the EU level. The Observatory and Forum has finalized five major thematic policy research reports on (i) blockchains and digital identity; (ii) scalability interoperability and sustainability of blockchains; (iii) blockchains for government public services; (iv) blockchains and General Data Protection Regulation (GDPR); and (v) blockchain innovation in Europe.<sup>221</sup>

3.196. Identification of standards needs is also taking place in the area of AI. Since AI has a broad impact on the economy and society, the Commission believes it is necessary to prepare such products and services markets and ensure compliance with safety standards. The Commission set up a High-Level Expert Group (AI HLEG), which aims to serve as the steering group for the European AI Alliance's work. In the first year after its creation in June 2018, the AI HLEG delivered on the two items below.

3.197. The Ethics Guidelines on Artificial Intelligence put forward a human-centric approach on AI and lists seven key requirements that AI systems should meet in order to be trustworthy. These requirements will go through a pilot process, expected to conclude with the presentation of a revised document in early 2020. The document describes the potential role of standardization in the context of trustworthy AI assessment.

3.198. The Policy and Investment Recommendations consist of 33 recommendations that can guide trustworthy AI towards sustainability, growth, competitiveness, and inclusion, – while empowering,

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<sup>219</sup> European Commission, *2019 Rolling Plan for ICT Standardisation*. Viewed at: <https://ec.europa.eu/docsroom/documents/34788>.

<sup>220</sup> European Commission, *Blockchain Technologies*. Viewed at: <https://ec.europa.eu/digital-single-market/en/blockchain-technologies>.

<sup>221</sup> Workshops were also organized bringing together a broad range of stakeholders from the EC, governments, industry associations, start-ups, the academia and civil society organizations.

benefiting and protecting human beings. The potential role of standardization in various aspects, such as innovation, data sharing, interoperability, and certification is also part of this document.

### 3.3.2.4 Standardization and climate change

3.199. Since 2013, the Commission has been implementing an EU Strategy on Adaptation to Climate Change, setting out a framework and mechanisms for the EU's preparedness for current and future climate impacts (Section 4.2). The Commission invited the ESOs to contribute to EU efforts to make Europe more climate-resilient. In 2018, the Commission published an evaluation of the initial five years of the implementation of the Strategy, encompassing, among others, the progress on standardization.<sup>222</sup>

3.200. On a mandate from the Commission, the ESOs completed the first phase at the beginning of 2017; this resulted in a shortlist of 12 standards to be revised and 1 standard to be written under the second phase, which started at the beginning of 2018 and is expected to take about four years. CEN-CENELEC will then consider whether the process should be extended to other standards. The technical committees are currently asking for more detailed information on climate change projection data.

3.201. The work included, among others, the development of tailored guidance for the technical committees. The guidance is to provide information on the availability and use of climate data, including recommendations for dealing with uncertainty, as well as approaches for vulnerability assessment and adaptation based on best practices and experience gained during the project.<sup>223</sup>

3.202. In 2016, CEN and CENELEC developed and published a "Guide for addressing climate change adaptation in standards". The Guide is intended to help standard writers address the consequences and implications of climate change. It includes a simple checklist to help establish whether climate change adaptation is relevant to a particular standardization activity and a decision tree to help identify which actions should be taken.<sup>224</sup>

3.203. As regards the mitigation of climate change, the objective is that both the standards developed by ESOs (CEN/CENELEC/ETSI) and the legal minimum requirements in EU law work towards the reduction of CO<sub>2</sub> emissions. For instance, the EU Regulation on tyres labelling, which aims to improve fuel efficiency, safety and noise by providing better information to consumers when they buy tyres, relies on standards for measuring rolling resistance, wet grip and noise.<sup>225</sup>

### 3.3.2.5 Rapid Alert System for non-food dangerous products (RAPEX)

3.204. RAPEX enables the quick exchange of information between EU/EEA member states and the Commission about dangerous non-food products posing a risk to the health and safety of consumers, as well as measures taken to address these risks.

3.205. Since the set-up of an information exchange tool about dangerous non-food products in 2003, the System has continuously developed in terms of improved quality and efficiency. With a database containing more than 25,000 alerts and over twice as many follow-up reactions, this is a successful achievement resulting from more than 15 years of joint-cooperation between member States and the Commission. Since 2010, RAPEX also covers professional products and products that pose risks other than those relating to health and safety, such as risks to the environment. In 2018, the authorities of the 31 participating countries exchanged 2,257 alerts on dangerous products.

3.206. The national authorities have an obligation to follow up on the products circulated in RAPEX. After checking their own national markets, they must take the necessary measures if they find the

<sup>222</sup> European Commission, *EU Adaptation Strategy*. Viewed at: [https://ec.europa.eu/clima/policies/adaptation/what\\_en#tab-0-0](https://ec.europa.eu/clima/policies/adaptation/what_en#tab-0-0).

<sup>223</sup> CEN/CENELEC, *Climate Change*. Viewed at: <https://www.cencenelec.eu/standards/sectors/climatechange/pages/default.aspx>.

<sup>224</sup> CEN/CENELEC, *Climate Change*. Viewed at: <https://www.cencenelec.eu/standards/sectors/climatechange/pages/default.aspx>.

<sup>225</sup> Other pieces of EU legislation imposing legal requirements for the energy efficiency of buildings (Energy Performance of Buildings Directive) and of products (Ecodesign Directive and Energy Labelling Regulation) (Section 4.2), similarly rely on measurement standards established by the ESOs.

same products in their territory and send this information through the System. In 2018, 4,050 follow-up reports in respect of original alerts were circulated. Underneath each alert published on the Safety Gate, it is possible to see which countries have followed up on that alert, found the same dangerous product on their markets, and taken the necessary measures to stop, withdraw, or recall the product.

3.207. To improve the detection of dangerous products marketed in the EU before they are sold to consumers or as soon as possible thereafter, the Commission facilitated the signature of the Product Safety Pledge by four major online marketplaces (i.e. Alibaba, Amazon, Ebay, and Rakuten France) on 25 June 2018. By signing the pledge, these companies agreed to a list of commitments going beyond their legal obligations, with the aim of protecting consumers.<sup>226</sup>

### 3.3.2.6 Technical Barriers to Trade (TBT) Committee in the WTO

3.208. The EU and each member State notified enquiry points under the TBT Agreement. The Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs (DG GROW) – formerly the Directorate-General for Enterprise and Industry (DG-ENTR) of the European Commission – is the EU notification authority.<sup>227</sup>

3.209. In 2017 and 2018, the EU made 200 notifications to the TBT Committee in the WTO under Article 10.6 to the TBT Agreement (176 in 2015-16). In the first nine months of 2019, the EU made 43 such notifications. In addition, individual EU member States submitted 82 notifications in 2017-18 (56 in 2015-16). The EU also submitted one notification under Article 10.7 regarding the Agreement between the EU and Chile on trade in organic products.<sup>228</sup>

3.210. During the review period, the TBT Committee received 13 new specific trade concerns regarding measures taken by the EU or its member States: eco-design requirements for electronic displays; chlorothalonil (pesticide active substance); transitional periods for minimum residue limits (MRLs) and international consultations; organic production and labelling - maté (erva-mate); labelling requirements of the origin of grains used in the preparation of dried pasta; non-renewal of approval of the active substance picoxystrobin; titanium dioxide: Regulation (EC) No. 1272/2008 (CLP Regulation), Annex VI, Part 2; amendments to Directive 2009/28/EC, Renewable Energy Directive; application of Regulation No. 1169/2011 and Regulation (EC) No. 1924/2006 as regards the labelling of food products, in not prohibiting or examining the use of "palm oil free" labels; Regulation of the European Parliament and of the Council laying down rules and procedures for compliance with and enforcement of Union harmonization legislation on products and amending relevant regulations; establishment and operation of a traceability system for tobacco products; Radio Equipment Directive; and laws, regulations, procedures and guidelines on marketing authorization for medicinal products.<sup>229</sup>

3.211. During the review period, Members also referred to nine concerns that had been raised earlier: protected designations of origin and geographical indications, traditional terms, labelling and presentation of certain wine sectors; quality schemes for agricultural products and foodstuffs; hazard-based approach to plant protection products and setting of import tolerances; common criteria for information technology security evaluation (Common Criteria) certification in the EU; Public Health (Alcohol) Bill 2015; Regulation on the Registration, Evaluation and Authorization of Chemicals (REACH); Restriction on Polycyclic Aromatic Hydrocarbons (PAHs) in tyres as specified in Annex XVII of REACH; Directive 2014/40/EU on the approximation of the laws, regulations and administrative provisions of member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC; and country of origin labelling.<sup>230</sup>

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<sup>226</sup> European Commission, *Safety Gate: just a click to keep away from dangerous products*. Viewed at: [https://ec.europa.eu/consumers/consumers\\_safety/safety\\_products/rapex/alerts/repository/content/pa ges/rapex/reports/docs/RAPEX\\_2018\\_Report\\_en.pdf](https://ec.europa.eu/consumers/consumers_safety/safety_products/rapex/alerts/repository/content/pa ges/rapex/reports/docs/RAPEX_2018_Report_en.pdf).

<sup>227</sup> WTO document G/TBT/ENQ/38/Rev.1, 8 July 2011.

<sup>228</sup> WTO document G/TBT/10.7/N/145, 8 August 2017.

<sup>229</sup> WTO database.

<sup>230</sup> WTO database.

3.212. The EU also used the TBT Committee to raise its own concerns regarding measures proposed or implemented by other WTO Members, notably in areas of foodstuffs and alcoholic beverages, cosmetics, medical devices, plastic products, ICTs and electronics, and tyres.<sup>231</sup>

### 3.3.3 Sanitary and phytosanitary requirements

3.213. Since the last Review, the most significant change in the EU's SPS regime refers to the new Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017 regarding official controls on products of animal origin intended for human consumption. It includes rules for the performance of official controls and other control activities by the competent authorities of the member States, sets out the requirements to be fulfilled for the entry into the EU of consignments of animals and goods from third countries, and empowers the Commission to adopt delegated acts concerning those requirements.<sup>232</sup> This Regulation will apply from 14 December 2019. However, the requirements will only apply from 21 April 2021.<sup>233</sup>

3.214. The new Regulation will replace Regulation (EC) No. 882/2004<sup>234</sup> and repeal Regulation (EC) No. 854/2004.<sup>235</sup> The key SPS legislation in the EU is summarized in Table 3.21.

**Table 3.21 Principal SPS legislation, 2019**

Legislation	Note
Regulation (EC) No. 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority (EFSA) and laying down procedures in matters of food safety	The General Food Law. Regulates the safety of food and feed produced or consumed in the internal market; established a framework for controlling and monitoring the risks and their prevention and management; and created the EFSA for the control and evaluation of food and feed. The amendment of the Law by Regulation (EU) No. 2019/1381 of the European Parliament and the Council on the transparency and sustainability of the EU risk assessment in the food chain, amending Regulations (EC) 178/2002, 1829/2003, 1831/2003, 2065/2003, 1935/2004, 1331/2008, 1107/2009, Regulation (EU) 2015/2283 and Directive 2001/18/EC. Regulation (EU) 2019/1381 aims to improve the transparency of the EU risk assessment process carried out by the EFSA, strengthen the long-term sustainability of the EFSA, and improve risk communication.
Regulation (EC) No. 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs	General rules for food business operators on the hygiene of foodstuffs, putting primary responsibility on the operators; implementation of procedures based on Hazard Analysis and Critical Control Point (HACCP) principles and good hygiene practice; and ensuring that imported foods are at least the same as, or equivalent to, the hygiene standards of food produced in the EU.
Regulation (EC) No. 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin	Supplementing Regulation (EC) No. 852/2004. Setting out specific rules on hygiene for food of animal origin, for food business operators, and applying to unprocessed and processed products of animal origin.

<sup>231</sup> WTO database.

<sup>232</sup> A legislative act may delegate to the Commission the power to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of a legislative act (Article 290 of the TFEU). Legal acts adopted by the Commission in this way are referred to as "delegated acts" (Section 2.1).

<sup>233</sup> Requirements laid down in Articles 11, (13)(1) and 13(2) of delegated Regulation (EU) No. 2017/625.

<sup>234</sup> Regulation (EC) No. 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules. Viewed at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2004R0882:20060525:EN:PDF>.

<sup>235</sup> Regulation (EC) No. 854/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific rules for the organization of official controls on products of animal origin intended for human consumption. Viewed at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:226:0083:0127:EN:PDF>.

Legislation	Note
Regulation (EC) No. 854/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific rules for the organization of official controls on products of animal origin intended for human consumption <sup>a</sup>	Setting out specific rules on the organization of official controls on products of animal origin intended for human consumption. The Regulation applies in addition to Regulation (EC) No. 882/2004.
Regulation (EC) No. 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules <sup>a</sup>	On official controls for verification of compliance with feed and food law, animal health, and animal welfare rules. The Regulation sets out general rules for the performance of official controls to verify compliance with rules aiming, in particular, at: (a) preventing, eliminating or reducing to acceptable levels risks to humans and animals, either directly or through the environment; and (b) guaranteeing fair practices in the feed and food trade, and protecting consumer interests, including feed and food labelling and other forms of consumer information.
Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017 on official controls and other official activities performed to ensure the application of food and feed law, and rules on animal health and welfare, plant health and plant protection products (Official Controls Regulation)	On official controls for the verification of compliance with the feed and food law, and rules on animal health and animal welfare rules, plant health and plant protection products. It amends Regulations (EC) No. 999/2001, (EC) No. 396/2005, (EC) No. 1069/2009, (EC) No. 1107/2009, (EU) No. 1151/2012, (EU) No. 652/2014, (EU) No. 2016/429 and (EU) No. 2016/2031 of the European Parliament and of the Council, Council Regulations (EC) No. 1/2005 and (EC) No. 1099/2009 and Council Directives No. 98/58/EC, No. 1999/74/EC, No. 2007/43/EC, No. 2008/119/EC and No. 2008/120/EC, and repeals Regulations (EC) No. 854/2004 and (EC) No. 882/2004 of the European Parliament and of the Council, Council Directives No. 89/608/EEC, No. 89/662/EEC, No. 90/425/EEC, No. 91/496/EEC, No. 96/23/EC, No. 96/93/EC and No. 97/78/EC and Council Decision No. 92/438/EEC (Official Controls Regulation).
Directive 2002/99/EC of 16 December 2002 laying down the animal health rules governing the production, processing, distribution and introduction of products of animal origin for human consumption <sup>b, c</sup>	Setting out rules for the production, processing, distribution, and introduction of products of animal origin for human consumption. The Directive lays down the general animal health rules governing all stages of the production, processing and distribution within the EU and the introduction from third countries of products of animal origin and products obtained therefrom intended for human consumption.
Regulation (EU) 2016/429 of the European Parliament and of the Council of 9 March 2016 on transmissible animal diseases, amending and repealing certain acts in the area of animal health (Animal Health Law)	Repeal of Council Directives 64/432/EEC, 77/391/EEC, 78/52/EEC, 80/1095/EEC, 82/894/EEC, 88/407/EEC, 89/556/EEC, 90/429/EEC, 91/68/EEC, 92/35/EEC, 92/65/EEC, 92/66/EEC, 92/118/EEC, 92/119/EEC, 2000/75/EC, 2001/89/EC, 2002/60/EC, No. 2002/99/EC, and 2003/85/EC; Council Decisions 91/666/EEC, 95/410/EC, and 2000/258/EC; Council Regulation (EC) 21/2004, Council Directives 2004/68/EC, 2005/94/EC, 2006/88/EC, 2008/71/EC, 2009/156/EC, and 2009/158/EC, and Regulation (EU) 576/2013 of the European Parliament and of the Council. <i>Inter alia</i> , the Law consolidates animal health legislation and aims to simplify and clarify the rules relating to the prevention and eradication of diseases.
Regulation (EU) 2016/2031 of the European Parliament and of the Council of 26 October 2016 on protective measures against pests of plants, amending Regulations (EU) 228/2013, (EU) 652/2014 and (EU) 1143/2014 of the European Parliament and of the Council and repealing Council Directives 69/464/EEC, 74/647/EEC, 93/85/EEC, 98/57/EC, 2000/29/EC, 2006/91/EC and 2007/33/EC	Repeal of Directive 2000/29/EC. Protective measures against the introduction of organisms which are harmful to plants or plant products.
Regulation (EU) 2019/4 of the European Parliament and of the Council of 11 December 2018 on the manufacture, placing on the market and use of medicated feed	Amending Regulation (EC) No. 183/2005 of the European Parliament and of the Council and repealing Council Directive No. 90/167/EEC.

Legislation	Note
Regulation (EU) 2019/6 of the European Parliament and of the Council of 11 December 2018 on veterinary medicinal products, repealing Directive 2001/82/EC	This Regulation sets up an up-to-date legal framework for the authorization, distribution and use of veterinary drugs in the EU, and strengthens the fight against antimicrobial resistance (AMR). It will apply from 28 January 2022.

- a To be replaced by Regulation (EU) 2017/625, which will apply from 14 December 2019.
- b In addition to Directive 2002/99/EC, there are many other legislative acts in the EU relating to animal health (see the directives repealed by Regulation (EU) 2016/429).
- c To be replaced by Regulation (EU) 2016/429 which will apply from 21 April 2021.

Source: European Commission and Eur-Lex. *Access to European Union law*. Viewed at: <http://eur-lex.europa.eu/homepage.html>.

3.215. Transitional measures are laid down for the entry into the EU of certain food until 31 December 2020, in accordance with Commission Delegated Regulation No. 2017/185. The requirements set out in this Regulation consist of a three-tiered system of guarantees:

- requirements for the listing of third countries/regions authorized for imports of food into the EU. Third countries, or regions in these third countries, are included in those lists through an implementing regulation in accordance with Article 127 of Regulation (EU) 2017/625;
- the requirement that consignments of certain animals and goods from third countries must be dispatched from, and obtained or prepared in, establishments which comply with relevant requirements referred to in Article 1(2)(a) of Regulation (EU) 2017/625, or with requirements recognized to be at least equivalent thereto and listed in accordance with this Regulation; and
- the requirement that consignments be accompanied by appropriate official certification confirming their compliance with relevant requirements applicable in the EU.

3.216. Additional specific import requirements for bivalve molluscs, fishery products and composite products were also included. The import requirements laid down in this Regulation consider (as do the existing rules laid down in Regulation (EC) No. 854/2004) the specific characteristics of certain products. They also consider the need for greater flexibility when certain products pose a lower level of risk to public and animal health.

3.217. The Animal Health Law of 2016 is to become applicable on 21 April 2021, and the Plant Health Law of 2016 on 14 December 2019, except for the provisions relating to a phytosanitary certificate for exports (from 1 January 2021). In the meantime, several measures are to be adopted by the Commission to implement the new rules.

3.218. The Commission is responsible for developing draft proposals for implementing acts. The Standing Committee on Plants, Animals, Food and Feed (PAFF Committee) is the principal regulatory body responsible for delivering opinions on draft implementing measures. The Committee is made up of 14 different sections, each of which is responsible for different aspects related to SPS measures.<sup>236</sup> In addition, five other committees are also responsible for specific SPS-related issues:

- Regulatory Committee under Directive 2001/18/EC on the deliberate release into the environment of genetically modified organisms (GMOs);
- Regulatory Committee under Directive 2009/41/EC on the contained use of GMOs;
- Standing Committee on Plant Variety Rights;

<sup>236</sup> General Food Law, Biological Safety of the Food Chain, Toxicological Safety of the Food Chain, Controls and Import Conditions, Animal Nutrition, Animal Health and Animal Welfare, Genetically Modified Food and Feed and Environmental Risk, Phytopharmaceuticals, Plant Health, Propagating Material of Ornamental Plants, Propagating Material and Plants of Fruit Genera and Species, Seeds and Propagating Material for Agriculture and Horticulture, Forest Reproductive Material, and Vine.

- Standing Committee on Zootechnics; and
- Biocidal Products Committee.

3.219. The EFSA, established under the General Food Law of 2002, is an independent agency responsible for risk assessment for food and feed safety, nutrition, animal health and welfare, plant protection, and plant health, as well as, through environmental risk assessments, the possible impact of the food chain on biodiversity.<sup>237</sup> The Health and Food Audits and Analysis Directorate (formerly known as the Food and Veterinary Office (FVO)) of the Commission is responsible for audits, inspections, and related activities, to assess compliance with EU food safety and quality, animal health and welfare, and plant health legislation within the EU, and compliance with EU import requirements in third countries exporting to the EU.

3.220. The Commission's Trade Control and Expert System (TRACES) is an online system which manages official controls and route planning for imports of animals, semen and embryos, food, feed and plants which must be accompanied by health certificates and/or trade documents. All harmonized certificates for exporting to the EU are available on TRACES which is used to notify the relevant authorities in the importing member State of the arrival of a consignment.<sup>238</sup>

3.221. To a large extent, SPS measures in the EU have been harmonized, and most measures are taken at the EU level. Nonetheless, member States may, and sometimes do, take specific measures in the absence of harmonized EU requirements.

3.222. EU member States are members of the Codex Alimentarius Commission, and the World Organization for Animal Health (OIE), and are contracting parties to the International Plant Protection Convention (IPPC). The EU itself is a member of Codex and a contracting party to the IPPC.

### 3.3.3.1 Plants and plant products

3.223. No major changes were introduced regarding plants and plant products since the last Review. Regulation (EU) 2016/2031 on protective measures against plant pests extends the definition of pests to include non-parasitic plants that could have a severe economic, social, or environmental impact within the EU. It will apply as from 14 December 2019.<sup>239</sup>

3.224. Regulation (EU) 2016/2031 classifies all pests into three categories: regulated non-quarantine pests, protected-zone quarantine pests, and union quarantine pests, among which those with the most severe impacts would be tagged as "priority pests". It also introduces a new concept of "high risk plants, plant products and other objects", whose import would be prohibited until a thorough risk assessment is carried out. Temporary import restrictions could be introduced if there is insufficient experience in terms of trade, or if the risks are still unknown. For the importation of living plant material, the EU would request that phytosanitary certificates attest compliance with EU legislation.<sup>240</sup>

3.225. As from 14 December 2019, all plants (including living parts of plants) will need to be accompanied by a phytosanitary certificate to enter into the EU, unless they are listed in Commission Implementing Regulation (EU) 2018/2019 as exempted from this general requirement. Currently, the list of exempted plants are the following: pineapples, coconuts, durians, bananas and dates.

3.226. Provisions within Regulation (EU) 2016/2031 are in place for the listing of "high risk plants, plant products and other objects" (Article 42), based on a scientific preliminary assessment by the EFSA. Commission Implementing Regulation (EU) 2018/2019 establishes the list of high-risk plants the introduction of which into the EU territory will be provisionally prohibited from 14 December 2019 until a full risk assessment has been carried out.

<sup>237</sup> EFSA. Viewed at: <http://www.efsa.europa.eu/>.

<sup>238</sup> European Commission, *TRACES: TRAdE Control and Expert System*. Viewed at: [http://ec.europa.eu/food/animals/traces\\_en](http://ec.europa.eu/food/animals/traces_en).

<sup>239</sup> WTO document G/SPS/N/EU/44/Add.2, 26 January 2017.

<sup>240</sup> WTO document G/SPS/GEN/1541, 10 March 2017.

3.227. Under the currently applicable legislation on trade in plants and plant products (Directive 2000/29/EC)<sup>241</sup>, a phytosanitary certificate from the competent authorities in the exporting country is required for plants for planting, some fruits, vegetables, seeds and cut flowers. Once in the EU, a plant passport may replace the phytosanitary certificate. Imports into the EU of most plants and plant products from most countries do not require prior approval or notification, although they are subject to rules on food safety and customs procedures and inspection. The competent authorities in the member States must be notified of imports of some food and feed products of non-animal origin from specified third countries which must enter the EU through designated points of entry where they are subject to additional controls.<sup>242</sup> The list of products and exporting countries is reviewed quarterly.

3.228. The procedure for approving GMOs has not changed. An application for approval for use of a GMO for food, feed, cultivation, or release on the market for other purposes (e.g. cut flowers) must be made to the competent authority in a member State. The EFSA, in collaboration with the member States' scientific bodies, conducts a risk assessment and delivers an opinion. On the basis of the opinion, the Commission prepares draft legislation to grant or refuse authorization. Directive (EU) 2015/412 gives member States more flexibility to restrict or prohibit the cultivation of a GMO in their territory, either during the authorization procedure, by demanding to exclude their territory from the geographical scope of the application, or, after authorization has been granted, by adopting measures that prohibit or restrict cultivation of specific GMOs.<sup>243</sup> The Commission also proposed a review of the decision-making process on GMOs to allow member States to restrict or prohibit the use, in part or all of their territory, of GM food and feed authorized at EU level for compelling reasons other than the risk to human or animal health or to the environment.<sup>244</sup>

3.229. As at the end of September 2019, 1 GMO was approved for cultivation (with ongoing procedures for renewal of authorization) and 139 for food and feed uses. In addition, 2 applications (excluding the ongoing renewal) for cultivation and 51 for food and feed uses were pending. Six GMO flowers are also approved for sale in the EU.

### 3.3.3.2 Live animals and animal products

3.230. The Animal Health Law will apply from 21 April 2021. It provides for new animal health requirements for entry into the EU of animals and their products, but it does not make significant changes to the existing system. Under the currently applicable legislation, to export live animals and germinal products, products of animal origin for human consumption, animal by-products and derived products to the EU, the competent authority of the exporting country must be recognized as being able to "ensure credible inspection and controls throughout the production chain, which cover all relevant aspects of hygiene, animal health and public health" and provide adequate guarantees.<sup>245</sup> In addition, the country of origin must: be authorized, i.e. listed for entry into the EU for the specific species of animals or animal products; and, where appropriate, have an approved residue plan for the relevant animal species, a Salmonella control programme for poultry and poultry products, and meet other requirements depending on the animal and/or product.

3.231. At the request of the supplying country, the EU normally audits the country to ensure that all the criteria provided for in the EU legislation are met. Based on the results of the audit, the country may then be added to the list of countries authorized for entry into the EU. Depending on the animal health situation within a country, products from part of a country may be authorized for entry into the EU, or different parts of a country may face different requirements. Additions to the

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<sup>241</sup> Council Directive 2000/29/EC of 8 May 2000 on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community.

<sup>242</sup> Commission Regulation (EC) No. 669/2009 of 24 July 2009 implementing Regulation (EC) No. 882/2004 of the European Parliament and of the Council as regards the increased level of official controls on imports of certain feed and food of non-animal origin and amending Decision 2006/504/EC.

<sup>243</sup> Directive (EU) 2015/412 of the European Parliament and of the Council of 11 March 2015 amending Directive 2001/18/EC as regards the possibility for member States to restrict or prohibit the cultivation of GMOs in their territory.

<sup>244</sup> Commission Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) 1829/2003 as regards the possibility for member States to restrict or prohibit the use of genetically modified food and feed on their territory.

<sup>245</sup> European Commission (2010), *General guidance on EU import and transit rules for live animals and animal products from third countries*, SANCO/7166/2010.



list of approved third countries, territories, zones, or compartments are made through amendments to the relevant legislation following approval of a Commission proposal by the PAFF Committee.

3.232. In addition, an establishment in a third country wishing to export to the EU products of animal origin for human consumption and animal by-products must be added to the list of eligible exporters. It must inform its national authorities, which may then make a request to the Commission, after they have verified that production in the establishment is compliant with, or equivalent to, the requirements laid down in the EU legislation.

3.233. Entry into the EU of live animals and animal products must be accompanied by a health certificate issued by the competent authorities of the exporting country, stating that the animals or products meet EU import requirements. Before their arrival on EU territory, the approved Border Inspection Post (BIP)<sup>246</sup> of arrival must be notified through TRACES (at least 24 hours before arrival for live animals) using the Common Veterinary Entry Document (CVED). At the BIP, the consignment must undergo official controls, including documentary, identity, and physical checks, which may include laboratory tests. Depending on the risks associated with the animal product concerned, physical checks may be reduced.<sup>247</sup>

3.234. As from 14 December 2019, under the new Official Controls Regulation (OCR), the BIPs will be changed to Border Control Posts (BCPs), the CVED to the Common Health Entry Document (CHED), and TRACES to the Information Management System for Official Controls (IMSOC).<sup>248</sup>

3.235. Where a recurrent problem is identified with a specific animal product from a third country, special import conditions may be applied, such as reinforced testing or pre-export testing in the country of origin.<sup>249</sup>

### 3.3.3.3 Rapid Alert System for Food and Feed (RASFF)

3.236. The RASFF allows food and feed authorities of the member States and the Commission to exchange information about measures taken in response to direct and indirect risks to human health from food, and human and animal health and the environment from feed.<sup>250</sup> Member States notify risks detected in products already on the market (market notifications) and when products are refused entry into the EU (border rejections).<sup>251</sup>

3.237. During the review period, there was a significant rise in notifications transmitted through the RASFF, notably in alert notifications. The number of border rejections that had been declining in recent years also grew substantially in 2017 but declined again in 2018. A total of 3,687 original notifications were reported in 2018 (28% decrease compared to 2017), of which 1,118 were classified as alerts, 493 as information for follow-up, 675 as information for attention, and 1,401 as border rejection notifications (Table 3.22). These original notifications gave rise to 9,117 follow-up notifications in 2017 (25% more than in 2016), an average of 2.4 follow-ups per original notification. For alert notifications, this average rose to 6.1 follow-ups per original notification. Compared to 2016, the number of alert notifications, implying a serious health risk of a product circulating on the market, rose by 11%, with 24% more follow-ups transmitted.

<sup>246</sup> European Commission Decision of 28 September 2009 drawing up a list of approved BIPs, laying down certain rules on the inspections carried out by Commission veterinary experts and laying down the veterinary units in TRACES (notified under document COM(2009) 7030 final, 28 September 2009).

<sup>247</sup> Commission Decision No. 94/360/EC of 20 May 1994 on the reduced frequency of physical checks of consignments of certain products to be implemented from third countries, under Council Directive No. 90/675/EEC.

<sup>248</sup> European Commission, *Official Controls Regulation: A new framework for better and integrated controls for animals, food and feed in the EU*. Viewed at: [https://ec.europa.eu/food/sites/food/files/safety/docs/comm\\_oc\\_20181010\\_pres-01.pdf](https://ec.europa.eu/food/sites/food/files/safety/docs/comm_oc_20181010_pres-01.pdf).

<sup>249</sup> European Commission, *Special Import Conditions*. Viewed at: [http://ec.europa.eu/food/animals/vet-border-control/special-import-conditions\\_en](http://ec.europa.eu/food/animals/vet-border-control/special-import-conditions_en).

<sup>250</sup> Regulation (EC) No. 178/2002 (General Food Law), Article 50.

<sup>251</sup> European Commission. *RASSF Portal*. Viewed at: [https://ec.europa.eu/food/safety/rasff/portal\\_en](https://ec.europa.eu/food/safety/rasff/portal_en).

**Table 3.22 RASFF notifications, 2012-19**

Year	Alert <sup>a</sup>	Border rejection <sup>b</sup>	Information for attention <sup>c</sup>	Information for follow-up <sup>d</sup>
<b>Original notification</b>				
2012	522	1,712	679	507
2013	584	1,438	679	429
2014	725	1,357	605	402
2015	748	1,376	475	378
2016	817	1,159	573	372
2017	927	1,570	683	586
2018	1,118	1,401	675	493
2019 (Jan-Sep)	807	1,103	624	404
<b>Follow-up notification</b>				
2012	2,312	906	664	1,325
2013	2,376	525	763	1,493
2014	3,280	581	670	1,377
2015	4,028	417	538	1,222
2016	4,659	421	704	1,504
2017	5,781	771	979	1,586
2018	..	..	..	..
2019 (Jan-Sep)	..	..	..	..

.. Not available.

- a Alert notifications are sent when food or feed presenting a serious health risk is on the market, and when rapid action is required.
- b Border rejections concern food and feed consignments that have been tested and rejected at the external borders of the EU (or the EEA) when a health risk has been found.
- c Information notifications for attention relate to a product that is present only in the notifying member country, or has not been placed on the market, or is no longer on the market.
- d Information notifications for follow up relate to a product that is, or may be, placed on the market in another member country.

Source: *RASFF - The Rapid Alert System for Food and Feed - 2017 Annual Report*, Publications Office of the EU, p. 38; and information provided by the European Commission.

### 3.3.3.4 SPS Committee in the WTO

3.238. The EU and each member State notified enquiry points under the SPS Agreement.<sup>252</sup> The Directorate-General for Health and Food Safety (DG SANTE) of the European Commission is the EU notification authority.<sup>253</sup>

3.239. In 2017 and 2018, the EU made a total of 153 notifications to the Committee on Sanitary and Phytosanitary Measures in the WTO (107 in 2015-16). In addition, in 2017-18, Finland made one regular notification; France made two emergency notifications; and Spain made two regular notifications.<sup>254</sup> In the first nine months of 2019, the EU had made 108 notifications.

3.240. During the review period, WTO Members used the SPS Committee to raise 11 new specific trade concerns about measures taken in the EU or a member State: EU non-recognition of regionalization for Avian Influenza; France's dimethoate-related restrictions on imports; EU MRLs for acrinathrin, metalaxyl and thiabendazole; EU maximum level of cadmium in foodstuffs; EU restrictions on poultry meat due to Salmonella detection; EU Commission Decision 2002/994/EC on animal products; EU restrictions on poultry meat preparations (Regulation (EU) No. 2018/700); EU review of legislation on veterinary medicinal products; new EU definition of the fungicide folpet; EU MRLs for buprofezin, diflubenzuron, ethoxysulfuron, ioxynil, molinate, picoxystrobin and tepraloxydim; and CJEU Opinion 528/16 on organisms obtained by mutagenesis.

3.241. During the review period, WTO Members also referred to two concerns that had been raised previously: application and modification of the EU regulation on novel foods; and EU's revised

<sup>252</sup> WTO document G/SPS/ENQ/16, 11 March 2011.

<sup>253</sup> WTO document G/SPS/NNA/16, 11 March 2011.

<sup>254</sup> See WTO documents G/SPS/N/FIN/2, 6 April 2017; G/SPS/N/FRA/13, 31 May 2017; G/SPS/N/FRA/14, 4 May 2018; and G/SPS/N/ESP/5, 12 February 2018.

proposal for categorization of compounds as endocrine disruptors. The EU used the Committee to raise its concerns in 11 cases over the same period.<sup>255</sup>

3.242. As part of the fifth Review of the Operation and Implementation of the SPS Agreement, the EU identified regionalization (pest- and disease-free areas) as an issue that requires the Committee's continuing attention.<sup>256</sup>

### 3.3.4 Competition policy

3.243. During the period under review, the existing competition policy regime of the EU and its member States was further consolidated. The main legislative basis of EU competition law and regulation remained unchanged (Table 3.23).<sup>257</sup> In an important development, the competences of national competition authorities were strengthened through the adoption of a Directive to empower them.<sup>258</sup> The Directive highlights their role in enforcing EU competition law, as well as the importance of independence and of sufficient resources for effective investigation of cases. In addition, it sets out the powers of competition authorities in conducting inspections and interviews, and ordering interim measures, etc. The European Competition Network (ECN), which was established in 2004<sup>259</sup>, continued to unite national competition authorities within a single network, thus ensuring similar application of competition norms in all member States. In that framework, national competition authorities participate as independent and equal entities endowed with powers in the competition area that are parallel to the competences of the Commission.<sup>260</sup>

3.244. To make communication with external stakeholders more efficient, the Commission launched eTrustEx, a tool through which the entities can submit complaints, drafts of remedies in merger cases, responses to requests for information, etc. The user guide, published in May 2019, provides a detailed description of the steps to be undertaken to submit the documents.<sup>261</sup>

3.245. The Commission also organizes training for national judges in the area of competition law, thus contributing to the coherent application of EU competition law by national courts. Topics include, but are not limited to, general training on enforcing competition law, damage actions for competition infringements, and interaction of IP and competition law.<sup>262</sup>

3.246. The Commission adopted Working Arrangements for the functioning of the Advisory Committee on Restrictive Practices and Dominant Positions, to facilitate cooperation with national competition authorities.<sup>263</sup> The Advisory Committee is to be consulted prior to taking decisions under Articles 7, 8, 9, 10, 23, 24(2) and 29(1) of Regulation 1/2003; for the sector inquiries; and on draft regulations. The Committee is comprised of representatives of competition authorities of member States. In light of the General Data Protection Regulation (GDPR) of 2016<sup>264</sup>, in the reporting period, the Commission adopted a decision on handling personal data in relation to the provision of

<sup>255</sup> WTO SPS IMS database. Viewed at: <http://spsims.wto.org/>.

<sup>256</sup> WTO document G/SPS/W/298, 4 June 2018.

<sup>257</sup> The legislation of the EU related to competition policy was analysed in detail during the previous Review. WTO document WT/TPR/S/357/Rev.1, 13 October 2017.

<sup>258</sup> Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L0001&from=EN>.

<sup>259</sup> Commission Notice on cooperation within the Network of Competition Authorities. Viewed at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2004:101:0043:0053:EN:PDF>.

<sup>260</sup> The ECN itself is not an autonomous legal entity, and does not have enforcement competences.

<sup>261</sup> European Commission, *User Guide: eTrustExchange*. Viewed at: [http://ec.europa.eu/competition/contacts/etrustex\\_user\\_guide.pdf](http://ec.europa.eu/competition/contacts/etrustex_user_guide.pdf).

<sup>262</sup> European Commission, *Training of national judges and judicial cooperation in the field of EU competition law*. Viewed at: <http://ec.europa.eu/competition/court/training.html>.

<sup>263</sup> European Commission, *Annex to the Communication to Commission, Working Arrangements for the Functioning of the Advisory Committee on Restrictive Practices and Dominant Positions*. Viewed at: [https://ec.europa.eu/competition/antitrust/legislation/cooperation\\_nca.pdf](https://ec.europa.eu/competition/antitrust/legislation/cooperation_nca.pdf).

<sup>264</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation). Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0679&from=EN>.

information to data subjects and the restriction of certain rights.<sup>265</sup> According to the Commission, the Decision "ensures the balance between the rights of the data subjects and the efficiency of competition investigations".<sup>266</sup>

3.247. In October 2018, the Commission commenced the review of the Vertical Block Exemption Regulation (VBER), which will expire in May 2022.<sup>267</sup> In order to decide whether the VBER should be amended, prolonged or lapsed, the Commission is conducting an evaluation of the functioning of the existing rules. For this purpose, it is currently collecting information on the efficiency, effectiveness, relevance, coherence and added value of the VBER and the accompanying Guidelines on Vertical Restraints. In this context, stakeholders' comments on the Evaluation Roadmap, published in November 2018, were collected until 6 December 2018; and a public consultation took place between 4 February 2019 and 27 May 2019.<sup>268</sup> The Commission published a factual summary of the contributions received in July 2019.<sup>269</sup> An evaluation support study, carried out by independent contractors, was launched by the Commission at the beginning of August 2019. The study is expected to be completed by April 2020. The evaluation phase will end with the publication by the Commission of a Staff Working Document, which is planned for the second quarter of 2020.

3.248. The European Parliament was also active in discussing issues related to competition, and published its usual annual reports on competition policy. The last such report was adopted as a resolution dated 31 January 2019.<sup>270</sup> The report sets out recent developments in EU competition policy and enforcement, welcoming Commission actions and calling for specific steps to tackle challenges. It highlights the importance of international cooperation, *inter alia*, through international forums such as the OECD, the WTO and UNCTAD, and welcomes the efforts to reform the WTO.

**Table 3.23 Competition policy legislative framework – selected rules**

Rule	Note
<b>TFEU</b>	
Article 101	Prohibits agreements between two or more independent market operators that restrict competition
Article 102	Prohibits firms holding a dominant position in a relevant market from abusing that position
Article 105	The Commission may undertake investigations and make decisions, upon request by a member State or on its own initiative, concerning possible violations of the TFEU rules on competition policy. Such decisions may be appealed to the CJEU
Article 106	Limited exceptions to the Treaty competition rules for undertakings required to operate services of general economic interest
<b>Regulations and directives</b>	
Council Regulation (EC) No. 1/2003 of 16 December 2002	On the implementation of the rules on competition laid down in Articles 81 and 82 of the EC Treaty (now Articles 101 and 102 of the TFEU)
Council Regulation (EC) No. 139/2004 of 20 January 2004	On the control of concentrations between undertakings (the EC Merger Regulation)
Directive 2014/104/EU of the European Parliament and the Council of 26 November 2014	On certain rules governing actions for damages under national law for infringements of the competition law provisions of the member States and of the EU

<sup>265</sup> Commission Decision (EU) 2018/1927 of 5 December 2018 laying down internal rules concerning the processing of personal data by the European Commission in the field of competition in relation to the provision of information to data subjects and the restriction of certain rights. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018D1927&from=EN>.

<sup>266</sup> European Commission, *Competition: Data Protection*. Viewed at: [http://ec.europa.eu/competition/general/data\\_protection\\_en.html](http://ec.europa.eu/competition/general/data_protection_en.html).

<sup>267</sup> European Commission, *Antitrust: What's new?* Viewed at: <http://ec.europa.eu/competition/antitrust/news.html>.

<sup>268</sup> European Commission, *Review of the Vertical Block Exemption Regulation*. Viewed at: [http://ec.europa.eu/competition/consultations/2018\\_vber/index\\_en.html](http://ec.europa.eu/competition/consultations/2018_vber/index_en.html).

<sup>269</sup> European Commission, *Factual summary of the contributions received in the context of the open public consultation on the evaluation of the Vertical Block Exemption Regulation (EU) No. 330/2010*. Viewed at: [https://ec.europa.eu/competition/consultations/2018\\_vber/factual\\_summary.pdf](https://ec.europa.eu/competition/consultations/2018_vber/factual_summary.pdf).

<sup>270</sup> European Parliament, *Resolution of 31 January 2019 on the Annual Report on Competition Policy*. Viewed at: [http://www.europarl.europa.eu/doceo/document/TA-8-2019-0062\\_EN.docx](http://www.europarl.europa.eu/doceo/document/TA-8-2019-0062_EN.docx).

Rule	Note
Commission Regulation 773/2004/EC of 7 April 2004	Relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty
Commission Regulation (EU) No. 330/2010 of 20 April 2010	On the application of Article 101(3) of the TFEU to categories of vertical agreements and concerted practices
Commission Regulation (EU) No. 316/2014 of 21 March 2014	On the application of Article 101(3) of the TFEU to categories of technology transfer agreements
Commission Implementing Regulation (EU) No. 1269/2013 of 5 December 2013	Amending Regulation (EC) No. 802/2004 implementing Council Regulation (EC) No. 139/2004 on the control of concentrations between undertakings
Regulation (EU) 2018/302 of the European Parliament and of the Council of 28 February 2018	Addressing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market
Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018	Empowering the competition authorities of the member States to be more effective enforcers and to ensure the proper functioning of the internal market
<b>Other</b>	
Communication from the Commission OJ 2011/C 11/01	Guidelines on the applicability of Article 101 of the TFEU to horizontal cooperation agreements
Communication from the Commission OJ 2014/C 89/03	Guidelines on the application of Article 101 of the TFEU to technology transfer agreements
Communication from the Commission OJ 2006/C 210/02	Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No. 1/2003
Communication from the Commission OJ 2013/C 167/07	On quantifying harm in actions for damages based on breaches of Article 101 or 102 of the TFEU
Practical Guide SWD(2013) 205 - C(2013) 3440	Quantifying harm in actions for damages based on breaches of Article 101 or 102 of the TFEU
Communication from the Commission OJ 2009/C 45/02	Guidance on the Commission's enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings
Commission Notice OJ 2013/C 366	On a simplified procedure for treatment of certain concentrations under Council Regulation (EC) No. 139/2004
Commission Decision (EU) 2018/1927 of 5 December 2018	Laying down internal rules concerning the processing of personal data by the European Commission in the field of competition in relation to the provision of information to data subjects and the restriction of certain rights

Source: DG Competition, WTO Secretariat, and EUR-Lex.

### 3.3.4.1 Enforcement of competition law (anti-competitive agreements and abuse of dominant position)

3.249. The enforcement action of the Commission and national competition authorities continues to be based on Articles 101 and 102 of the TFEU and Council Regulation (EC) No. 1/2003, and on sector-specific rules, including on agriculture, fisheries, insurance, postal services, professional services, transport, and telecommunications<sup>271</sup>, which all remained unchanged. The main investigation and redress procedures were not amended over the review period.

#### *Investigations and fines imposed*

3.250. In 2018, the level of fines imposed on cartels was about EUR 800 million (Table 3.24), less than in the previous two years; 2016 saw the highest amount of fines, with EUR 3,561 million. No case from 2018 is included in the list of the ten highest cartel fines per case since 1969.<sup>272</sup>

3.251. The above table shows that the national competition authorities are actively engaged in the enforcement of competition rules. As evidenced by it, a majority of cases are investigated or submitted by the competition authorities of the member States. The Directive further supporting the role of national competition authorities in enforcing European competition law<sup>273</sup> can thus be expected to contribute to the effective investigation of anti-competitive behaviour and merger cases in the EU.

<sup>271</sup> European Commission, *Competition*. Viewed at: [http://ec.europa.eu/competition/index\\_en.html](http://ec.europa.eu/competition/index_en.html).

<sup>272</sup> European Commission, *Cartel Statistics*. Viewed at: <http://ec.europa.eu/competition/cartels/statistics/statistics.pdf>.

<sup>273</sup> Discussed in paragraph 3.1.

**Table 3.24 Anti-trust cases, investigations, decisions, and fines**

	Note	2014	2015	2016	2017	2018
Commission investigations		23	43	18	29	31
National competition authority (NCA) investigations		173	136	127	122	134
Submitted by NCAs		101	94	77	80	67
A. 101	Anti-competitive agreements	66.34%	72.34%	83.12%	55%	68.66%
A. 102	Abuse of dominant position	29.70%	21.28%	12.99%	33.75%	23.88%
A. 101/102	Combined	3.96%	6.38%	3.90%	10%	5.97%
Not specified					1.25%	1.49%
<b>Cartels</b>						
<b>Commission</b>						
Cases decided	No	10	5	6	7	4
Fines imposed (not adjusted for Court judgements)	EUR million	1,689	366	3,561	1,946	801

Source: European Commission, *European Competition Network, Statistics*. Viewed at: <http://ec.europa.eu/competition/ecn/statistics.html>; and European Commission, *Cartel Statistics*.

3.252. During the review period, several decisions were adopted by the Commission concerning large firms in the digital services market, such as Google<sup>274</sup>, Amazon<sup>275</sup>, and Qualcomm.<sup>276</sup> The Commission also took action to ensure competition in gas supply markets, notably adopting a commitment decision involving the Russian provider Gazprom.<sup>277</sup> Gazprom's commitments include the removal of barriers to the free flow of gas in Central and Eastern Europe; the integration of gas markets in Central and Eastern Europe; ensuring competitive gas prices, especially in Bulgaria, Estonia, Latvia, Lithuania and Poland; and the removal of demands obtained by leveraging the market position.<sup>278</sup>

3.253. The CJEU delivered several judgements on antitrust law. In the case of *Intel vs Commission*, it set aside the decision of the General Court related to the rebate scheme of Intel, and referred it back to the General Court for further examination of the arguments of the company.<sup>279</sup> In addition, the CJEU clarified questions related to excessive pricing through a preliminary ruling. Thus, in the *Latvijas Autoru apvienība* case, the Court ruled that, in order to decide on whether prices are unfair, it is necessary to compare them to the prices in neighbouring member States, or in other member States after adjusting them in accordance to the purchasing parity index. The selection of such member States is to be based on objective criteria, and the comparison should be made on a consistent basis.<sup>280</sup>

<sup>274</sup> European Commission, *Antitrust: Commission fines Google EUR 2.42 billion for abusing dominance as search engine by giving illegal advantage to own comparison shopping service*. Viewed at: [http://europa.eu/rapid/press-release\\_MEMO-17-1785\\_en.htm](http://europa.eu/rapid/press-release_MEMO-17-1785_en.htm). The Commission also fined Google for illegal practices regarding Android mobile devices. In that case, the fine came to EUR 4.34 billion.

<sup>275</sup> European Commission, *Antitrust: Commission accepts commitments from Amazon on e-books*. Viewed at: [http://europa.eu/rapid/press-release\\_IP-17-1223\\_en.htm](http://europa.eu/rapid/press-release_IP-17-1223_en.htm).

<sup>276</sup> European Commission, *Antitrust: Commission fines Qualcomm EUR 997 million for abuse of dominant market position*. Viewed at: [http://europa.eu/rapid/press-release\\_IP-18-421\\_en.htm](http://europa.eu/rapid/press-release_IP-18-421_en.htm).

<sup>277</sup> Case AT.39816 – Upstream gas supplies in Central and Eastern Europe.

<sup>278</sup> In the case of breach of these obligations, the Commission can impose a fine of up to 10% of the entity's worldwide turnover. European Commission, *Antitrust: Commission imposes binding obligations on Gazprom to enable free flow of gas at competitive prices in Central and Eastern European gas markets*. Viewed at: [http://europa.eu/rapid/press-release\\_IP-18-3921\\_en.htm](http://europa.eu/rapid/press-release_IP-18-3921_en.htm).

<sup>279</sup> CJEU, The Court of Justice sets aside the judgment of the General Court which had upheld the fine of EUR 1.06 billion imposed on Intel by the Commission for abuse of a dominant position. Viewed at: <https://curia.europa.eu/jcms/upload/docs/application/pdf/2017-09/cp170090en.pdf>.

<sup>280</sup> C-177/16, Judgement of the Court (Second Chamber), 14 September 2017, ECLI:EU:C:2017:689. Viewed at: <http://curia.europa.eu/juris/document/document.jsf?text=&docid=194436&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1>.

3.254. In the area of collective damages, the Commission published a report on the implementation of the Commission Recommendation of 11 June 2013.<sup>281</sup> The Commission concluded that the Recommendation succeeded in starting a debate on the facilitation of access to justice and on the prevention of abusive litigation, even if the majority of the member States did not consider the Recommendation when adopting relevant legislation. To remedy the situation, the Commission intends to continue the promotion of the principles set out in the Recommendation, and to carry out further analysis of some specific aspects.

3.255. In 2017, the European Court of Auditors started a performance audit procedure, looking at whether the Commission has been effective in its role as the main enforcer of competition rules in the specific areas of antitrust and merger control in the EU. The audit was included as a priority in the Court of Auditor's annual programme for 2019.<sup>282</sup> A report is planned for publication by the end of 2019.

### **Leniency and whistleblowing: online submissions**

3.256. In order to support its enforcement action, the Commission continues to enhance the existing leniency programme, allowing cartel members to report the cartel to the Commission in exchange for immunity from (or reduction of) fines.<sup>283</sup> In order to make this process more efficient and rapid, the Commission launched the "eLeniency" tool.<sup>284</sup> This tool allows company representatives and their lawyers to submit online statements and submissions in the context of leniency applications, and to provide responses to requests for the provision of information without the need to travel to Brussels. eLeniency provides the same guarantees of confidentiality of information as the usual procedures (documents are not saved in the system, no trace of statements or other documents remains in the applicants' computer after formal submission, etc).<sup>285</sup> Moreover, the Commission prepared guidelines for eLeniency users, to facilitate the submission of documents online.<sup>286</sup>

3.257. Similarly, insider information on the existence of cartels or any other form of anti-competitive behaviour can be submitted online, and the anonymity of the person will be protected, as appropriate.<sup>287</sup>

### **3.3.4.2 Mergers and acquisitions**

3.258. Merger control is based on Council Regulation (EC) No. 139/2004 of 20 January 2004. The Commission Staff Working Document accompanying the report on Competition Policy 2017 confirms that, as a result of public consultations, the legislation in this area was deemed effective overall, although the Commission continues to reflect on whether potential improvements merit proposing any legislative or non-legislative changes to the EU Merger Regulation.<sup>288</sup>

3.259. Several important decisions on cases related to mergers were taken in 2017-18. For example, in 2017, the Commission cleared a merger between Dow and DuPont only after the companies agreed to divest a significant part of DuPont's pesticide business, including its R&D

<sup>281</sup> European Commission, *Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the implementation of the Commission Recommendation of 11 June 2013 on common principles for injunctive and compensatory collective redress mechanisms in the Member States concerning violations of rights granted under Union law*. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52018DC0040&from=EN>.

<sup>282</sup> European Court of Auditors, *2019 Work Programme*. Viewed at: [https://www.eca.europa.eu/Lists/ECADocuments/WP2019/WP2019\\_EN.pdf](https://www.eca.europa.eu/Lists/ECADocuments/WP2019/WP2019_EN.pdf).

<sup>283</sup> More details on the leniency policy can be found at: <http://ec.europa.eu/competition/cartels/leniency/leniency.html>.

<sup>284</sup> European Commission, *Antitrust: Commission launches new online tool for cartel leniency and settlements and non-cartel cooperation*. Viewed at: [https://europa.eu/rapid/press-release\\_IP-19-1594\\_en.htm](https://europa.eu/rapid/press-release_IP-19-1594_en.htm).

<sup>285</sup> eLeniency is available at: [eleniency.ec.europa.eu](http://eleniency.ec.europa.eu).

<sup>286</sup> European Commission, *Notice to eLeniency users*. Viewed at: [https://ec.europa.eu/competition/cartels/leniency/eleniency\\_guidance\\_document.pdf](https://ec.europa.eu/competition/cartels/leniency/eleniency_guidance_document.pdf).

<sup>287</sup> European Commission, *Cartels: Anonymous Whistleblower Tool*. Viewed at: <http://ec.europa.eu/competition/cartels/whistleblower/index.html>.

<sup>288</sup> European Commission, *Staff Working Document accompanying the document Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Report on Competition Policy 2017*. Viewed at: [https://ec.europa.eu/competition/publications/annual\\_report/2017/part2\\_en.pdf](https://ec.europa.eu/competition/publications/annual_report/2017/part2_en.pdf).

organization<sup>289</sup> In 2018, the Commission conditionally cleared Bayer's acquisition of Monsanto, with the condition that the companies would divest the relevant assets, including some of its R&D organization, which were ultimately sold to BASF.<sup>290</sup> The Commission also enforces compliance with the procedural aspects of merger control. Thus, it imposed a fine of EUR 110 million on Facebook for providing misleading information on its bid to acquire Whatsapp<sup>291</sup>, and a fine of EUR 124.5 million on Altice for gun-jumping conduct when it acquired PT Portugal.<sup>292</sup> Furthermore, in 2019, the Commission fined General Electric (GE) for providing incorrect information during the Commission's investigation of GE's planned acquisition of LM Wind, and it also fined Canon for partial early implementation of its acquisition of Toshiba Medical Systems Corporation.<sup>293</sup>

3.260. In early 2019, the Commission prohibited the merger of Siemens and Alstom. Based on an in-depth investigation, the Commission found that the merger would have reduced competition in some signalling markets and in very high-speed trains, depriving customers of choice of suppliers and products. No appropriate remedy had been proposed, so the proposed merger was blocked. As explained by Commissioner Vestager: "Siemens and Alstom are both champions in the rail industry. Without sufficient remedies, this merger would have resulted in higher prices for the signalling systems that keep passengers safe and for the next generations of very high-speed trains".<sup>294</sup>

3.261. The General Court, in turn, took several decisions related to merger cases. It annulled the Commission decision prohibiting the acquisition of TNT Express by UPS. This decision was confirmed by the CJEU in 2019.<sup>295</sup> The General Court overturned the Commission decision clearing Liberty Global's acquisition of Ziggo, subject to conditions, for failure to state reasons.<sup>296</sup> It dismissed the appeal against the Commission's decision to impose a fine on Marine Harvest for breach of the stand-still obligation.<sup>297</sup> In 2019, it also dismissed the appeal by KPN against a 2016 decision to conditionally clear the joint venture between Vodafone and Liberty Global in the Netherlands.<sup>298</sup> The CJEU issued a preliminary ruling answering the question posed by the Austrian Supreme Court, providing much-awaited clarification on the assessment of joint ventures.<sup>299</sup> The CJEU also issued a preliminary ruling in relation to the stand-still obligation, clarifying the notion of early implementation of a concentration.<sup>300</sup>

<sup>289</sup> Commission Decision of 27 March 2017 declaring a concentration compatible with the internal market and the functioning of the EEA Agreement (Case M.7932 – Dow/DuPont). Viewed at: [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.C\\_.2017.353.01.0009.01.ENG](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.C_.2017.353.01.0009.01.ENG).

<sup>290</sup> Commission Decision of 21 March 2018 declaring a concentration compatible with the internal market and the functioning of the EEA agreement (Case M.8084 – Bayer/Monsanto). Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52018M8084%2802%29>.

<sup>291</sup> Commission Decision of 18 May 2017 imposing fines under Article 14(1) of Council Regulation (EC) No. 139/2004 for the supply by an undertaking of incorrect or misleading information (Case No. M.8228 – Facebook/WhatsApp). Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52017M8228%2803%29>.

<sup>292</sup> Commission Decision of 24 April 2018, Case M.7993 – Altice/PT Portugal. Viewed at: [https://ec.europa.eu/competition/mergers/cases/decisions/m7993\\_849\\_3.pdf](https://ec.europa.eu/competition/mergers/cases/decisions/m7993_849_3.pdf).

<sup>293</sup> Commission Decision of 8 April 2019, Case M.8436 – General Electric Company/LM Wind Power Holding; and Commission Decision of 27 June 2019, Case M.8179 Canon/Toshiba Medical Systems Corporation.

<sup>294</sup> European Commission, *Mergers: Commission prohibits Siemens' proposed acquisition of Alstom*. Viewed at: [http://europa.eu/rapid/press-release\\_IP-19-881\\_en.htm](http://europa.eu/rapid/press-release_IP-19-881_en.htm).

<sup>295</sup> Judgement of the Court (First Chamber) of 16 January 2019, European Commission vs United Parcel Service, Inc, Case C-265/17 P, ECLI:EU:C:2019:23. Viewed at: <http://curia.europa.eu/juris/celex.jsf?celex=62017CJ0265&lang1=en&type=TEXT&ancre=>.

<sup>296</sup> Judgment of the General Court of 26 October 2017, KPN vs Commission, Case T-394/15. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62015TA0394&from=EN>.

<sup>297</sup> Judgment of the General Court of 26 October 2017, Marine Harvest vs Commission, Case T-704/14. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62014TJ0704&from=EN>.

<sup>298</sup> Judgement of the General Court of 23 May 2019, KPN vs Commission, Case T-370/17. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62017TJ0370&from=EN>.

<sup>299</sup> Judgement of the Court (Fifth Chamber) of 7 September 2017, Austria Asphalt GmbH & Co OG vs Bundeskartellanwalt, Case C-248/16, ECLI:EU:C:2017:643. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62016CJ0248&from=EN>.

<sup>300</sup> Judgement of the Court (Fifth Chamber) of 31 May 2018, Ernst & Young P/S vs Konkurrenserådet, Case C-633/16, ECLI:EU:C:2018:371. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62016CA0633&qid=1572866626325&from=EN>.



**Table 3.25 Merger notifications and decisions, 2015-18**

	2015	2016	2017	2018
Notified cases	337	362	380	414
Withdrawn	8	9	9	12
<b>Phase I decisions</b>				
Out of scope	1	1	0	0
Compatible	297	327	353	366
Compatible with remedies	13	19	18	17
<b>Phase II decisions</b>				
Compatible	1	1	0	4
Compatible with remedies	7	6	2	6
Prohibited	0	1	2	0

Source: DG Competition, *Merger Statistics*. Viewed at: <http://ec.europa.eu/competition/mergers/statistics.pdf>.

### 3.3.4.3 Sector inquiries and reports

3.262. Other important developments related to specific sector inquiries carried out by the Commission.<sup>301</sup> These inquiries form the basis for public reports, and help the Commission to decide whether formal investigation procedures should be launched.

3.263. During the period under review, the Commission finalized its inquiry into the e-commerce sector. The exercise was launched in 2015, with a view to investigating the barriers to online trade.<sup>302</sup> The final report of the inquiry was adopted by the Commission in May 2017, accompanied by a Staff Working Document detailing the findings of the report.<sup>303</sup> The final results of the sector inquiry highlighted, as major market trends, the increased use of online retail shops, together with (i) selective distribution systems<sup>304</sup>; and (ii) contractual restrictions to better control product distribution.<sup>305</sup> The report found that some of these practices may be justified, for example in order to improve the quality of product distribution; others may unduly prevent consumers from benefiting from greater product choice and lower prices in e-commerce and, therefore, warrant Commission action to ensure compliance with EU competition rules.<sup>306</sup>

3.264. One of the main findings in relation to digital content was the widespread use of geo-blocking, preventing online buyers from acquiring digital goods/services based on their geographical location (around 60% of questioned digital content providers were found to use geo-blocking). These practices are implemented through restrictions in the licences granted to users. The report stressed that licensing is essential for copyright holders and noted that the assessment of the consequences of licensing practices in each case needs to consider the specificities of the industry under consideration. To end the discriminatory practices hampering e-commerce and to enhance cross-border competition in online trade, the EU adopted a regulation addressing issues related to geo-blocking (Section 4.4.3.2)

3.265. Following up on a sector inquiry into the pharmaceutical sector of 2008, the Commission adopted annual reports on patent settlements between generic and originator companies, identifying

<sup>301</sup> European Commission, *Antitrust: Sector inquiries*. Viewed at: [http://ec.europa.eu/competition/antitrust/sector\\_inquiries.html](http://ec.europa.eu/competition/antitrust/sector_inquiries.html).

<sup>302</sup> European Commission, *Antitrust: Commission launches e-commerce sector inquiry*. Viewed at: [http://europa.eu/rapid/press-release\\_IP-15-4921\\_en.htm](http://europa.eu/rapid/press-release_IP-15-4921_en.htm).

<sup>303</sup> European Commission, *Commission Staff Working Document accompanying the document Report from the Commission to the Council and the European Parliament: Final report on the E-commerce Sector Inquiry*. Viewed at: [https://eur-lex.europa.eu/resource.html?uri=cellar:9d1137d3-3570-11e7-a08e-01aa75ed71a1.0001.02/DOC\\_1&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:9d1137d3-3570-11e7-a08e-01aa75ed71a1.0001.02/DOC_1&format=PDF).

<sup>304</sup> Where the products can only be sold by pre-selected authorized sellers, which allows manufacturers to better control their distribution networks, in particular in terms of the quality of distribution but also of price.

<sup>305</sup> Depending on the business model and strategy, such restrictions may take various forms, such as pricing restrictions, marketplace (platform) bans, restrictions on the use of price comparison tools, and exclusion of pure online players from distribution networks.

<sup>306</sup> European Commission, *Sector inquiry into e-commerce*. Viewed at: [http://ec.europa.eu/competition/antitrust/sector\\_inquiries\\_e\\_commerce.html#findings](http://ec.europa.eu/competition/antitrust/sector_inquiries_e_commerce.html#findings).

concerns related to potential delays in generic market entry to the detriment of consumers.<sup>307</sup> The last such annual report, for the period January-December 2016, noted that, in the future, the Commission may decide to continue the monitoring exercise in order to further examine the development of the foregoing trends.<sup>308</sup>

3.266. In addition to these annual reports, the Commission is continuing its comprehensive examination of the pharmaceutical sector, and recently published a report on competition enforcement in that sector.<sup>309</sup> It reported about 29 antitrust decisions against pharmaceutical companies adopted by competition authorities of member States, resulting in fines of over EUR 1 billion. In 2009-17, the Commission reviewed around 80 merger cases, with concerns raised in 19 of those. Some landmark cases tackled issues related to access to markets of generic and more affordable medicines, for example, in Italy (*Aspen*), the United Kingdom (*Paroxetine*, and *Pfizer/Flynn*), Denmark (*CD Pharma*), and by the Commission itself (*Lundbeck*, *Fentanyl* and *Servier*).<sup>310</sup> The Commission concluded that competition law enforcement contributes to ensuring access to affordable medicines, and should be based on a solid regulatory and legislative basis.

3.267. The Commission published several other reports relating to competition policy issues in different sectors (Table 3.26). During the period under review the following reports were published:

**Table 3.26 Summary table of other reports relating to competition policy issues**

Report	Note
EU loan syndication and its impact on competition in credit markets	The report finds several competition risks in the loan syndication area in different stages of the process, such as the competitive bidding process for appointing individual banks to the lead banking group; the use of debt advisors which are also involved in the syndicated loan; coordination by lenders on the sale of the loan on the secondary market. It also lays down some important safeguards to ensure a competitive outcome of the loan syndication process (promotion of unbundled price competition, avoidance of unwarranted information exchange, etc.).
Competition policy for the digital era	Digital markets require competition law enforcement to protect consumers. According to the report, special attention should be paid to "killer acquisitions", where big tech companies acquire fast-growing start-ups. The report also discusses the issues related to data. Data portability and interoperability are important tools that allow consumers to switch platforms easily. In addition, market places act as regulators, laying down rules for their users' interaction, and competition law should enforce them to ensure a level playing field for the participants.
Study on Producer Organisations (PO) and their activities in the olive oil, beef and veal and arable crops sectors	The study was based on a survey of 203 POs and 23 associations of producers (APOs). One of the main findings was that farmers set up POs to strengthen their position in the market, to have better access to training, and to increase their bargaining power. There are some barriers to setting up a PO, such as a lack of support from the government and from sector organizations, and a lack of good examples of successful cooperation within the sector.

<sup>307</sup> Pharmaceuticals. *Pharmaceuticals - Sector inquiry and follow-up*. Viewed at: <http://ec.europa.eu/competition/sectors/pharmaceuticals/inquiry/index.html>.

<sup>308</sup> European Commission, *8<sup>th</sup> Report on the Monitoring of Patent Settlements (period: January-December 2016)*. Viewed at: [http://ec.europa.eu/competition/sectors/pharmaceuticals/inquiry/patent\\_settlements\\_report8\\_en.pdf](http://ec.europa.eu/competition/sectors/pharmaceuticals/inquiry/patent_settlements_report8_en.pdf).

<sup>309</sup> European Commission, *Competition Enforcement in the Pharmaceutical Sector (2009-2017): European competition authorities working together for affordable and innovative medicines*. Viewed at: <https://ec.europa.eu/competition/publications/reports/kd0718081enn.pdf>.

<sup>310</sup> European Commission, *Competition Enforcement in the Pharmaceutical Sector (2009-2017): European competition authorities working together for affordable and innovative medicines*. Viewed at: <https://ec.europa.eu/competition/publications/reports/kd0718081enn.pdf>.

Report	Note
Feasibility study on the microeconomic impact of enforcement of competition policies on innovation <sup>311</sup>	The study had several goals: (i) conduct a literature review; (ii) develop a methodology; (iii) collect data on R&D spending, patents and product characteristics; and (iv) analyse the collected data. The study concentrated on the consequences of the 2012 consolidation of the Hard Disc Drives market for the innovation. Seagate/Samsung and Western Digital/HGST mergers were chosen as case studies. In the case of Seagate, innovation was increased; while in the case of Western Digital, no change was observed in R&D spending, or product characteristics, but there was an increase in patenting activity.
Economic impact of competition policy enforcement on the functioning of telecoms markets in the EU	The study gathered information on all competition policy decisions of the Commission and national competition authorities of the past 15 years related to telecom markets. The analysis measured the correlation between the decisions taken and the functioning of the market, through observing prices, penetration, coverage and investment. Specifically, three decisions affected the better functioning of the fixed and mobile markets.
Improving Monitoring Indicators System to Support DG Competition's Future Policy Assessments	The aim of the study was to map and categorize the indicators relevant to DG Comp policy interventions. In addition, the study looked at different indicators used by other international organizations and national contracting authorities. It is recommended that DG Comp systematically collect data, set up a database of indicators, plan for stakeholder interviews and surveys, and improve the consistency of the defined general and specific objectives.
Zero-rating practices in broadband markets	The study had three main targets, starting with the understanding of how widespread the practice of zero-rating is in Europe. In addition, it contained a review of available legal and economic literature, and developed a framework for the assessment of the effect of zero-rating on competition and efficiency.

Source: WTO Secretariat.

### 3.3.4.4 International cooperation

3.268. The EU cooperates with the competition authorities of different countries at both bilateral and multilateral levels. At the bilateral level, the EU recently signed an agreement with the competition authority of Mexico on the exchange of information related to competition legislation and the sharing of non-confidential information on cases under investigation.<sup>312</sup> The EU and Japan also started negotiating a review of their EU-Japan Agreement on cooperation on anti-competitive activities, with a view to enhancing the exchange of information between their respective anti-competitive authorities.<sup>313</sup> Moreover, in April 2019, the Terms of Reference of the EU-China Competition Policy Dialogue was approved.<sup>314</sup> At the multilateral level, the EU is actively cooperating with the OECD, the International Competition Network (ICN), UNCTAD, etc.

3.269. The Commission published a notice to mitigate the risk of uncertainty in competition policy enforcement and cooperation relating to the withdrawal of the United Kingdom from the EU.<sup>315</sup> The notice points out that businesses incorporated, or having headquarters, in a third country are not exempt from the application of EU competition law; when it comes to antitrust; what matters is whether the anti-competitive conduct is implemented in, or has an effect on, the Single Market. The applicability of EU merger control rules depends on whether the jurisdictional criteria of the EU Merger Regulation 139/2004 are fulfilled.

<sup>311</sup> Viewed at: <http://ec.europa.eu/competition/publications/reports/kd0417860enn.pdf>.

<sup>312</sup> European Commission, *Competition: Commission agrees framework for dialogue on competition policy issues with Mexico*. Viewed at: [http://europa.eu/rapid/press-release\\_IP-18-4042\\_en.htm](http://europa.eu/rapid/press-release_IP-18-4042_en.htm).

<sup>313</sup> European Commission, *Competition: EU and Japan start negotiations for a 2nd generation cooperation agreement in the field of competition*. Viewed at: <http://ec.europa.eu/competition/international/news.html>.

<sup>314</sup> Terms of Reference of the EU-China Competition Policy Dialogue between on the one side the Directorate-General for Competition of the European Commission and on the other side the State Administration for Market Regulation of the People's Republic of China, 2019. Viewed at: [http://ec.europa.eu/competition/international/bilateral/agreement\\_tor\\_china\\_2019.pdf](http://ec.europa.eu/competition/international/bilateral/agreement_tor_china_2019.pdf).

<sup>315</sup> European Commission Directorate General for Competition, *Notice to Stakeholders: Withdrawal of the United Kingdom and the EU competition law*. Viewed at: [https://ec.europa.eu/info/sites/info/files/eu-competition-law\\_en.pdf](https://ec.europa.eu/info/sites/info/files/eu-competition-law_en.pdf).

### 3.3.5 State trading, state-owned enterprises, and privatization

#### State trading

3.270. During the period under review, the EU notified three state trading enterprises (STEs) to the WTO in accordance with Article XVII of GATT 1994 and the Understanding on the Interpretation of Article XVII (Table 3.27).

**Table 3.27 New and full notifications on STEs**

Enterprise	EU member State	Description of products affected	Reason and purpose
Alko Oy (Alko Inc.)	Finland	Alcoholic beverages (spirituous drinks, wines, and strong beer over 5.5%)	The exclusive retail sale of alcoholic beverages over 5.5% alcohol. The aim of the monopoly is to limit alcohol consumption and alcohol-related damage; Alko Inc. is supervised by the Ministry of Social Affairs and Health.
British Wool Marketing Board (BWMB)	United Kingdom	Fleece wool (CN code: 5101110000)	The monopoly on the collection of fleece wool from producers. BWMB aims to ensure a steady supply of quality wool.
Systembolaget AB	Sweden	Alcoholic beverages (spirituous drinks, wines, and strong beer)	The exclusive retail sale of alcoholic beverages. The retail monopoly aims to reduce the total alcohol consumption by limiting availability.

Source: WTO documents G/STR/N/16/EU/Add.1, 21 April 2017; and G/STR/N/17/EU, 12 July 2018.

3.271. Article 37 of the TFEU ensures that state monopolies provide non-discriminatory treatment when operating commercially. It specifies that there will be no discrimination on goods imported or exported between member States, if a State, either directly or indirectly, supervises, determines or appreciably influences the intra-EU trade. As noted in the previous Review, these provisions apply to the EU internal market but not to external trade.<sup>316</sup> General EU rules (e.g. competition, freedom of establishment and non-discrimination) apply to state monopolies.

#### State-owned enterprises

3.272. State-owned enterprises (SOEs) continued to play an important role in the EU economy in terms of revenue, value added, and employment, although their importance varies from one member State to another. According to a 2018 report by the European Commission<sup>317</sup>, EU member States owned about EUR 16.5 trillion of public assets in 2015, mostly in services and public utilities (i.e. water, electricity, energy, and transports) and in financial institutions, employing more than 4 million people.<sup>318</sup> At the individual country level, in absolute terms, the number of SOEs covered in the report ranged from 35 or below (in Cyprus and Malta) to over 3,000 (in Germany, Italy, Bulgaria, and Poland) in 2015.<sup>319</sup>

3.273. The EU does not have a legal definition of SOEs, but several articles of the TFEU refer to "public undertakings". Article 345 is neutral on the issue of ownership (including ownership of public undertakings), stating that "The Treaties shall in no way prejudice the rules in Member States governing the system of property ownership". However, Article 106 states that general EU rules are applicable to SOEs, including rules on non-discrimination and competition policy. The Commission

<sup>316</sup> WTO document WT/TPR/S/357/Rev.1, 13 October 2017.

<sup>317</sup> European Commission. *Public Assets: What's at Stake? An Analysis of Public Assets & their Management in the European Union*. Viewed at: [https://ec.europa.eu/info/sites/info/files/economy-finance/dp089\\_en\\_public\\_assets.pdf](https://ec.europa.eu/info/sites/info/files/economy-finance/dp089_en_public_assets.pdf).

<sup>318</sup> The study is based on more than 37,000 firms (registered) registered companies in the EU-28, where one or more public sector entities (central or local government, or social security funds) own a direct or indirect stake. The detailed methodological notes of the study can be viewed at: [https://ec.europa.eu/info/sites/info/files/economy-finance/dg\\_ecfin\\_am\\_final\\_report\\_pillar\\_1\\_methodological\\_notes\\_0.pdf](https://ec.europa.eu/info/sites/info/files/economy-finance/dg_ecfin_am_final_report_pillar_1_methodological_notes_0.pdf).

<sup>319</sup> European Commission, *Study on State asset management in the EU: Final study report for Pillar 1 - EU Summary Report*. Viewed at: [https://ec.europa.eu/info/sites/info/files/economy-finance/dg\\_ecfin\\_am\\_final\\_report\\_pillar\\_1\\_eu28\\_summary\\_report.pdf](https://ec.europa.eu/info/sites/info/files/economy-finance/dg_ecfin_am_final_report_pillar_1_eu28_summary_report.pdf).

ensures the application of the provisions of this Article and addresses appropriate directives or decisions to member States. With respect to public undertakings, under Commission Directive No. 2006/111/EC, member States are required to keep and, upon request of the Commission, to report to the Commission information relating to financial relations between public authorities and public undertakings, to ensure the transparency of public funds made available to state-owned companies.<sup>320</sup> Commission Directive No. 2006/111/EC does not oblige member States to provide a list of public undertakings. Moreover, as many member States are also members of the Organisation for Economic Co-operation and Development (OECD), in principle, they follow the non-binding Guidelines on Corporate Governance of SOEs.<sup>321</sup>

3.274. Since there is no specific EU legislation to regulate SOEs at the EU level, each member State has its own legal provisions and retains competence for SOEs. Table A3.4 presents an overview of governments as stakeholders in enterprises, as reported by individual member States. SOE definitions are quite heterogeneous among EU member States. For instance, some member States report SOEs with only majority ownership, whereas others include all shareholding or investments of the State. Moreover, regarding responsible government institutions for SOEs, some member States designate a specific agency or company (owned by the State) to manage SOEs on behalf of the State. The level of detailed information on SOEs also varies greatly across member States, as noted in the previous Review.<sup>322</sup>

3.275. While various forms of state ownership remain in the EU, member States are required to publish information on the participation of the general government in the capital of public and private corporations in respect of economically significant amounts. In this regard, Council Directive No. 2011/85/EU<sup>323</sup> sets out requirements for budgetary frameworks of the member States, in order to reinforce EU economic governance. Such data requirements, which are comparable across member States, provide more transparency on the extent and type of public-sector ownership, public management of assets, and overall fiscal position, in order to prevent and mitigate fiscal risks. The data on contingent liabilities<sup>324</sup> shows countries with significant amounts of liabilities, such as Greece (119.6% of GDP), the Netherlands (102.7%), Germany (91.7%), Luxembourg (82.5%), and Cyprus (74.9%). The Slovak Republic, Romania, Lithuania, the Czech Republic, and Croatia have small amounts of liabilities. Gross liabilities of public corporations are much higher in countries where governments control financial institutions (Chart 3.7).

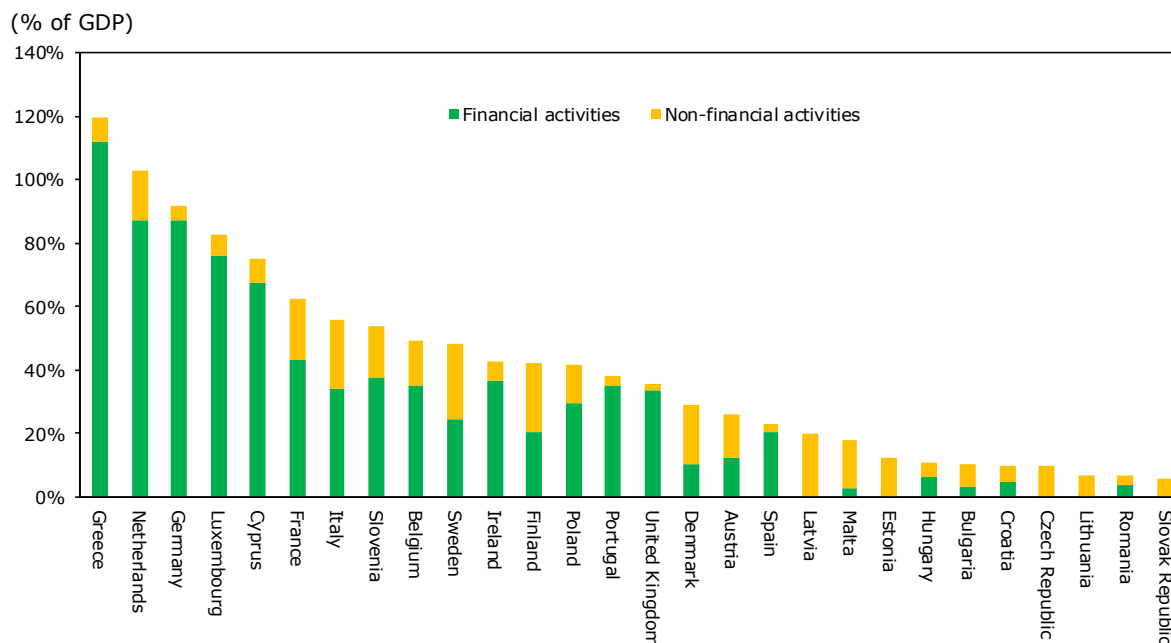
<sup>320</sup> Commission Directive No. 2006/111/EC of 16 November 2006 on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32006L0111&from=EN>. For the purpose of this Directive, a "public undertaking" is defined as "any undertaking over which the public authorities may exercise directly or indirectly a dominant influence by virtue of their ownership of it, their financial participation therein, or the rules which govern it". The Directive applies to public undertakings with a turnover of more than EUR 40 million (or a balance sheet total of EUR 800 million for public credit institutions). For these, member States must keep information on financial relations, and submit it to the Commission upon request. Reporting of more detailed information is compulsory for manufacturing public undertakings with a turnover of more than EUR 250 million. The Directive requires member States to ensure the separation of accounts for undertakings that enjoy special or exclusive rights granted by a member State, or undertakings entrusted with the operation of a service of general economic interest that also carry out other activities.

<sup>321</sup> OECD (2015), *OECD Guidelines on Corporate Governance of State-Owned Enterprises*, 2015 Edition, OECD Publishing, Paris. The Guidelines provide recommendations with respect to governance of individual SOEs, as well as state-ownership practices and the regulatory and legal environment in which SOEs operate.

<sup>322</sup> WTO document WT/TPR/S/357/Rev.1, para. 3.229, 13 October 2017.

<sup>323</sup> Council Directive No. 2011/85/EU of 8 November 2011 on requirements for budgetary frameworks of the Member States. Viewed at: <https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX:32011L0085>.

<sup>324</sup> The Directive requires member States to publish relevant information on contingent liabilities with potentially large impacts on public budgets. The liabilities are called "contingent" in the sense that they are, by nature, only potential and not actual liabilities, and can occur as actual government liabilities only if certain specific conditions prevail.

**Chart 3.7 Liabilities of public corporations, by controlling government level, 2017**

Note: 2016 data used for Austria, France, and Germany.

Source: Eurostat. Viewed at: [http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=gov\\_cl\\_liab&lang=en](http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=gov_cl_liab&lang=en).

### Privatization

3.276. As per Article 345 of the TFEU, privatization is under the exclusive competence of the individual member States. Privatization of state enterprises or assets is subject to each member States' privatization laws, if they exist. There is no specific EU legislation or EU policy with respect to privatization, but member States undergoing certain reforms often publish privatization plans (e.g. procedure of privatization, and time-frame). General EU rules (e.g. on non-discrimination, freedom of establishment, and competition) apply if a member State decides to privatize a certain company.

3.277. There are a number of national motives for privatization by EU member States. According to a 2018 OECD report, these relate to, *inter alia*, fiscal concerns, improvement of market structures or economic efficiency, or public interest.<sup>325</sup> For example, in the case of the Czech Republic, privatization is motivated by two considerations, namely reducing public debt and influencing market conditions in the sectors where SOEs operate.<sup>326</sup> Greece has continued to implement the privatization programme agreed within the framework of the European Stability Mechanism Programme since August 2015.<sup>327</sup>

3.278. Privatization deals continued in the EU. According to the 2015/16 Privatization Barometer Report<sup>328</sup>, the EU reached the highest level of privatization revenues in 2015, with EUR 80 billion

<sup>325</sup> OECD, *Privatisation and the Broadening of Ownership of State-Owned Enterprises*. Viewed at: <https://www.oecd.org/daf/ca/Privatisation-and-the-Broadening-of-Ownership-of-SOEs-Stocktaking-of-National-Practices.pdf>. The report covers 13 EU member States, namely the Czech Republic, Denmark, Estonia, France, Germany, Hungary, Italy, Latvia, Lithuania, the Netherlands, Poland, Sweden, and the United Kingdom.

<sup>326</sup> OECD (2018), *Privatisation and the Broadening of Ownership of State-Owned Enterprises*, pp. 16. Viewed at: <https://www.oecd.org/daf/ca/Privatisation-and-the-Broadening-of-Ownership-of-SOEs-Stocktaking-of-National-Practices.pdf>.

<sup>327</sup> European Council and Council of the EU, *Greece: the third economic adjustment programme*. Viewed at: <https://www.consilium.europa.eu/en/policies/financial-assistance-eurozone-members/greece-programme/>; and European Commission, *Financial Assistance to Greece*. Viewed at: [https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/eu-financial-assistance/which-eu-countries-have-received-assistance/financial-assistance-greece\\_en](https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/eu-financial-assistance/which-eu-countries-have-received-assistance/financial-assistance-greece_en).

<sup>328</sup> Privatization Barometer, *The PB Report 2015/2016*. Viewed at [http://www.privatizationbarometer.com/PUB/NL/5/9/PB\\_AR2015-2016.pdf](http://www.privatizationbarometer.com/PUB/NL/5/9/PB_AR2015-2016.pdf).

since 2000, mainly due to divestment of financial sector assets that had come under state ownership during the financial crisis. However, in 2016, the revenues fell to EUR 34 billion. Among the EU member States, in 2015-16, the United Kingdom was the leading country (in terms of number of transactions and value), followed by Italy and France.

### 3.3.6 Government procurement

3.279. In 2015, total general government public procurement expenditure on works, goods and services in the EU (excluding utilities) amounted to EUR 2,015.3 billion (above and below public procurement thresholds), or about 14% of GDP, with some EUR 350 billion published on the Tenders Electronic Daily (TED) supplement to the Official Journal of the EU. Including defence and utilities, the total value of government procurement in the EU and published on TED is about EUR 450 billion i.e. 3.1% of the EU's GDP. Almost half of the EU's Structural and Investment Funds (ESI), worth over EUR 450 billion, are spent via public contracts for the period 2014-20.<sup>329</sup>

3.280. The EU public procurement framework, designed to implement the EU's obligations under the revised Government Procurement Agreement (GPA) (see below), is based upon certain general principles derived from the TFEU and comprises three directives<sup>330</sup> that, together, are known as the "2014 Directives": the Classical Directive<sup>331</sup>; the Concessions Directive<sup>332</sup>, and the Utilities Directive (water, energy, transport, and postal services).<sup>333</sup>

3.281. The 2014 Directives set out the rules on the award of contracts. While most rules in public procurement have been harmonized at EU level, the public procurement directives allow for flexibility in implementation at the national level. The CJEU delivers regular judgements in procurement cases, which are binding on EU member States. The core principles of the 2014 Directives are transparency, equal treatment, non-discrimination, and open competition.

3.282. The public procurement directives provide, for public buyers in the EU, to accord to the works, supplies, services and economic operators of the signatories to international agreements (such as the GPA and RTAs with procurement chapters), treatment that is no less favourable than the treatment accorded to the works, supplies, services and economic operators of the EU, insofar as these are covered by these agreements.<sup>334</sup> The 2014 Directives are designed to achieve a procurement market that is competitive, open, and well regulated.

3.283. Previous reports outlined the changes introduced in the 2014 Directives<sup>335</sup>, which entered into force on 17 April 2014 with 24 months for transposition into domestic law by the member States, and 30 months for the provisions on e-procurement. As at end-September 2019, only one member State had yet to complete the transposition process for the 2014/23/EU Concessions Directive and the 2014/25/EU Utilities Directive.<sup>336</sup>

3.284. In October 2017, the Commission's public procurement strategy was adopted, with the aim of further improving EU public procurement practices by working with public authorities and other

<sup>329</sup> European Commission, *Making Public Procurement work in and for Europe*. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2017%3A572%3AFIN>. The ESI is composed of five funds: the European Regional Development Fund (ERDF), the Cohesion Fund (CF), the European Social Fund (ESF), the European Agricultural Fund for Rural Development (EAFRD), and the European Maritime and Fisheries Fund (EMFF).

<sup>330</sup> Other public procurement related EU Directives: Directive 2009/81/EC on defence and sensitive security procurement; the Remedies Directive for the utilities sector (Directive 92/13/EEC) and the Remedies Directive for the public sector (Directive 89/665/EEC), as modified by Directive 2007/66/EC; and the EU Directive 2014/55/EU on electronic invoicing in public procurement.

<sup>331</sup> Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement, repealing Directive 2004/18/EC.

<sup>332</sup> Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts.

<sup>333</sup> Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors, repealing Directive 2004/17/EC.

<sup>334</sup> See in this regard Article 25 of Directive 2014/24/EU, Article 43 of Directive 2014/25/EU.

<sup>335</sup> WTO documents WT/TPR/S/317/Rev.1, 21 October 2015, Section 3.3.2; and WT/TPR/S/357/Rev.1, 13 October 2017, Section 3.3.7.

<sup>336</sup> European Commission, *Public procurement: Commission refers 4 Member States to Court of Justice and opens a new case*. Viewed at: [http://europa.eu/rapid/press-release\\_IP-17-4771\\_en.htm?locale=en](http://europa.eu/rapid/press-release_IP-17-4771_en.htm?locale=en).

stakeholders. The strategy includes three initiatives: a mechanism for large infrastructure projects to provide clarity and guidance to public authorities on public procurement; a recommendation to professionalize public buyers<sup>337</sup>; and a consultation on draft guidance on public procurement of innovation was launched.<sup>338</sup> These initiatives are discussed further below.

3.285. According to the Commission, the creation of a single EU procurement market has helped to improve and integrate further procurement markets of member States, as reflected in the fact that cross-border procurement (direct and indirect) has increased in recent years, to around 23% of the total value of procurement in the EU.<sup>339</sup> Some 55% of procurement procedures use lowest price as the only award criterion for public contracts, which may indicate that public buyers are not yet paying enough attention to quality, sustainability and innovation. Similarly, only 11% of procedures are carried out by cooperative procurement, which may result in lost opportunities to benefit from economies of scale and exchange of know-how. Overall, it is estimated that efficiency gains of 10% could save EUR 200 billion per year, without cutting the level of service offered.<sup>340</sup>

3.286. Also, according to the Commission, innovation procurement is hampered by various barriers. One way of improving the situation could consist of a wider use of the innovation partnerships procedure. Awareness of this type of procedure is increasing and, to date, more than 200 innovation partnerships have been published in the TED.

3.287. The 2014 Directives mandate a gradual transition to e-procurement. The electronic publication of procurement notices ("eNotification") and electronic access to tender documents ("eAccess") are mandatory since April 2016. The electronic submission of bids ("eSubmission") is mandatory since October 2018. Besides fulfilling these obligations, member States are using this opportunity to further enhance their eTendering systems, with the final aim of digitalizing the whole public procurement life-cycle.

3.288. Through Directive No. 2014/55/EU on electronic invoicing in public procurement, the Commission adopted a new European Standard which enables harmonization and interoperability at European level. Since 17 April 2019, all public administrations in Europe conducting public procurement must accept electronic invoices sent by their suppliers, which comply with this standard. In certain member States, a derogation for their sub-central authorities is in force until April 2020.<sup>341</sup>

3.289. The Commission is currently taking steps to promote public procurement data-driven policies in member States. One such project is the European Commission award for better governance through procurement digitalization, with three winners in 2018 (Italy for its contract register, Portugal for the BASE portal, and Estonia for its public procurement register).<sup>342</sup>

3.290. To harmonize procedures and processes, the Commission introduced the European Single Procurement Document (ESPD), which is a self-declaration form simplifying the participation of

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<sup>337</sup> The recommendation encourages member States to take steps to ensure buyers have the necessary skills, knowledge and integrity. The Commission will also facilitate the exchange of good practice and innovative approaches.

<sup>338</sup> European Commission, *Making Public Procurement work in and for Europe*. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2017%3A572%3AFIN>.

<sup>339</sup> Direct cross-border procurement accounted for 3.5% of the total value of contracts in 2009-15, while indirect cross-border procurement (through foreign subsidiaries) accounted for over 20%. These figures do not consider the increasing international trade within supply chains. European Commission, *Making Public Procurement work in and for Europe*. Viewed at: <https://ec.europa.eu/transparency/regdoc/rep/1/2017/EN/COM-2017-572-F1-EN-MAIN-PART-1.PDF>.

<sup>340</sup> European Commission, *Making Public Procurement work in and for Europe*. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2017%3A572%3AFIN>.

<sup>341</sup> According to Recital 35 of Directive 2014/55/EU, "this Directive is without prejudice to the right of the sender of the invoice to choose between submitting the invoice in accordance with the European standard on electronic invoicing, in accordance with national or other technical standards, or in paper format".

<sup>342</sup> European Commission, *European Commission award for better governance through procurement digitalisation*. Viewed at: [https://ec.europa.eu/growth/content/european-commission-award-better-governance-through-procurement-digitalisation\\_en](https://ec.europa.eu/growth/content/european-commission-award-better-governance-through-procurement-digitalisation_en).



suppliers in procurement procedures.<sup>343</sup> The next step is ESPD integration with national databases or eTendering platforms.<sup>344</sup>

3.291. The Commission is also working on a new implementation regulation on public procurement standard forms ("eForms")<sup>345</sup>, a major update to the public procurement standard forms. The forms define how EU countries publish data on individual procurement contracts. This update will make it easier for companies to find contracts, increase transparency for citizens, and improve governments' ability to make data-driven decisions on spending. The eForms can be easily mapped to other international standards, such as the Open Contracting Data Standard (OCDS).<sup>346</sup>

3.292. The EU is funding various projects related to digital technologies, to enhance procurement, including the Digital Whistleblower project and others.<sup>347</sup> Risk assessment and good governance are to be improved through the comprehensive procurement contract registers. The Commission's multi-stakeholder expert group on e-procurement (EXEP) published a report containing several recommendations on the creation of contract registers, concentrating on the structure, implementation, and management of contract registers and the importance of their integration in the TED.<sup>348</sup>

3.293. To address some of the procurement challenges, the new EU strategy focuses on six policy priorities (Box 3.3).

### Box 3.3 Government procurement strategic priorities

#### Ensuring wider uptake of strategic public procurement

- establish a voluntary *ex-ante* assessment mechanism for large infrastructure projects;
- update guidance on green and social procurement, and provide guidance on innovation procurement; and
- exchange best practices regarding strategic procurement, including in key sectors (construction, healthcare, and information technology (IT)).

#### Professionalizing public buyers

- adopt a recommendation on the professionalization of public buyers;
- develop a European competence framework for public procurement, with the essential skills and competences procurers need;
- create an e-competence centre, as a central information portal, and an e-library of best practice on procurement; and
- establish an EU-wide network of National Innovation Procurement Centres.

#### Improving access to procurement markets

- further improve access to non-EU procurement markets through trade agreements;
- rapid adoption of an international procurement instrument (IPI) (see below);
- strengthen the remedies system by further networking of first instance review bodies and guidance notices on remedies; and
- boost SME participation via business intermediaries and innovation brokers (currently, SMEs win only 45% of the value of public contracts).

#### Increasing transparency, integrity and better data

- issue new procurement standard forms to improve the collection of data;
- promote the establishment of publicly accessible contract registers; and
- provide guidelines on practical application of new integrity provisions and on exclusion grounds relating to collusion, and set up a database on irregularities.

<sup>343</sup> European Commission, *Establishing the standard form for the European Single Procurement Document*. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016R0007>.

<sup>344</sup> European Commission, *European Single Procurement Document and e-Certis*. Viewed at: [https://ec.europa.eu/growth/single-market/public-procurement/e-procurement/espd\\_en](https://ec.europa.eu/growth/single-market/public-procurement/e-procurement/espd_en).

<sup>345</sup> European Commission, *Standard forms for procurement notices*. Viewed at: [https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2019-797630\\_en](https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2019-797630_en).

<sup>346</sup> Open Contracting Data Standard. *Open Contracting Data Standard: Documentation*. Viewed at: <http://standard.open-contracting.org/latest/en/#>.

<sup>347</sup> For an overview of all the different projects related to e-procurement in the EU, see European Commission. *Other Initiatives*. Viewed at: [https://ec.europa.eu/growth/single-market/public-procurement/e-procurement/projects\\_en](https://ec.europa.eu/growth/single-market/public-procurement/e-procurement/projects_en).

<sup>348</sup> European Commission, *Contract registers - EXEP subgroup report*. Viewed at: <https://ec.europa.eu/docsroom/documents/26421>.

**Boosting the digital transformation of procurement**

- extend the scope of the e-Certis tool and further improve IT systems; and
- support the implementation of the ESPD, the "once-only" principle and electronic invoicing in the member States.

**Cooperating to procure together**

- promote joint cross-border public procurement, including innovation by large buyers; and
- launch pilot training on "SME-friendly Policies in Central Purchasing Bodies".

Source: European Commission, *Making Public Procurement work in and for Europe*, Strasbourg, 3 October 2017. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2017%3A572%3AFIN>.

3.294. After the adoption of three new directives regulating public procurement transactions, the EU is currently concentrating on the implementation of the adopted rules. As shown in Box 3.3, soft tools, such as the recommendation on the professionalization of public buyers and the exchange of best practices, are the focus of policymaking in public procurement.

3.295. The voluntary *ex-ante* assessment mechanism for large infrastructure projects was introduced in October 2017.<sup>349</sup> Currently, the mechanism has three elements: a helpdesk, a notification mechanism, and the possibility to exchange information (forum). The helpdesk is available for projects with a total estimated value of at least EUR 250 million, and the notification mechanism is for projects with a total estimated value exceeding EUR 500 million.<sup>350</sup>

3.296. The Commission recommendation on the professionalization of public procurement was adopted in October 2017<sup>351</sup> as part of a package also containing a staff working document including a toolbox of best practices.<sup>352</sup> The toolbox was digitalized in the form of an e-library, providing for the cross-fertilization of best practices in different aspects of public procurement.<sup>353</sup> Another support tool for public buyers is the e-Competence Centre. It provides information on, *inter alia*, green, innovative procurement, and on specific tools for procurement in the IT, healthcare and construction areas.<sup>354</sup>

3.297. The Commission also adopted Guidance on Innovation Procurement.<sup>355</sup> The guidance focuses on the creation of policy framework for innovation procurement. It walks through the different stages of such procurement, and contains references to examples of real procurement cases highlighting the positive outcome.

3.298. All procurement carried out in the EU above the specified thresholds must comply with the requirements of the EU directives on procurement that implement corresponding EU obligations under the GPA. The applicable thresholds were updated with effect from 1 January 2018 (Table 3.28).<sup>356</sup>

<sup>349</sup> European Commission, *Helping investment through a voluntary ex-ante assessment of the procurement aspects for large infrastructure projects*. Viewed at: <https://ec.europa.eu/growth/tools-databases/pp-large-projects/>.

<sup>350</sup> According to footnotes 20 and 25 of COM(2017) 573 "A Member State can request the Commission to use the mechanism for any lower value infrastructure projects it considers to be of high importance for itself and/or the EU as a whole, for instance, for projects of common interest (PCI) in the field of the Trans-European Networks. Following reception of a request, the Commission will assess its admissibility, and inform the Member State on the conditions for its acceptance".

<sup>351</sup> Commission Recommendation, *Professionalisation of public procurement — Building an architecture for the professionalisation of public procurement*. Viewed at: <https://op.europa.eu/en/publication-detail/-/publication/94421013-ab20-11e7-837e-01aa75ed71a1/language-en>.

<sup>352</sup> European Commission, *professionalisation of public procurement - Building an architecture for the professionalisation of public procurement*. Viewed at: <https://ec.europa.eu/transparency/regdoc/rep/10102/2017/EN/SWD-2017-327-F1-EN-MAIN-PART-1.PDF>.

<sup>353</sup> European Commission, *E-library of public procurement good practices*. Viewed at: [https://ec.europa.eu/regional\\_policy/en/policy/how/improving-investment/public-procurement/e-library](https://ec.europa.eu/regional_policy/en/policy/how/improving-investment/public-procurement/e-library).

<sup>354</sup> European Commission, *Support tools for public buyers: e-Competence Centre*. Viewed at: [https://ec.europa.eu/info/policies/public-procurement/support-tools-public-buyers\\_en](https://ec.europa.eu/info/policies/public-procurement/support-tools-public-buyers_en).

<sup>355</sup> European Commission, *Guidance on Innovation Procurement*. Viewed at: <https://ec.europa.eu/transparency/regdoc/rep/3/2018/EN/C-2018-3051-F1-EN-MAIN-PART-1.PDF>.

<sup>356</sup> See also the corresponding notification of thresholds in national currencies contained in WTO document GPA/THR/EU/1, 17 April 2018.

**Table 3.28 Public procurement thresholds from 1 January 2018**

(EUR)

Directive	Type	Threshold	
<b>Concessions Directive</b>			
Directive 2014/23/EU and Commission Delegated Regulation (EU) 2015/2172 of 24 November 2015 amending Directive 2014/23/EU of the European Parliament and of the Council in respect of the application thresholds for the procedures for the award of contracts			
	All works or services concessions	5,548,000	
<b>Classical Directive (contracts for public works, public supply and public service)</b>			
Directive 2014/24/EU and Commission Delegated Regulation (EU) 2015/2170 of 24 November 2015 amending Directive 2014/24/EU of the European Parliament and of the Council in respect of the application thresholds for the procedures for the award of contracts			
Central government authorities	Works contracts, subsidized works contracts	5,548,000	
	All contracts concerning social and other specific services listed in Annex XIV	750,000	
	All subsidized services	221,000	
	All other service contracts and all design contests	144,000	
	All supplies contracts awarded by contracting authorities not operating in the field of defence	144,000	
	Supplies contracts awarded by contracting authorities operating in the field of defence	Annex III products	144,000
		Other products	221,000
Sub-central contracting authorities	Works contracts, subsidized works contracts	5,548,000	
	All services concerning social and other specific services listed in Annex XIV	750,000	
	All other service contracts, all design contests, subsidized service contracts, all supplies contracts	221,000	
<b>Utilities (Sectors) Directive</b>			
Directive 2014/25/EU and Commission Delegated Regulation (EU) 2015/2172 of 24 November 2015 amending Directive 2014/23/EU of the European Parliament and of the Council in respect of the application thresholds for the procedures for the award of contracts			
	Works contracts	5,548,000	
	All services concerning social and other specific services listed in Annex XVII	1,000,000	
	All other services contracts, all design contests, all supplies contracts	443,000	

Source: European Commission, *Thresholds*. Viewed at: [https://ec.europa.eu/growth/single-market/public-procurement/rules-implementation/thresholds\\_en](https://ec.europa.eu/growth/single-market/public-procurement/rules-implementation/thresholds_en).

3.299. Public procurement above the thresholds must be published on the TED through a standard contract notice. A contracting authority may also publish a prior information notice (PIN) to announce a possible upcoming tender. Local and regional authorities may use the PIN as a call for tenders. For public procurement below the thresholds, national rules apply, and these national rules must respect the general principles of EU law, including the TFEU principles of non-discrimination, equal treatment, transparency, mutual recognition, and proportionality.

3.300. Public authorities can choose among different procedures, including: open procedure, when all eligible economic operators may submit a tender; restricted procedure, when the contracting authority invites tenders from a selected group of those that respond to the call for competition; competitive procedure with negotiation, which is similar to a restricted procedure followed by negotiations with the selected economic operators; and competitive dialogue, when the contracting authority enters into a dialogue with a selection of the suppliers that responded to the call for competition in order to find a suitable product or service to meet its needs. Tenders are then invited from a selection of bidders, and from innovation partnerships under which a selection is made from suppliers that responded to the call for competition followed by negotiations for search and innovation projects aimed at meeting the needs identified by the contracting authority that cannot be met by existing solutions.<sup>357</sup>

<sup>357</sup> Directive No. 2014/23/EU.

3.301. In 2018, the amount of total general government expenditure on works, goods, and services (excluding utilities) in the member States varied from as low as 7.4% of GDP in Ireland and 9.3% in Lithuania, to 19.3% in the Netherlands and 17.7% in Finland (Table 3.29).

**Table 3.29 Estimated value of public procurement by general government, 2016-18**

(EUR billion)

	2016		2017		2018	
	Estimated total value excluding utilities <sup>a</sup>	% of GDP	Estimated total value excluding utilities <sup>a</sup>	% of GDP	Estimated total value excluding utilities <sup>a</sup>	% of GDP
EU-28	2,034.5	13.6	2,077.9	13.5	2,154.7	13.6
Austria	47.3	13.2	49.0	13.2	50.5	13.1
Belgium	61.1	14.2	63.0	14.1	66.5	14.5
Bulgaria	4.7	9.6	4.9	9.4	5.6	10.0
Croatia	6.5	14.0	6.4	13.1	7.1	13.8
Cyprus	1.1	6.0	1.3	6.3	2.0	9.6
Czech Republic	22.0	12.5	23.5	12.3	27.7	13.3
Denmark	39.8	14.1	39.8	13.6	40.7	13.7
Estonia	2.9	13.3	3.4	14.2	3.5	13.6
Finland	38.7	17.8	39.9	17.7	41.6	17.7
France	323.6	14.5	332.0	14.5	338.4	14.4
Germany	495.1	15.8	514.3	15.8	534.9	16.0
Greece	19.2	10.9	21.4	11.9	17.9	9.7
Hungary	14.5	12.6	17.9	14.2	20.0	15.0
Ireland	20.5	7.6	21.4	7.2	24.0	7.4
Italy	179.1	10.6	181.6	10.5	184.3	10.4
Latvia	2.7	10.7	3.1	11.5	3.6	12.4
Lithuania	3.7	9.5	4.0	9.4	4.2	9.3
Luxembourg	6.5	11.8	6.9	12.2	7.2	12.0
Malta	1.0	9.2	1.1	9.4	1.3	10.4
Netherlands	140.3	19.8	143.8	19.5	149.6	19.3
Poland	45.8	10.7	52.4	11.2	60.5	12.2
Portugal	16.6	8.9	17.6	9.0	18.5	9.1
Romania	17.2	10.1	16.0	8.5	17.5	8.6
Slovak Republic	11.5	14.2	11.9	14.1	12.8	14.3
Slovenia	4.8	11.8	5.0	11.5	5.5	12.0
Spain	109.4	9.8	112.6	9.7	118.3	9.8
Sweden	76.3	16.4	77.7	16.2	77.5	16.5
United Kingdom	322.6	13.2	306.0	12.9	313.3	13.0

a Calculations based on the methodology applied in Government revenue, expenditure and main aggregates [gov\_10a\_main]; it is the sum of intermediate consumption (P2), Gross fixed capital formation (P51G), and social transfers in kind purchased market production, payable (D632PAY) for the general government sector (referred to DG Grow (2016), Public Procurement Indicators 2015, DG GROW G4 – Innovative and e-Procurement). These estimates include expenditure on items which are exempt under the EU directives, such as contracts below the thresholds. They also include expenditure which may not be classified as public procurement, for example, the costs of health care and medical products reimbursed through statutory health insurance funds or by government.

Source: Eurostat, Government finance and EDP statistics (gov\_10a\_main). Viewed at: <https://ec.europa.eu/eurostat/web/government-finance-statistics/data/database>; and [National Accounts \(including GDP\). Viewed at: https://ec.europa.eu/eurostat/web/national-accounts/data/database](https://ec.europa.eu/eurostat/web/national-accounts/data/database). Each public procurement procedure is subject to minimum time-limits for the submission of tenders. For example, after the publication of a contract notice under the open procedure, the minimum time-limit is 35 days, but this can be reduced to 15 days if a PIN was published.

3.302. The methods for calculating the estimated value of a procurement are set out in the Directives<sup>358</sup>, and include aggregation rules intended to prevent a single public procurement

<sup>358</sup> Directive 2014/24/EU, Article 5; Directive 2014/23/EU, Article 8; and Directive 2014/25/EU, Article 16.

requirement being subdivided with the intention or effect of reducing the value below the threshold amounts. For example:

- for framework agreements, and dynamic purchasing systems, the value should be the maximum estimated value, net of VAT, of all contracts envisaged for the total term;
- for innovation partnerships, the value should be the maximum estimated value, net of VAT, of research and development activities to take place during all stages of the envisaged partnership, as well as of the supplies, services or works to be developed and procured by the end of the partnership; and
- for concessions, the value should be the total turnover of the concessionaire generated over the duration of the contract, net of VAT, as estimated by the contracting authority or entity, in consideration for the works and services, object of the concession, as well as for supplies incidental to such works and services.

3.303. The contracting authority may divide a procurement into lots but, if the total value of these lots is greater than the threshold, then EU-level rules will apply to the awarding of each lot, except for small lots, for which the amounts are below the following *de minimis* levels:

- EUR 80,000 for supplies or services; or
- EUR 1 million for works; and
- provided the aggregate value of the lots to be excluded from aggregation is no more than 20% of the total value.

3.304. A simplified regime applies for contracts with an estimated value of less than EUR 750,000 for services listed in Annex XIV of the Classical Directive (social, health, cultural, and assimilated services; legal services; and hotel and restaurant services, and catering and canteen services) with no procedural rules apart from the requirements for advance publication, equal treatment of bidders, and the announcement of the results.

3.305. In terms of contract award notices, in 2018, 48% of the calls for competition were for services, 17% for works, and 35% for goods. In terms of procedures, in 2018, 86.7% of the calls for competition were under open procedure, 9.4% were under negotiated procedures with competition, and 3.5% were restricted procedures.<sup>359</sup>

3.306. The Remedies Directives<sup>360</sup>, as modified by Directive No. 2007/66/EC<sup>361</sup>, provide for legal remedies in cases of breaches of EU Public Procurement Directives. These remedies include a "standstill period", which requires contracting authorities to provide at least ten days' suspension after tender awards and before the public contract can be signed, and more stringent rules against illegal direct awards of public contracts so that they may be rendered ineffective by national courts.

3.307. In January 2017, the European Commission reported to the European Parliament and the Council on the effectiveness of Directives 89/665/EEC and 92/13/EEC as amended by Directive 2007/66/EC.<sup>362</sup> According to the report, the Remedies Directives largely meet the objectives they were adopted for. In particular, they provide for an effective and rapid remedy while treating all suppliers equally.

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<sup>359</sup> The information provided is based on internal EU calculations.

<sup>360</sup> Council Directive No. 92/13/EEC of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors; and Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts.

<sup>361</sup> Council Directives 89/665/EEC and 92/13/EEC regarding improving the effectiveness of review procedures concerning the award of public contracts, amended by Directives 2007/66/EC and 2014/23/EU.

<sup>362</sup> European Commission, on the effectiveness of Directive 89/665/EEC and Directive 92/13/EEC, as modified by Directive 2007/66/EC, concerning Review procedures in the area of Public Procurement. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017DC0028&from=EN>.

3.308. As advised in the report, a network of first instance review bodies was set up to enable discussion of the ways such bodies can be made more efficient.<sup>363</sup> The first meeting of the network took place in March 2017. As at April 2019, the network had had six meetings, discussing the digitalization of the process, exchange of relevant information, and collection of data with regards to the functioning of national remedy systems.<sup>364</sup>

3.309. On 29 January 2016, the Commission presented a revised proposal for an International Procurement Instrument (IPI).<sup>365</sup> The genesis of the IPI goes back to 2012, and is rooted in a longstanding EU concern about international imbalance in public procurement markets.<sup>366</sup> According to the Commission, the IPI would promote open access to public procurement markets around the world. It would allow the Commission to initiate public investigations in cases of alleged discrimination against EU companies in procurement markets. According to the Commission, the existing EU commitments, including in the GPA and bilateral trade agreements, would remain unaffected by the IPI. Recently, the European Council called for resuming discussions on the IPI.<sup>367</sup>

### **The GPA**

3.310. The EU is party to the revised WTO plurilateral GPA, adopted through Council Decision 2014/115/EU<sup>368</sup>, and its member States are covered by the revised GPA. As indicated in the previous Review, under the revised GPA, the EU extended its commitments to provide for further market access opportunities for suppliers offering goods and services originating in GPA parties' economies. New sectors and contracting authorities/entities were included in the EU schedules, for example, the European External Action Service at EU level and several central governments contracting authorities and sub-central entities of member States.<sup>369</sup>

3.311. In the context of its withdrawal from the EU, the United Kingdom applied for accession to the GPA (in its own right), through a communication from the EU on 1 June 2018.<sup>370</sup> Its initial market access offer and its replies to the Checklist of Issues were submitted by the EU on the same day.<sup>371</sup> A preliminary discussion on this accession was held at the Committee's informal session of 27 June 2018. During that discussion, the United Kingdom expressed its strong desire to continue to participate in the GPA, without interruption, following its withdrawal from the EU, and expressed the hope that its accession process could be concluded swiftly.<sup>372</sup> On 27 February 2019, the Committee adopted a decision setting out the terms of accession of the United Kingdom to the GPA in its own right.<sup>373</sup> According to the Committee's decision (addendum) of 26 June 2019, the period

<sup>363</sup> European Commission, *New EU network of review bodies to make public procurement remedies more efficient*. Viewed at: [https://ec.europa.eu/growth/content/new-eu-network-review-bodies-make-public-procurement-remedies-more-efficient-0\\_en](https://ec.europa.eu/growth/content/new-eu-network-review-bodies-make-public-procurement-remedies-more-efficient-0_en).

<sup>364</sup> European Commission, *EU network of review bodies helps guarantee effective enforcement of public procurement rules*. Viewed at: [https://ec.europa.eu/growth/content/EU-network-review-bodies-helps-guarantee-effective-enforcement-public-procurement-rules\\_en](https://ec.europa.eu/growth/content/EU-network-review-bodies-helps-guarantee-effective-enforcement-public-procurement-rules_en).

<sup>365</sup> Amended proposal for a regulation of the European Parliament and of the Council on the access of third-country goods and services to the Union's internal market in public procurement and procedures supporting negotiations on access of Union goods and services to the public procurement markets of third countries. European Commission, *Access of third-country goods and services to the Union's internal market in public procurement and procedures supporting negotiations on access of Union goods and services to the public procurement markets of third countries*. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016PC0034&from=EN>.

<sup>366</sup> Proposal for a regulation of the European Parliament and of the Council on the access of third-country goods and services to the Union's internal market in public procurement and procedures supporting negotiations on access of Union goods and services to the public procurement markets of third countries. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52012PC0124&from=EN>.

<sup>367</sup> European Parliament, *Key issues in the European Council: State of play in June 2019*, p. 52. Viewed at: [http://www.europarl.europa.eu/RegData/etudes/STUD/2019/631754/EPRS\\_STU\(2019\)631754\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2019/631754/EPRS_STU(2019)631754_EN.pdf).

<sup>368</sup> Council Decision 2014/115/EU: Council Decision of 2 December 2013 on the conclusion of the Protocol Amending the Agreement on Government Procurement.

<sup>369</sup> WTO document WT/TPR/S/357/Rev.1, 13 October 2017, Section 3.3.7.2.

<sup>370</sup> WTO document GPA/146, 5 June 2018.

<sup>371</sup> WTO documents GPA/ACC/GBR/1, 5 June 2018; GPA/ACC/GBR/1/Rev.1, 14 June 2018; and GPA/ACC/GBR/2, 5 June 2018.

<sup>372</sup> WTO document GPA/W/347, 9 November 2018.

<sup>373</sup> WTO document GPA/CD/2, 28 February 2019.

for submission of the United Kingdom's Instrument of Accession was extended by six months, until 27 February 2020, unless further extended by the Committee<sup>374</sup>.

### **Government procurement in RTAs**

3.312. During the period under review, the EU has been active in concluding/implementing RTAs containing procurement chapters building or modelled on the provisions of the revised GPA. For example, the CETA contains a separate chapter on public procurement (Chapter 19). As both the EU and Canada are members to the GPA, the public procurement chapter builds on the GPA, including the structure of the Annexes. The coverage is enhanced in comparison with the GPA, with lower thresholds, fewer exceptions and more entities covered.

3.313. Similarly, the chapter on procurement of the EPA of the EU with Japan incorporates the GPA as part of the Agreement, and its norms apply *mutatis mutandis*.<sup>375</sup> It goes beyond the text of the GPA, in that it puts in place further transparency mechanisms, refers more explicitly to environmental considerations, and sets additional norms on review mechanisms. The parties also agreed to additional coverage. For instance, Japan opened its procurement market of the railway sector, hospitals, academic institutions and electricity distributors to EU economic operators.<sup>376</sup> At the local and regional level, Japan extended the coverage to 54 "core cities" with more than 300,000 inhabitants.<sup>377</sup> The EU, in turn, offered Japan partial access to the procurement market of transportation equipment in cities, such as trains for metro systems and facilities for overland railways. Coverage was also enhanced through lowering the thresholds (on the part of Japan).<sup>378</sup>

3.314. The EU-Singapore FTA, signed in October 2018 and for which the European Parliament gave its consent on 13 February 2019, contains procurement provisions based on the GPA (Chapter 9).<sup>379</sup> If the GPA is amended or superseded by another agreement, the EU-Singapore FTA procurement chapter should be amended accordingly (Article 9.20). As is the case with the trade agreements with Japan and Canada, the FTA with Singapore enhances the coverage provided by the parties under the GPA. Thus, the EU listed additional central governmental entities. Singapore included additional entities such as the Energy Market Authority, and subjected more services contracts to transparency and non-discrimination requirements. The applicable thresholds were also lowered.<sup>380</sup>

3.315. Another GPA party with whom the EU has deepened its trade relations is Armenia. The Comprehensive and Enhanced Partnership Agreement (CEPA) was signed in November 2017. Article 269 reaffirms the obligations and rights the EU and Armenia acquired under the GPA, including the Annexes to Appendix I. The CEPA takes a step forward by covering concession contracts, and regulating in detail the procurement review process based on the provisions of the Remedies Directive.

3.316. The EU is also including procurement chapters based on the GPA in its trade agreements with countries that are not currently GPA parties. One such country is Kazakhstan, with which the EU signed the Enhanced Partnership and Cooperation Agreement (EPCA) in December 2015, which is currently under ratification by member States.<sup>381</sup> The procurement chapter of the EPCA replicates the GPA. However, there is limited coverage of entities and higher thresholds than the ones usually seen in the GPA Parties' Annexes to Appendix I.

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<sup>374</sup> WTO document GPA/CD/2/Add.1, 26 June 2019.

<sup>375</sup> Article 10.1 of the EU-Japan EPA.

<sup>376</sup> Annex 10 to the EU-Japan EPA.

<sup>377</sup> European Commission, *Key elements of the EU-Japan Economic Partnership Agreement*. Viewed at: [http://europa.eu/rapid/press-release\\_MEMO-18-6784\\_en.htm](http://europa.eu/rapid/press-release_MEMO-18-6784_en.htm).

<sup>378</sup> European Commission, *An introduction to the EU-Japan Economic Partnership Agreement: Public Procurement*. Viewed at: [http://trade.ec.europa.eu/doclib/docs/2017/july/tradoc\\_155719.pdf](http://trade.ec.europa.eu/doclib/docs/2017/july/tradoc_155719.pdf).

<sup>379</sup> European Commission, *Annex to the proposal for a Council Decision on the conclusion of the Free Trade Agreement between the European Union and the Republic of Singapore*. Viewed at: <http://data.consilium.europa.eu/doc/document/ST-7967-2018-INIT/en/pdf>.

<sup>380</sup> European Commission, *European Union–Singapore: Trade and Investment Agreements*. Viewed at: [http://trade.ec.europa.eu/doclib/docs/2019/february/tradoc\\_157684.pdf](http://trade.ec.europa.eu/doclib/docs/2019/february/tradoc_157684.pdf).

<sup>381</sup> EU member States are now ratifying the agreement. European Commission, *Enhanced Partnership and Cooperation Agreement between the EU and its member States, of the one part, and the Republic of Kazakhstan, of the other part*. European Commission. Viewed at: <http://ec.europa.eu/trade/policy/countries-and-regions/countries/kazakhstan/>.

3.317. On 30 June 2019, the EU and Viet Nam signed a trade agreement and an investment protection agreement. The trade agreement will open up public procurement opportunities for both sides through GPA-based rules on public procurement and market access obligations concerning entities at central and sub-central level and entities operating in utilities sectors.

3.318. The EU previously signed "second generation" Association Agreements and Deep and Comprehensive Trade Agreements (AAs/DCFTAs)<sup>382</sup> with Moldova, Georgia and Ukraine, containing similar chapters on procurement.<sup>383</sup> These three countries are under obligations to gradually approximate their procurement legislation with the EU *acquis*, in accordance with the milestones and deadlines laid down in the roadmaps prepared by the implementing country.<sup>384</sup> This process of gradual approximation with these requirements is currently ongoing.

### 3.3.7 Intellectual property rights

3.319. In a world of increasingly knowledge-based economies, in which companies heavily rely on innovation and creativity, as well as quality, the adequate protection and enforcement of intellectual property rights (IPRs) continue to play a key role for EU business to maintain its competitiveness. The economic importance of IPRs, both in terms of employment and contribution to GDP, was confirmed by a joint report by the European Patent Office (EPO) and the European Union Intellectual Property Office (EUIPO), released in September 2019.<sup>385</sup> An overview of its main findings is provided in Table 3.30. It shows that an important share of total GDP, amounting to 44.8% on average during the period 2014-16, was generated by IPR-intensive industries. The trademark-intensive industry made by far the biggest contribution both to employment and the EU's GDP, followed by the design- and patent-intensive industries.

**Table 3.30 Contribution of IP industries to employment, GDP, trade, and average wage premium of IP-intensive industries, 2014-16 average**

IPR	Share of total direct employment (%)	Share of total direct and indirect employment (%)	Share of total GDP (%)	Average wage premium compared to non-IPR-intensive industries (%)	Exports (EUR million, 2016)	Imports (EUR million, 2016)
All IPR industries	29.2	38.9	44.8	47	2,122,465	1,940,510
Copyright-intensive industries	5.5	7.1	6.9	59	294,856	202,738
Patent-intensive industries	10.9	16.1	16.1	72	1,438,117	1,307,850
Plant variety-intensive industries	0.8	1.2	1.2	n.a.	7,552	3,885
Trade mark-intensive industries	21.7	30.2	37.3	48	1,275,472	1,261,002

<sup>382</sup> For more details on the three DCFTAs mentioned, see Wolczuk, K. (2017), *Demystifying the Association Agreements: Review of Trilogy of Handbooks on the EU's Association Agreements and Deep and Comprehensive Free Trade Areas (DCFTAs) with Georgia, Moldova and Ukraine*, 27 June 2017.

<sup>383</sup> European Parliamentary Research Service (2018), *Association Agreements between the EU and Moldova, Georgia and Ukraine: European Implementation Assessment*, June 2018, pg. 8.

<sup>384</sup> Arts. 145 and 146 of the EU-Georgia DCFTA; Arts. 272 and 273 of the EU-Moldova DCFTA; and Arts. 152 and 153 of the EU-Ukraine DCFTA.

<sup>385</sup> EPO/EUIPO, *IPR-intensive industries and economic performance in the European Union - Industry-Level Analysis Report*, 3<sup>rd</sup> edition. Viewed at: [https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/IPContributionStudy/IPR-intensive\\_industries\\_and\\_economicin\\_EU/WEB\\_IPR\\_intensive\\_Report\\_2019.pdf](https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/IPContributionStudy/IPR-intensive_industries_and_economicin_EU/WEB_IPR_intensive_Report_2019.pdf).



IPR	Share of total direct employment (%)	Share of total direct and indirect employment (%)	Share of total GDP (%)	Average wage premium compared to non-IPR-intensive industries (%)	Exports (EUR million, 2016)	Imports (EUR million, 2016)
GI-intensive industries	n.a.	0.2	0.1	29	12,923	1,335
Design-intensive industries	14.2	20.9	16.2	40	1,261,774	1,194,885

n.a. Not applicable.

Source: IPR-intensive industries and economic performance in the European Union - Industry-Level Analysis Report, joint EPO/EUIPO study, 3<sup>rd</sup> edition, September 2019.

3.320. During the review period, a number of legislative measures were put in place that implement the initiatives announced in the Commission's comprehensive IP strategy, dating from 2011<sup>386</sup>, and the 2015 Commission's Digital Market<sup>387</sup> and Single Market Strategies.<sup>388</sup> These include the adoption of a copyright reform package, with a focus on copyright-protected goods in the online environment. The framework putting into place the unitary patent is pending ratification by relevant member States. Meanwhile, work progressed on the review of the IPR enforcement regime, again with a focus on the need to adapt the regime to respond to challenges in the online environment. These measures and initiatives are discussed in more detail in the relevant sections below.

3.321. The IPR regime is governed by both EU legislation and legislation in member States. Based on Article 118 of the TFEU, the EU put in place an extensive body of IPR legislation. Table A3.5 provides an overview of the principal legislative measures adopted by the EU and their notification to the WTO. Member States' legislation implements and complements, where appropriate, EU legislation and commitments under international agreements.

3.322. During the review period, the EU contributed constructively to discussions and work in the TRIPS Council.<sup>389</sup> It submitted comprehensive reports on its technical cooperation activities and on incentives provided to the private sector to transfer technology to LDCs, for consideration by other WTO Members.<sup>390</sup>

3.323. The EU is an observer to the World Intellectual Property Organization (WIPO), and its member States are also WIPO member States. Table 3.31 provides an overview of the status of the EU's participation in individual WIPO treaties, notably its recent acceptance of the Marrakesh Treaty.<sup>391</sup> The EU and its member States<sup>392</sup> are also contracting parties to the International Union for the Protection of New Varieties of Plants (UPOV). EU accession to the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications, proposed by the Commission in 2018, is expected to take place in 2019.

<sup>386</sup> European Commission, *Communication on a Single Market for IPRs*. Viewed at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52011DC0287&from=EN>. See also the 2013 TPR Report, WT/TPR/S/284/Rev.2, 28 November 2013, para. 3.241.

<sup>387</sup> European Commission, *A Digital Single Market Strategy for Europe*. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1447773803386&uri=CELEX:52015DC0192>.

<sup>388</sup> European Commission, *Upgrading the Single Market: more opportunities for people and business*. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52015DC0550>.

<sup>389</sup> WTO documents IP/C/W/652, 8 February 2019 and IP/C/W/653, 23 May 2019, as well as addenda thereto on public-private collaborations in innovation; IP/C/W/650, 31 May 2019; IP/C/W/648, 19 October 2018; IP/C/W/642, 25 February 2018; and IP/C/W/641, 22 February 2018 on the societal value of IP in the new economy; and IP/C/W/638, 16 February 2018; IP/C/W/635, 9 October 2017; and IP/C/W/629, 24 May 2017 on inclusive innovation and MSME growth.

<sup>390</sup> WTO documents IP/C/W/647/Add.6, 21 January 2019 and IP/C/W/632/Add.7, 22 February 2018 for notifications on technical assistance activities; and IP/C/W/646/Add.7, 29 January 2019, and IP/C/W/631/Add.7, 16 February 2018 for notifications on technology transfer.

<sup>391</sup> Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled. Viewed at: <https://www.wipo.int/treaties/en/ip/marrakesh/>.

<sup>392</sup> Except Cyprus, Greece, Luxembourg and Malta.

**Table 3.31 Status of participation in WIPO conventions and treaties**

Convention/treaty	Signed	Accepted	In force
Beijing Treaty on Audiovisual Performances	19 June 2013		
Marrakesh Treaty	30 April 2014	1 October 2018	1 January 2019
Trademark Law Treaty	30 June 1995		
WIPO Copyright Treaty	20 December 1996	14 December 2009	14 March 2010
WIPO Performances and Phonograms Treaty	20 December 1996	14 December 2009	14 March 2010
Hague Agreement		24 September 2007	1 January 2008
Madrid Protocol		1 July 2004	1 October 2004

Source: WTO Secretariat.

### 3.3.7.1 Copyright and related rights

3.324. For the EU economy, but also for its international competitiveness and cultural diversity, copyright and neighbouring rights continue to play a key role, in particular as regards the digital economy. Copyright-intensive industries accounted directly for 11.8 million jobs, or 5.5% of employment, in the EU during the period 2014-16, and indirectly for 15.3 million jobs, or 7.1% of total employment. Their share of total GDP during this period was 6.9%. The value of exports generated by copyright-intensive industries in 2016 was almost EUR 295 billion (Table 3.30).

3.325. Digital technologies are having a strong impact on the development of the copyright-intensive industry. More than half of the respondents to a survey carried out by the Commission from February to March 2019 use the Internet to download or stream music, films or TV series. Music is the most popular type of content accessed online or downloaded, with 59% of respondents indicating they had done so within the year preceding the survey (i.e. between early 2018 and early 2019), and 38% regularly. The proportion of respondents who say they download or stream music regularly grew by four percentage points since the previous survey on this subject in January 2015.<sup>393</sup> Overall, in 2018, paid streaming in Europe rose by 29.2%, while physical revenues fell by 19.4% and downloads by 24.3%.<sup>394</sup>

3.326. The EU's legal framework (*acquis*) for copyright and neighbouring rights is shaped by a set of directives (to be) implemented by its member States (Table A3.5). The overarching objective of approximating the standards of protection is to create a sound basis for the free movement of protected creative works and services, offering access to these works within the internal market.

3.327. In the period under review, the EU adopted the following legislative measures: (i) the Directive on copyright in the Digital Single Market; (ii) the Directive on television and radio programmes; (iii) the Regulation on cross-border portability of online subscriptions; and (iv) a Directive and a Regulation on the implementation of the Marrakesh Treaty. Member States are due to implement the first two Directives by June 2021. The deadline for them to transpose the Directive implementing the Marrakesh Treaty into national law was 11 October 2018.

3.328. The Directive on copyright in the Digital Single Market<sup>395</sup> is designed to further harmonize copyright and related rights in the EU, in particular with regard to digital and cross-border uses of protected content. It lays down exceptions and limitations to copyright and related rights to allow, with appropriate safeguards, text and data mining, in particular for scientific purposes<sup>396</sup>, and to facilitate digital and cross-border teaching activities<sup>397</sup>, and the preservation and dissemination of European cultural heritage.<sup>398</sup>

<sup>393</sup> European Commission, *Flash Eurobarometer 477a Report - Accessing content online and cross-border portability of online content services*. Viewed at: <https://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/survey/getsurveydetail/instruments/flash/surveyky/2221>.

<sup>394</sup> IFPI, *Global Music Report 2019*. Viewed at: <https://www.ifpi.org/recording-industry-in-numbers.php>.

<sup>395</sup> Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L0790&from=EN>.

<sup>396</sup> Arts. 3 and 4 of Directive (EU) 2019/790.

<sup>397</sup> Art. 5 of Directive (EU) 2019/790.

<sup>398</sup> Arts. 6 and 8(2) of Directive (EU) 2019/790.

3.329. The Directive furthermore contains measures to improve licensing practices, and ensure wider access to content, in particular as regards out-of-commerce works and works of visual art upon expiry of the original term of protection. For example, it requires member States to allow collective management organizations to conclude non-exclusive licences with cultural heritage institutions for non-commercial purposes for use throughout the EU. It introduces, subject to safeguards, collective licensing with an extended effect to include works by authors not having mandated collective management organizations to represent them. It seeks to enhance access to, and availability of, audiovisual works on video-on-demand platforms by requiring the establishment of impartial bodies or the appointment of mediators to assist parties facing difficulties in concluding licensing agreements.

3.330. Importantly, the Directive introduces new measures to achieve a well-functioning marketplace for copyright. In that context, it protects the rights of publishers of press publications regarding the online use of their publications by information society service providers (as opposed to non-commercial uses of them by individual users, hyperlinking, and use of individual words or very short extracts).

3.331. It also addresses the use of protected content by online service providers such as YouTube, Twitter, etc. Notably, under Article 17 of the Directive, online content-sharing service providers are held responsible for the sharing by users of copyright-protected materials with the public, and are obliged to seek relevant authorizations from right-holders. These authorizations then also cover non-commercial users. In the event of unauthorized dissemination, service providers are exempted from liability if they demonstrate that they have made the best effort to obtain authorization from the right-holder; and to make unavailable relevant works based on information provided by the right-holder and/or removed infringing content (including future uploads) after receiving a notice from the right-holder to this end. Less stringent requirements are placed on newly-established (less than three years of provision of services) providers with a turnover below EUR 10 million. Rather than a general monitoring obligation, requests for information by right-holders, and complaint and redress mechanisms for users, need to be established by online service providers. Exceptions and limitations, such as for use in the context of quotation, criticism, or review; and for the purpose of caricature, parody or pastiche, are expressly upheld.

3.332. Finally, the rights of authors and performers, in particular to appropriate and proportionate remuneration, are reaffirmed and protected through requirements for transparency and contract adjustment mechanisms, alternative dispute resolution, and rights of revocation in the event of lack of use.

3.333. The Directive on television and radio programmes<sup>399</sup> aims to make it easier to license television and radio programmes protected under copyright, thus contributing to their dissemination across the EU. This is achieved through: the facilitated clearance of copyright and related rights of radio and certain TV content; the establishment of the country of origin principle (so that copyright clearance is only required in the broadcaster's country of principal establishment); and the extension of mandatory collective management to all types of retransmission. As a result, EU citizens are likely to have a wider choice of TV and radio programmes through retransmission of content online. As highlighted in the joint statement of the Vice-President for the Digital Single Market and the Commissioner of the Digital Economy and Society, "[t]he new rules will be particularly relevant for the 41% of Europeans who watch TV online but also for the linguistic minorities, as well as the 20 million EU citizens who are living abroad in another EU country".<sup>400</sup>

3.334. The EU introduced rules on cross-border portability of online content subscriptions.<sup>401</sup> Since 1 April 2018, service providers are prohibited from imposing additional charges on the use of the

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<sup>399</sup> Directive (EU) 2019/789 of the European Parliament and of the Council of 17 April 2019 laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes, and amending Council Directive 93/83/EEC. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L0789&from=EN>.

<sup>400</sup> European Commission, *Commission welcomes European Parliament's vote on new rules facilitating access to online TV and radio content across borders*. Viewed at: [http://europa.eu/rapid/press-release\\_STATEMENT-19-1888\\_en.htm](http://europa.eu/rapid/press-release_STATEMENT-19-1888_en.htm).

<sup>401</sup> Regulation (EU) 2017/1128 of the European Parliament and of the Council of 14 June 2017 on cross-border portability of online content services in the internal market. Viewed at: [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2017.168.01.0001.01.ENG](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2017.168.01.0001.01.ENG).

services if the user is temporarily outside of the member State of his/her residence, meaning that citizens can travel with their subscriptions, such as HBO, Amazon Prime, Spotify, etc. The adoption of the Regulation was preceded by a survey, according to which one in every three European citizens wanted online portability of subscriptions.<sup>402</sup> The European Parliament, the Presidency of the Council and the Commission, in their joint statement on the adoption of the regulation, expressed confidence that the broadcasters would use the "opportunity to enhance user experience".<sup>403</sup>

3.335. The Commission carried out a second evaluation of the "Database Directive", in force since 1996.<sup>404</sup> The evaluation largely concluded that the Directive is still effective, efficient, relevant, adds value and is coherent (even though some clarification on how it interacts with the Public Sector Information Directive would be needed).<sup>405</sup>

3.336. The EU adopted a Directive and a Regulation implementing the Marrakesh Treaty, ratified by the EU on 1 October 2018 and aimed at giving blind, visually impaired or otherwise print disabled people better access to printed materials. The Directive<sup>406</sup> contains rules on the exceptions from the requirement to receive authorization from the right-holder of copyright or any related right. These exceptions apply to necessary accessible copy for the exclusive use of relevant beneficiaries. The Regulation<sup>407</sup> allows for the cross-border exchange of otherwise copyright-protected accessible copies.

### 3.3.7.2 Industrial property

#### 3.3.7.2.1 Patents

3.337. Patent-intensive industries are reported to have accounted for 16.1% of total employment in the EU and of total GDP during the period 2014-16. Exports of patent-intensive industries amounted to EUR 1.4 trillion (Table 3.30).

3.338. With 166,585 new patent applications in 2017, the EPO was among the top five offices that accounted for a combined share of 84.5% of global patent applications. While China saw the fastest growth (+14.2%), the increase in filings at the EPO (+4.5%) exceeded those in other patent offices, such as the United States (+0.2%) and Japan (+0.03%).<sup>408</sup> In 2018, the EPO granted 127,580 patents, and received 173,958 applications.<sup>409</sup> Most patent applications were in the fields

<sup>402</sup> European Commission, *Cross-border portability of online content services*. Viewed at: <https://ec.europa.eu/digital-single-market/en/cross-border-portability-online-content-services>.

<sup>403</sup> European Commission, *Travel with your digital subscriptions: Joint statement by the European Commission, the European Parliament and the Bulgarian Presidency of the Council of the EU*. Viewed at: [http://europa.eu/rapid/press-release\\_STATEMENT-18-2341\\_en.htm](http://europa.eu/rapid/press-release_STATEMENT-18-2341_en.htm).

<sup>404</sup> Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases. Viewed at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31996L0009:EN:HTML>.

<sup>405</sup> European Commission, *Evaluation of the Directive 96/9/EC on the legal protection of databases*. Viewed at: <https://ec.europa.eu/digital-single-market/en/news/staff-working-document-and-executive-summary-evaluation-directive-969ec-legal-protection>. The conclusions of the Commission were supported by an external study and stakeholder consultations: *Study in support of the Evaluation of the Database Directive*. Viewed at: <https://ec.europa.eu/digital-single-market/en/news/study-support-evaluation-database-directive>. *Synopsis report on the responses to the public consultation activities on the evaluation of Directive 96/9/EC on the legal protection of databases*. Viewed at: <https://ec.europa.eu/digital-single-market/en/news/synopsis-report-public-consultation-evaluation-directive-969ec-legal-protection-databases>.

<sup>406</sup> Directive (EU) 2017/1564 of the European Parliament and of the Council of 13 September 2017 on certain permitted uses of certain works and other subject matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print-disabled and amending Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017L1564&from=EN>.

<sup>407</sup> Regulation (EU) 2017/1563 of the European Parliament and of the Council of 13 September 2017 on the cross-border exchange between the Union and third countries of accessible format copies of certain works and other subject matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print-disabled. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R1563&from=EN>.

<sup>408</sup> WIPO, *World Intellectual Property Indicators 2018*. Viewed at: [https://www.wipo.int/edocs/pubdocs/en/wipo\\_pub\\_941\\_2018.pdf](https://www.wipo.int/edocs/pubdocs/en/wipo_pub_941_2018.pdf).

<sup>409</sup> EPO *Statistics* (status: 21 January 2019). Viewed at: <https://www.epo.org/about-us/annual-reports-statistics/statistics.html#granted>.

of medical technology, digital communications, and computer technology. Applications granted by the EPO result in a bundle of national patents.

3.339. A regulation adopted in 2012 as part of the unitary patent package<sup>410</sup> will allow right-holders to potentially receive patent protection in almost all EU member States, based on a single request.<sup>411</sup> It will apply from the date of entry into force of the international Agreement on the Unified Patent Court (UPC Agreement), the third component of the package. The UPC Agreement was signed by 25 EU member States in early 2013.<sup>412</sup> Ratification by 13 member States, including the 3 with the highest number of European patents in force (Germany, France and the United Kingdom), is required for its entry into force. As at 30 September 2019, the Agreement had been ratified by 16 EU member States, including France and the United Kingdom but not Germany.

3.340. As part of its Digital Single Market Strategy, the Commission continues to attach importance to removing unnecessary barriers in the market for the licensing of standard essential patents (SEPs). In November 2017, it published the Communication to the Institutions on Setting out the EU approach to Standard Essential Patents.<sup>413</sup> It stresses the need, and makes proposals, for a more transparent environment for negotiations between SEP holders and potential licensees, common valuation principles for SEP technology, and a balanced and predictable enforcement regime. Furthermore, the Commission published a study on licensing terms of SEPs, to contribute to a consistent framework for both the interpretation of Fair, Reasonable and Non-Discriminatory (FRAND) terms commitments and the definition of FRAND royalties.<sup>414</sup>

3.341. Regarding biotechnological inventions, in July 2017, the Administrative Council of the EPO adopted a decision amending relevant rules of the Implementing Regulations to the European Patent Convention (EPC).<sup>415</sup> The amended rules clarify, *inter alia*, that "under Article 53(b) EPC, European patents shall not be granted in respect of plants or animals exclusively obtained by means of an essentially biological process" (Rule 28 (2)). In a decision of 5 February 2019<sup>416</sup>, the EPO's Technical Board of Appeal found this amendment to be in conflict with Article 53(b) of the EPC as interpreted by the Enlarged Board of Appeal in two decisions ("Tomatoes II" and "Broccoli II" of

<sup>410</sup> WTO document WT/TPR/S/357/Rev.1, 13 October 2017, paras. 3.270-3.274.

<sup>411</sup> Regulation (EU) No. 1257/2012 of the European Parliament and of the Council of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012R1257&from=EN>. Another regulation deals with applicable translation arrangements; Council Regulation (EU) No. 1260/2012 of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable translation arrangements. Viewed at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:361:0089:0092:EN:PDF>; and WTO documents WT/TPR/S/284/Rev.2, 28 November 2013, paras. 3.257-3.267 and WT/TPR/S/357/Rev.1, 13 October 2017, paras. 3.270-3.274.

<sup>412</sup> The text of the Agreement on a Unified Patent Court can be accessed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2013:175:0001:0040:EN:PDF>.

<sup>413</sup> European Commission, *Communication to the Institutions on Setting out the EU approach to Standard Essential Patents*. Viewed at: <https://ec.europa.eu/docsroom/documents/26583>.

<sup>414</sup> Pentheroudakis, C. and Baron, J.A. (2017) *Licensing Terms of Standard Essential Patents*. A *Comprehensive Analysis of Cases*. JRC Science for Policy Report. EUR 28302 EN; doi:10.2791/32230. Viewed at: <http://publications.jrc.ec.europa.eu/repository/bitstream/JRC104068/jrc104068%20online.pdf>.

<sup>415</sup> EPO, *Decision of the Administrative Council of 29 June 2017 amending Rules 27 and 28 of the Implementing Regulations to the European Patent Convention (CA/D 6/17)*. Viewed at: <https://www.epo.org/law-practice/legal-texts/official-journal/2017/07/a56.html>.

<sup>416</sup> See Case T 1063/18. Viewed at: [http://documents.epo.org/projects/babylon/eponet.nsf/0/426B74FD32463ACEC1258398003EA3F4/\\$File/T\\_1063-18\\_en.pdf](http://documents.epo.org/projects/babylon/eponet.nsf/0/426B74FD32463ACEC1258398003EA3F4/$File/T_1063-18_en.pdf). See also EPO, *Written decision in case T 1063/18 on the patentability of plants issued*. Viewed at: <https://www.epo.org/law-practice/case-law-appeals/communications/2019/20190205.html>. In its decision, the EPO's Enlarged Board of Appeal states that "[a]lthough the Administrative Council is [...] competent to amend the Implementing Regulations pursuant to Article 33(1)(c) EPC, this competence does not extend to amending an Article of the Convention".

25 March 2015).<sup>417</sup> The President of the EPO subsequently referred the decision of the Technical Board to the EPO's Enlarged Board of Appeal, aiming to reverse it.<sup>418</sup>

### **Supplementary protection certificates**

3.342. The EU legal framework offers supplementary protection certificates (SPCs) for medicinal products (Regulation (EC) No. 469/2009) and plant-protection products (Regulation (EC) No. 1610/96) as a *sui generis* IP category that only applies after expiry of the basic patent.<sup>419</sup> In other words, they are considered as legally distinct from patent protection, including international obligations in this regard, and may therefore be subject to wider exceptions than patent rights themselves. Following up on a Commission proposal of 28 May 2018<sup>420</sup>, the EU co-legislators adopted Regulation (EU) 2019/933 amending Regulation (EC) No. 469/2009 concerning the supplementary protection certificate for medicinal products<sup>421</sup>, introducing an exception to let firms established in the EU manufacture certain pharmaceutical products for export to non-EU markets during the term of the SPC. It also permits the making and stockpiling of a pharmaceutical product six months prior to the expiry of the certificate, in order to place it on the market of EU member States immediately after expiry of the certificate. These provisions have been described as means to level the playing field for Europe-based generic and biosimilar manufacturers in light of a lack of international binding rules on SPCs.<sup>422</sup> Comparable exceptions were included in recent FTAs such as the CETA.<sup>423</sup>

3.343. The regulations in those areas create binding rules at the EU level, while other areas are subject to the applicable national legislation of the EU member States. No "unitary SPC" that would apply to future unitary patents is foreseen in the regulatory package adopted and awaiting entry into force. The Commission is working on the relationship between unitary patent protection and SPC legislation.<sup>424</sup>

3.344. Several studies have been concluded on legal and economic aspects of SPCs. These include a study on the legal aspects of SPCs in the EU<sup>425</sup>, a study of the economic impact of SPCs,

<sup>417</sup> Cases G 2/12 and G 2/13. They can be accessed at the EPO Board of Appeal decisions database at: <http://www.epo.org/law-practice/case-law-appeals/advanced-search.html>. In those decisions, the Enlarged Board of Appeal held that exclusion of essentially biological processes from patentability did not preclude the grant of patents for plants and plant material obtained from such processes, provided the basic patentability criteria were met. See also WT/TPR/S/357/Rev.1, 13 October 2017, paras. 3.275-3.278.

<sup>418</sup> On the issue of the non-patentability of essentially biological processes, which is supported by EU institutions and member States, see also *Commission Notice on certain articles of Directive 98/44/EC of the European Parliament and of the Council on the legal protection of biotechnological inventions*. Viewed at: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016XC1108\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016XC1108(01)&from=EN).

<sup>419</sup> WTO document WT/TPR/S/357/Rev.1, 13 October 2017, paras. 3.282-3.287.

<sup>420</sup> *Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No. 469/2009 concerning the supplementary protection certificate for medicinal products*. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2018%3A317%3AFIN>. This initiative was first considered in the Upgrading the Single Market Strategy of 2015, in the context of a targeted recalibration of certain aspects of patent and SPC protection. It is supported by a series of studies and was the subject of a public consultation in October 2017.

<sup>421</sup> Regulation (EU) 2019/933 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EC) No. 469/2009 concerning the supplementary protection certificate for medicinal products. Viewed at: <http://data.europa.eu/eli/req/2019/933/oj>.

<sup>422</sup> European Commission, *Commission Staff Working Document - Impact Assessment Accompanying the document Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No. 469/2009 concerning the supplementary protection certificate for medicinal products*, p. 18. Viewed at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SWD:2018:0240:FIN:EN:PDF>.

<sup>423</sup> Article 20.27(9), CETA. Viewed at: [https://trade.ec.europa.eu/doclib/docs/2016/february/tradoc\\_154329.pdf](https://trade.ec.europa.eu/doclib/docs/2016/february/tradoc_154329.pdf).

<sup>424</sup> European Commission, *Supplementary protection certificates for pharmaceutical and plant protection products*. Viewed at: [https://ec.europa.eu/growth/industry/intellectual-property/patents/supplementary-protection-certificates\\_en](https://ec.europa.eu/growth/industry/intellectual-property/patents/supplementary-protection-certificates_en).

<sup>425</sup> European Commission, *Study and annexes on the legal aspects of Supplementary Protection Certificates in the EU*. Viewed at: <https://ec.europa.eu/docsroom/documents/29524>.

pharmaceutical incentives and rewards in Europe<sup>426</sup>, and a study on the economic impacts of changing exemption provisions during patent and SPC protection in Europe.<sup>427</sup>

### 3.3.7.2.2 Plant variety rights

3.345. According to the joint EPO/EUIPO report of September 2019, the plant variety rights-intensive industries directly and indirectly accounted for about 2.6 million jobs on average between 2014 and 2016, which represented a share of 1.2% of total direct employment in the EU. In the same period, these industries accounted for 1.2% of the total GDP (Table 3.30).

3.346. Plant varieties can be protected either under national plant variety right systems or as a Community Plant Variety Right (CPVR).<sup>428</sup> As regards the latter, Council Regulation (EC) No. 2100/94 on CPVRs<sup>429</sup> established a separate regime that provides for a unitary right to exploit a plant variety with effect across the EU via a single application to the Community Plant Variety Office (CPVO). The term of protection is 25 years, and 30 years in the case of potato, vine and tree varieties, extendable for a further 5 years in certain cases. National plant variety rights or patents cannot coexist with CPVRs; when a CPVR is granted, the corresponding national title becomes ineffective as long as the CPVR is in force.

3.347. CPVRs are granted and administered by the CPVO. On 31 December 2018, 26,896 titles were in force, with 2,757 titles granted in 2018 alone, which represented a slight decrease as compared to 2016 (2,980) and 2017 (2,865).<sup>430</sup> Just under half of the titles in force were for ornamental crops, while the fruit sector ranked last, with only 1,879 titles.

3.348. Building on reforms of the fees payable to the CPVO described in the previous Review<sup>431</sup>, the CPVO, in the current reporting period, updated the "Notes for applicants", e.g. in respect of the due date for payment of the examination fees.<sup>432</sup> The CPVO also intensified international cooperation by concluding administrative arrangements with plant variety protection agencies in China, Chinese Taipei, and the African Regional Intellectual Property Organization.

### 3.3.7.2.3 Trademarks

3.349. Among the IPR-intensive industries, the trademark-intensive industries contributed the biggest share to employment and GDP in the EU. During the period 2014-16, more than 46 million people were directly employed in this sector, and nearly 20 million more depended indirectly on these industries. This represented 30% of total direct and indirect employment on average from 2014 to 2016. The sector's share of total GDP was 37% during this period, and the value of exports generated by the trademark-intensive industries was EUR 1.28 trillion in 2016 (Table 3.30).

3.350. Trademarks can be registered in the EU either under national trademark systems or under the EU trademark system, which provides the right-holder with EU-wide protection by means of a single registration at the EUIPO.<sup>433</sup> Since the EU's adherence to the Madrid Protocol in 2004, international registration of a trademark at WIPO is also available to persons seeking protection in any country that is a signatory of the Madrid Protocol.

3.351. In 2018, the EUIPO received 152,494 European Union trademark (EUTM) applications, which was 4.1% more than in 2017 (146,443 applications) and shows a steady increase over time

<sup>426</sup> European Commission, *Study of the economic impact of supplementary protection certificates, pharmaceutical incentives and rewards in Europe*. Viewed at: <https://ec.europa.eu/docsroom/documents/29521>.

<sup>427</sup> Publications Office of the European Union, *Assessing the economic impacts of changing exemption provisions during patent and SPC protection in Europe*. Viewed at: <https://publications.europa.eu/en/publication-detail/-/publication/6e4ce9f8-aa41-11e7-837e-01aa75ed71a1/language-en>.

<sup>428</sup> WTO document WT/TPR/S/357/Rev.1, 13 October 2017, paras. 3.285-3.290.

<sup>429</sup> Council Regulation (EC) No. 2100/94 of 27 July 1994 on Community plant variety rights. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A31994R2100>.

<sup>430</sup> CPVO *Statistics*. Viewed at: <https://cpvo.europa.eu/en/statistics>.

<sup>431</sup> WTO document WT/TPR/S/357/Rev.1, 13 October 2017, paras. 3.285-3.290.

<sup>432</sup> CPVO, *Filing an application*. Viewed at: <http://cpvo.europa.eu/en/applications-and-examinations/filing-application>.

<sup>433</sup> WTO document WT/TPR/S/357/Rev.1, 13 October 2017, pp. 119 et seq.

(135,377 applications in 2016).<sup>434</sup> Virtually all application filings are electronic (99.75 % in 2018). Direct applications amounted to 127,323 in 2018, and applications for international registrations to 25,171, equivalent to 16.5% of the total number of applications. In terms of processing, as in previous years, the number of EUTMs registered, published and examined reported steady increases (close to 2% on average) in 2018.

3.352. During the review period, the EUTM regime witnessed the implementation of a substantive trademark reform package, adopted in December 2015 in the form of a regulation modernizing the rules on EU-wide trademarks administered by the EU, and a directive further harmonizing national trademark law. Regulation (EU) 2015/2424<sup>435</sup> amended the legal framework for EUTMs (formerly Community trademarks) administered by the EUIPO (formerly known as the Office for Harmonization in the Internal Market) and entered into force on 23 March 2016.<sup>436</sup> A number of provisions were applied from 1 October 2017, as they had to be developed by secondary legislation. The applicable legal rules were codified by Regulation (EU) 2017/1001 on the European Union trade mark.<sup>437</sup> The latest secondary legislation consists of the Delegated Regulation (EU) 2018/625<sup>438</sup> supplementing Regulation (EU) 2017/1001 (EUTMDR), and the Implementing Regulation (EU) 2018/626<sup>439</sup> laying down detailed rules for implementing certain provisions of Regulation (EU) 2017/1001 (EUTMIR).

3.353. Among others, the 2017 Regulation and its delegating and implementing regulations introduced the EU certification mark.<sup>440</sup> This is defined as a mark that is "capable of distinguishing goods or services which are certified by the proprietor of the mark in respect of material, mode of manufacture of goods or performance of services, quality, accuracy or other characteristics, with the exception of geographical origin, from goods and services which are not so certified". It thus provides a guarantee of the specific characteristics of certain goods and services, irrespective of the identity of the undertaking that actually produces or provides the goods and services at issue. The role of the certification mark owner is to control the compliance of the goods and services with a given standard set out in the regulations of use of the certification mark.

3.354. The new rules also removed the graphical representation requirement for trademarks.<sup>441</sup> Instead, signs can be represented in any appropriate form using generally-available technology, as long as the representation is clear, precise, self-contained, easily accessible, intelligible, durable and objective. This enables applicants to use electronic file formats, e.g. widely-used image and sound file formats such as jpeg and mp3, in the registration process. The new requirements are intended to modernize the system, and to reduce the rate of objections related to formalities.

3.355. The new legislation on the EUTM also streamlined the procedures before the EUIPO and modernized them to take into account the use of IT.<sup>442</sup> In that vein, priority claims are no longer examined in substance, but remain as a "mere" claim until relied upon. Applicants can invoke acquired distinctiveness as a subsidiary claim, allowing them to only incur the expense of gathering and presenting evidence of use, if necessary, if they are notified of a negative final decision on

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<sup>434</sup> EUIPO, *2018 Annual Report*. Viewed at: [https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/contentPdfs/about\\_euipo/annual\\_report/annual\\_report\\_2018\\_en.pdf](https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/contentPdfs/about_euipo/annual_report/annual_report_2018_en.pdf).

<sup>435</sup> Regulation (EU) 2015/2424 of the European Parliament and of the Council of 16 December 2015 amending Council Regulation (EC) No. 207/2009 on the Community trade mark and Commission Regulation (EC) No. 2868/95 implementing Council Regulation (EC) No. 40/94 on the Community trade mark, and repealing Commission Regulation (EC) No. 2869/95 on the fees payable to the Office for Harmonization in the Internal Market. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015R2424>.

<sup>436</sup> For a detailed description of the changes introduced by the Regulation, see WTO document WT/TPR/S/357/Rev.1, 13 October 2017, pp. 119 et seq.

<sup>437</sup> Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark. Viewed at: <http://data.europa.eu/eli/req/2017/1001/oj>.

<sup>438</sup> Commission Delegated Regulation (EU) 2018/625 of 5 March 2018 supplementing Regulation (EU) 2017/1001 of the European Parliament and of the Council on the European Union trade mark, and repealing Delegated Regulation (EU) 2017/1430. Viewed at: [http://data.europa.eu/eli/req\\_del/2018/625/oj](http://data.europa.eu/eli/req_del/2018/625/oj).

<sup>439</sup> Commission Implementing Regulation (EU) 2018/626 of 5 March 2018 laying down detailed rules for implementing certain provisions of Regulation (EU) 2017/1001 of the European Parliament and of the Council on the European Union trade mark, and repealing Implementing Regulation (EU) 2017/1431. Viewed at: [http://data.europa.eu/eli/req\\_impl/2018/626/oj](http://data.europa.eu/eli/req_impl/2018/626/oj).

<sup>440</sup> EUIPO, *Certification marks*. Viewed at: <https://euipo.europa.eu/ohimportal/en/certification-marks>.

<sup>441</sup> EUIPO, *Graphical Representation – Types of mark*. Viewed at: <https://euipo.europa.eu/ohimportal/en/elimination-of-graphical-representation-requirement>.

<sup>442</sup> EUIPO, *Procedural changes*. Viewed at: <https://euipo.europa.eu/ohimportal/en/procedural-changes>.



inherent distinctiveness as primary claim. Furthermore, opposition or cancellation claims can be substantiated with reference to online sources recognized by the Office (e.g. the databases of the national and regional EU IP offices). Assignment is recognized as an alternative remedy to invalidating a trademark registered without the authorization of the proprietor. Other changes concern the reordering and clarification of provisions on opposition/cancellation proceedings and Boards of Appeal; the simplification of language and translation requirements; and the modernization of provisions on communication with the office.

3.356. In order to further harmonize the national frameworks for trademark regimes in EU member States, which coexist with the EU trademark regime, the European Parliament and the Council adopted Directive (EU) 2015/2436 to approximate the laws of the member States relating to trademarks.<sup>443</sup> The Directive entered into force on 12 January 2016; member States had until 14 January 2019 to transpose it into national law. Most member States have notified complete transposition.

#### 3.3.7.2.4 Geographical indications

3.357. According to the joint EPO/EUIPO report of September 2019, GI-intensive industries generated 0.1% of overall GDP in the period 2014-16 and represented a 0.2% share of total employment. The value of exports of these industries in 2016 was nearly EUR 13 billion (Table 3.30).<sup>444</sup>

3.358. While the harmonization of the protection of GIs within the EU is advanced with regard to agricultural products<sup>445</sup>, that for non-agricultural products is currently only available at the national level in a number of member States. Protection for agricultural products at the EU level can be obtained in one of the following ways: as a protected designation of origin (PDO) or a protected GI (PGI) for wines and agricultural products and foodstuffs, or as a GI for spirits and aromatized wines.<sup>446</sup>

3.359. As regards GIs of products of non-EU origin, they may be protected in the EU either through direct application or by means of inclusion in FTAs. In the former, the application may be sent either directly, or through the authorities of the country where the geographical area is located, to the Commission. No fees are required for applications from third countries.

3.360. In April 2019, the new public database "eAmbrosia - the EU geographical indications register" was launched. It is designed to replace the current databases for wine (e-Bacchus), spirits (e-Spirit-Drinks) and food (DOOR).<sup>447</sup> It provides access to information on all GIs registered, including their country of origin, status (applied, published or registered), their product specification, and a direct link to the legal basis when they were officially protected.<sup>448</sup> The register contains 1,605 registered wine GIs and 239 registered spirit drink GIs. All wine and spirit drink GIs registered

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<sup>443</sup> Directive (EU) 2015/2436 of the European Parliament and of the Council of 16 December 2015 to approximate the laws of the Member States relating to trade marks. Viewed at: <http://data.europa.eu/eli/dir/2015/2436/oj>.

<sup>444</sup> The previous Review observed that about 20% of total sales of EU GI products are exported outside the EU, between 25% and 30% of processed agricultural products are covered by GIs, and 80% of total wine exports and almost all spirits exports are also covered by GIs. WTO document WT/TPR/S/357/Rev.1, 13 October 2017, para. 3.303.

<sup>445</sup> For an overview of EU member States' GI protection and enforcement systems, see EUIPO, *Protection and Control of Geographical Indications for Agricultural Products in the EU Member States*. Viewed at: [https://euipo.europa.eu/tunnel-web/secure/webdav/quest/document\\_library/observatory/documents/reports/Enforcement\\_of\\_GIs/EUIPO\\_Geographical\\_Indications\\_full\\_report\\_en.pdf](https://euipo.europa.eu/tunnel-web/secure/webdav/quest/document_library/observatory/documents/reports/Enforcement_of_GIs/EUIPO_Geographical_Indications_full_report_en.pdf).

<sup>446</sup> For an overview of relevant legislation, databases and procedures, see previous Reviews and references cited therein, in particular WTO document WT/TPR/S/357/Rev.1, paras. 3.302-3.315. See also WTO document IP/C/M/86/Add.1, para. 6, for a statement by the EU to the TRIPS Council introducing Regulation 251/2014 on Geographical Indications for Aromatized Wine Products.

<sup>447</sup> WTO document WT/TPR/S/357/Rev.1, 13 October 2017, para. 3.309.

<sup>448</sup> European Commission, *New database for EU geographical indications aims to increase transparency and simplify search*. Viewed at: [https://ec.europa.eu/info/news/new-database-eu-geographical-indications-aims-increase-transparency-and-simplify-search-2019-apr-01\\_en](https://ec.europa.eu/info/news/new-database-eu-geographical-indications-aims-increase-transparency-and-simplify-search-2019-apr-01_en). The register can be viewed at: <https://ec.europa.eu/info/food-farming-fisheries/food-safety-and-quality/certification/quality-labels/geographical-indications-register/>.

directly via EU regulations are listed in eAmbrosia, including third-country GIs.<sup>449</sup> Agricultural product and foodstuff GIs (currently in the DOOR database) will be incorporated in eAmbrosia by the end of 2019.

3.361. Given the importance of GIs for the EU's external trade, the Commission sought to include a comprehensive section on GI protection for agricultural products in the more recent generation of FTAs. As a consequence, a large number of EU and third-country GIs are now protected through bilateral and regional agreements.<sup>450</sup> The following agreements with GI coverage were finalized or have entered into force since the last Review:

- the EU-Japan EPA recognizes the special status of, and offers protection on the Japanese market to, 210 European agricultural GIs. In turn, the EU offers protection for 56 Japanese foodstuff, wine or spirit names;
- the draft FTA between the EU and Singapore provides that Singapore will strengthen its existing GI regime by setting up a system to register GIs in Singapore. Once registered in Singapore, around 190 GIs for wines, spirits and certain agricultural products will enjoy levels of protection equal to those in the EU;
- once in force, the FTA between the EU and Viet Nam will protect 169 European and 39 Vietnamese GIs<sup>451</sup>; and
- the agreement in principle reached by the EU and Mercosur in June 2019 on the trade part of an agreement foresees the protection of some 350 European GIs. The EU will also protect some 220 names of traditional Mercosur products such as Cachaça (a Brazilian distilled spirit) or Mendoza wine from Argentina.<sup>452</sup>

3.362. With regard to non-agricultural products, the EU commissioned a study on economic aspects of GI protection at the EU level, in order to (i) evaluate the effectiveness of specific GI protection in limiting the availability of non-authentic products; (ii) assess the value of this specific GI protection to consumers, and the impact on consumer search costs for authentic products with and without explicit GI protection; and (iii) identify the value of this specific GI protection to producers of authentic geographically-rooted products.<sup>453</sup> The results of the study are planned for publication in 2020. GIs for non-agricultural products may also be protected as collective EU trademarks<sup>454</sup>, and under unfair competition laws.

### 3.3.7.2.5 Undisclosed information

#### 3.3.7.2.5.1 Trade secrets

3.363. EU member States had until June 2018 to implement the Directive on the Protection of Undisclosed Know-How and Business Information (Trade Secrets) Against Their Unlawful Acquisition, Use and Disclosure (the Trade Secrets Directive).<sup>455</sup> All but one member States have adopted legislation in order to align their legal framework to the Directive.

<sup>449</sup> The third-country GIs protected through agreements are listed on the europa website under the link: [https://ec.europa.eu/info/sites/info/files/food-farming-fisheries/food\\_safety\\_and\\_quality/documents/list-gis-non-eu-countries-protected-in-eu\\_en.pdf](https://ec.europa.eu/info/sites/info/files/food-farming-fisheries/food_safety_and_quality/documents/list-gis-non-eu-countries-protected-in-eu_en.pdf).

<sup>450</sup> For a list of earlier agreements, see previous Review, WTO document WT/TPR/S/357/Rev.1, 13 October 2017, paras. 3.312 et seq.

<sup>451</sup> For further details, see also the previous Review, WTO document WT/TPR/S/357/Rev.1, 13 October 2017, para. 3.312.

<sup>452</sup> European Commission, *Key elements of the EU-Mercosur trade agreement*. Viewed at: <http://trade.ec.europa.eu/doclib/press/index.cfm?id=2040>.

<sup>453</sup> European Commission, *Study: Economic aspects of geographical indication protection at EU level for non-agricultural products*. Viewed at: [https://ec.europa.eu/growth/content/study-economic-aspects-geographical-indication-protection-eu-level-non-agricultural-products\\_en](https://ec.europa.eu/growth/content/study-economic-aspects-geographical-indication-protection-eu-level-non-agricultural-products_en).

<sup>454</sup> WTO document WT/TPR/S/284/Rev.2, 28 November 2013, para. 3.287.

<sup>455</sup> Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016L0943&from=EN>.

3.364. In the reporting period, the Commission held a workshop and published a study on cyber theft of trade secrets.<sup>456</sup> The study includes research on the estimated volume and impact of cyber theft of trade secrets. Based on a reported increased risk of this type of theft to the detriment of European businesses, it recommends taking measures to enhance awareness and training, facilitating businesses in addressing the challenge, enhancing institutional capabilities, and strengthening law enforcement. The European IP Helpdesk published a factsheet on trade secrets to help businesses protect their rights.<sup>457</sup>

3.365. Furthermore, a special study was also carried out regarding trade secret litigation.<sup>458</sup> It provides a description of all 28 EU member States' legal systems for the protection of trade secrets, prior to the implementation of the Trade Secret Directive, and a comparative overview of national case law is provided in a dedicated section. Overall, it finds that there is considerable divergence between member States in terms of their national definition of trade secrets, the scope of protection, the sources of law, and the availability of case law.

### 3.3.7.2.5.2 Clinical trial data

3.366. The EU legal framework on the protection of clinical trial data, as required by Article 39.3 of TRIPS, provides for a regime of exclusivity periods of eight plus two plus one years, during which generic manufacturers cannot rely on the data submitted by the originator company to the regulatory authorities, nor market the generic product.<sup>459</sup> This general regime of data and marketing exclusivity serves, *inter alia*, to facilitate the introduction of an open access regime, and important initiatives were undertaken in the EU with regard to the publication of clinical trial data.

3.367. On 10 April 2019, the Commission published a Question & Answer document<sup>460</sup> on the interplay between the General Data Protection Regulation 2016/679 (GDPR), which entered into force on 25 May 2018, and the Clinical Trials Regulation 536/2014 (CTR).<sup>461</sup> The CTR entered into force on 16 June 2014 but will only apply once relevant registers have been established.<sup>462</sup> A further Delegated Regulation was adopted in 2017.<sup>463</sup> The requirements for publishing clinical trial summary results in the EU Clinical Trials Database are included in the European Commission Guideline 2012/302 03/EC<sup>464</sup>. It is the responsibility of sponsors to ensure that the protocol information and results of all clinical trials are submitted to the EU Clinical Trials Database (EudraCT); this

<sup>456</sup> European Commission, *Study on The scale and impact of industrial espionage and theft of trade secrets through cyber*. Viewed at: <https://ec.europa.eu/docsroom/documents/34841>.

<sup>457</sup> European IP Helpdesk, *Trade secrets: An efficient tool for competitiveness*. Viewed at: <http://iprhelpdesk.eu/Fact-Sheet-Trade-Secrets-Efficient-Tool-Competitiveness>.

<sup>458</sup> KPMG/EUIPO, *The Baseline of Trade Secrets Litigation in the EU Member States*. Viewed at: [https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/reports/2018\\_Baseline\\_of\\_Trade\\_Secrets\\_Litigations\\_in\\_EU\\_Member\\_States/2018\\_Baseline\\_of\\_Trade\\_Secrets\\_Litigations\\_in\\_EU\\_Member\\_States\\_EN.pdf](https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/2018_Baseline_of_Trade_Secrets_Litigations_in_EU_Member_States/2018_Baseline_of_Trade_Secrets_Litigations_in_EU_Member_States_EN.pdf).

<sup>459</sup> Directive 2004/27/EC of 31 March 2004 amending Directive 2001/83/EC on the Community code relating to medicinal products for human use. Viewed at: [https://ec.europa.eu/health/sites/health/files/files/eudralex/vol-1/dir\\_2004\\_27/dir\\_2004\\_27\\_en.pdf](https://ec.europa.eu/health/sites/health/files/files/eudralex/vol-1/dir_2004_27/dir_2004_27_en.pdf). See also WTO document WT/TPR/S/357/Rev.1, 13 October 2017, paras. 3.330-3.334.

<sup>460</sup> European Commission, *Question and Answers on the interplay between the Clinical Trials Regulation and the General Data Protection Regulation*. Viewed at: [https://ec.europa.eu/health/sites/health/files/files/documents/ga\\_clinicaltrials\\_gdpr\\_en.pdf](https://ec.europa.eu/health/sites/health/files/files/documents/ga_clinicaltrials_gdpr_en.pdf).

<sup>461</sup> Regulation (EU) No. 536/2014 of the European Parliament and of the Council of 16 April 2014 on clinical trials on medicinal products for human use, and repealing Directive 2001/20/EC. Viewed at: <http://data.europa.eu/eli/reg/2014/536/oj>.

<sup>462</sup> The timing of its application depends on confirmation of the full functionality of the Clinical Trials Information System through an independent audit. The Regulation becomes applicable six months after the European Commission publishes notice of this confirmation. Consequently, the entry into application of this regulation is currently estimated to occur in 2020. EMA, *Clinical Trial Regulation*. Viewed at: <https://www.ema.europa.eu/en/human-regulatory/research-development/clinical-trials/clinical-trial-regulation>.

<sup>463</sup> See also Commission Delegated Regulation (EU) 2017/1569 of 23 May 2017 supplementing Regulation (EU) No. 536/2014 of the European Parliament and of the Council by specifying principles of and guidelines for good manufacturing practice for investigational medicinal products for human use and arrangements for inspections. Viewed at: [http://data.europa.eu/eli/req\\_del/2017/1569/oj](http://data.europa.eu/eli/req_del/2017/1569/oj).

<sup>464</sup> Commission Guideline - Guidance on posting and publication of result-related information on clinical trials in relation to the implementation of Article 57(2) of Regulation (EC) No. 726/2004 and Article 41(2) of Regulation (EC) No. 1901/2006. Viewed at: [https://ec.europa.eu/health/sites/health/files/files/eudralex/vol-10/2012\\_302-03/2012\\_302-03\\_en.pdf](https://ec.europa.eu/health/sites/health/files/files/eudralex/vol-10/2012_302-03/2012_302-03_en.pdf).

information is publicly available through the EU Clinical Trials Register (EU CTR). Since July 2014, sponsors are required to post results within one year after the end of a clinical trial (or six months for a paediatric trial). This information is also shared with the World Health Organization's International Clinical Trials Registry Platform, of which EU CTR is a primary registry. As at April 2019, the EudraCT database included 57,687 clinical trials in total, of which 27,093 were completed. The relevant technical guidance and technical documents were updated and published on EudraLex-10. Dedicated support tools are available at the EudraCT website.

3.368. In line with its updated policy on publication of clinical data for medicinal products for human use<sup>465</sup>, since 1 January 2015, the European Medicines Agency (EMA) publishes the clinical data submitted by pharmaceutical companies to support their requests for marketing authorization; these are assessed by the Committee for Human Medicinal Products. Clinical data normally include:

- the clinical overview, providing a critical analysis of the clinical data in the submission package, including the conclusions and implications of the clinical data;
- the clinical summary, which provides a detailed factual summarization of all the clinical information submitted;
- the study reports on the individual clinical studies; and
- three appendices to the clinical study reports, namely the study protocol, the sample case report form used to record information on an individual patient, and documentation of the statistical methods used to analyse the data.<sup>466</sup>

3.369. Clinical reports must be anonymized in order to comply with European legislation on personal data protection, and companies must justify the redaction of any commercially confidential information (CCI). The EMA provides guidance for pharmaceutical companies on the requirement to comply with its policy on the publication of clinical data.<sup>467</sup>

3.370. On 16 July 2018, the EMA published the first report on the implementation of the policy on the publication of clinical data.<sup>468</sup> According to the report, as at 20 October 2017, clinical data corresponding to 54 regulatory procedures for 50 medicines, and amounting to over 3,000 clinical documents, totalling more than 1.3 million pages, had been published. Published data attracted a total of more than 3,600 users, resulting in over 22,000 document views and in excess of 80,000 document downloads for non-commercial research purposes. Furthermore, the amount of CCI redactions in the documents published was very low, in only 0.01% of total pages published.

### 3.3.7.3 Enforcement

#### 3.3.7.3.1 Economic impact

3.371. The European Observatory on Infringements of IPRs (Observatory) has among its principal tasks to collect and monitor information regarding counterfeiting and piracy in the EU's internal market, as well as to foster collaboration through a network of public and private sector actors.<sup>469</sup> In order to provide evidence and data required for EU policymakers to take informed decisions, the Observatory hosts a number of important information resources regarding IPR enforcement. In

<sup>465</sup> EMA, *European Medicines Agency policy on publication of clinical data for medicinal products for human use*. Policy/0070, dated 21 March 2019 (EMA/144064/2019). It supersedes an earlier version of the policy dated 2 October 2014 (EMA/240810/2013). Viewed at: [https://www.ema.europa.eu/documents/other/european-medicines-agency-policy-publication-clinical-data-medicinal-products-human-use\\_en.pdf](https://www.ema.europa.eu/documents/other/european-medicines-agency-policy-publication-clinical-data-medicinal-products-human-use_en.pdf).

<sup>466</sup> EMA, *Clinical data publication*. Viewed at: <https://www.ema.europa.eu/en/human-regulatory/marketing-authorisation/clinical-data-publication>.

<sup>467</sup> EMA, *Support for industry on clinical data publication*. Viewed at: <https://www.ema.europa.eu/en/human-regulatory/marketing-authorisation/clinical-data-publication/support-industry-clinical-data-publication>.

<sup>468</sup> EMA, *Clinical data publication (Policy 0070) report Oct 2016-Oct 2017*. Viewed at: [https://www.ema.europa.eu/documents/report/clinical-data-publication-policy-0070-report-oct-2016-oct-2017\\_en.pdf](https://www.ema.europa.eu/documents/report/clinical-data-publication-policy-0070-report-oct-2016-oct-2017_en.pdf).

<sup>469</sup> WTO document WT/TPR/S/357/Rev.1, 13 October 2017, para. 3.343.

particular, it administers the Enforcement Database<sup>470</sup> as the single platform to deal with IPR enforcement matters. The Observatory is managed by the EUIPO.

3.372. In the reporting period, the EUIPO carried out a number of studies highlighting the risks deriving from, and the economic impact of, counterfeiting and piracy in the EU. Notably, its 2019 Qualitative Study on Risks Posed by Counterfeits to Consumers<sup>471</sup> sets out that 97% of recorded dangerous counterfeit goods were assessed as posing a serious risk, with toys at the top of the list, followed by clothing, textiles and fashion items. In fact, the end users of 80% of the goods reported to be dangerous and counterfeit were children (toys, childcare items and children's clothing). The causes of the risks identified ranged from poorly-constructed products, to the use of inferior-quality supplies and components, to the lack of understanding of regulations or safety mechanisms.

3.373. According to the EUIPO 2019 Intellectual Property Crime Threat Assessment<sup>472</sup>, over the last four years, the total number of seizures of counterfeit items by customs authorities in the EU has gradually decreased. At the same time, the number of articles seized and the total estimated value of these seizures increased in 2015 and 2016, only decreasing in 2017. The number of articles per seizure and the average value per seizure increased considerably (Table 3.32).

**Table 3.32 Trends in seizures based on customs figures, 2014-17**

	2014	2015	2016	2017
Number of seizures	95,194	81,098	63,184	57,433
Number of articles	35,568,982	40,728,675	41,387,132	31,410,703
Estimated value (EUR)	617,046,337	642,108,323	672,899,102	582,456,067
Articles per seizure	374	502	655	547
Value per seizure (EUR)	6,482	7,918	10,650	10,141

Source: EUIPO, *Intellectual Property Crime Threat Assessment*. Viewed at: [https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/reports/2019\\_IP\\_Crime\\_Threat\\_Assessment\\_Report/2019\\_IP\\_Crime\\_Threat\\_Assessment\\_Report.pdf](https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/2019_IP_Crime_Threat_Assessment_Report/2019_IP_Crime_Threat_Assessment_Report.pdf).

3.374. Updating a 2016 OECD/EUIPO Report on Trade in Counterfeit and Pirated Goods: Mapping the Economic Impact, a 2019 OECD/EUIPO study on Trends in Trade in Counterfeit and Pirated Goods<sup>473</sup> reveals the top 25 provenance economies of counterfeit goods entering the EU in 2014-16, with Hong Kong, China; China; and the United Arab Emirates at the top of the ranking.

3.375. Enforcement of IPRs in the digital environment was a topic of particular interest in the reporting period, and was addressed in several EUIPO publications. For example, an EUIPO 2018 study on the link between malware and copyright-infringing websites points to the fact that, in the sample, nearly 8% of the identified websites were characterized as malicious by anti-virus vendors.<sup>474</sup> Building on a previous qualitative study, quantitative research in the framework of a study on Online Business Models Infringing Intellectual Property Rights detected 27,870 e-shops suspected of marketing trade mark-infringing goods in Sweden, Germany, the United Kingdom and Spain. It was found that 21,001 of these e-shops (75.35%) were detected using domain names that had previously been used to direct Internet traffic to websites that have no relation to their prior

<sup>470</sup> The database can be accessed at: <https://euipo.europa.eu/ohimportal/da/web/observatory/ip-enforcement-portal-home-page>.

<sup>471</sup> EUIPO, *Qualitative Study on Risks Posed by Counterfeits to Consumers*. Viewed at: [https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/reports/2019\\_Risks\\_Posed\\_by\\_Counterfeits\\_to\\_Consumers\\_Study/2019\\_Risks\\_Posed\\_by\\_Counterfeits\\_to\\_Consumers\\_Study.pdf](https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/2019_Risks_Posed_by_Counterfeits_to_Consumers_Study/2019_Risks_Posed_by_Counterfeits_to_Consumers_Study.pdf).

<sup>472</sup> EUIPO, *Intellectual Property Crime Threat Assessment 2019*. Viewed at: [https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/reports/2019\\_IP\\_Crime\\_Threat\\_Assessment\\_Report/2019\\_IP\\_Crime\\_Threat\\_Assessment\\_Report.pdf](https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/2019_IP_Crime_Threat_Assessment_Report/2019_IP_Crime_Threat_Assessment_Report.pdf).

<sup>473</sup> OECD/EUIPO, *Trends in Trade in Counterfeit and Pirated Goods*. Viewed at: [https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/reports/trends\\_in\\_trade\\_in\\_counterfeit\\_and\\_pirated\\_goods/trends\\_in\\_trade\\_in\\_counterfeit\\_and\\_pirated\\_goods\\_en.pdf](https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/trends_in_trade_in_counterfeit_and_pirated_goods/trends_in_trade_in_counterfeit_and_pirated_goods_en.pdf).

<sup>474</sup> EUIPO, *Identification and Analysis of Malware on Selected Suspected Copyright-infringing Websites*. Viewed at: [https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/reports/2018\\_Malware\\_Study/2018\\_Malware\\_Study\\_en.pdf](https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/2018_Malware_Study/2018_Malware_Study_en.pdf).

use.<sup>475</sup> Furthermore, a study on legislative measures which can be applied to prevent or combat IPR infringement in the online environment<sup>476</sup> that legislative measures that concern the disclosure of information on a suspected infringer, and the possibility to block access to websites, are available in all member States. However, the study also notes (i) the lack of harmonization in regard to top-level domain name management at the EU level; and (ii) that specific legislative measures for suspension, transfer or deletion of domain name registrations that are suspected of infringing the IPR of a third party are available in most member States; but (iii) none of them are available in all member States.

3.376. To make case law more accessible, the EUIPO publishes compilations of the recent cases related to IP law enforcement.<sup>477</sup> It furthermore provided an overview of specialized IPR jurisdictions, including international experience<sup>477</sup> and providing an overview of relevant institutions in the member States.<sup>478</sup>

### 3.3.7.3.2 Enforcement within the EU

3.377. During the review period, enforcement of IPRs, both in traditional commerce and online, continued to be framed by Directive 2004/48/EC on the Enforcement of IPRs<sup>479</sup> (IPRED) and Directive 2001/29/EC on the Harmonisation of Certain Aspects of Copyright and Related Rights in the Information Society.<sup>480</sup>

3.378. Consultations on the civil enforcement of IPRs in the EU, including the operation and possible review of the IPRED, started in 2011, feeding into the evaluation of the IPRED.<sup>481</sup> They were concluded in November 2017, when the Commission decided that the IPRED is still fit for purpose, and adopted a Guidance Communication<sup>482</sup> clarifying the provisions of the IPRED; there have been differing interpretations in EU countries (e.g. related to its scope, rules on obtaining and preserving evidence, injunctions, and calculation of damages). The guidance is based on a ruling by the CJEU and best practice developed in EU countries.<sup>483</sup> The Communication was part of an overall

<sup>475</sup> EUIPO, *Research on Online Business Models Infringing Intellectual Property Rights - Phase 2*. Viewed at: [https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/reports/Research\\_on\\_Online\\_Business\\_Models\\_Infringing\\_IP\\_Rights.pdf](https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/Research_on_Online_Business_Models_Infringing_IP_Rights.pdf).

<sup>476</sup> EUIPO, *Study on Legislative Measures Related to Online IPR Infringements*. Viewed at: [https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/reports/2018\\_Study\\_on\\_legislative\\_measures\\_related\\_to\\_online\\_IPR\\_infringements/2018\\_Study\\_on\\_legislative\\_measures\\_related\\_to\\_online\\_IPR\\_infringements\\_EN.pdf](https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/2018_Study_on_legislative_measures_related_to_online_IPR_infringements/2018_Study_on_legislative_measures_related_to_online_IPR_infringements_EN.pdf).

<sup>477</sup> EUIPO, *Recent European Case-law on the Infringement and Enforcement of Intellectual Property Rights*. The compilation of 2018-19 cases can be viewed at: [https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/reports/New\\_Case\\_Law\\_en.pdf](https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/New_Case_Law_en.pdf). The judgements analysed include both those of the CJEU and those from the courts of the member States.

<sup>478</sup> EUIPO, *Specialised IP Rights Jurisdictions in the Member States*. Viewed at: [https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/reports/2018\\_Specialised\\_IP\\_Rights\\_Jurisdictions\\_in\\_Member\\_States/2018\\_Specialised\\_IP\\_Rights\\_Jurisdictions\\_in\\_Member\\_States\\_EN.pdf](https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/2018_Specialised_IP_Rights_Jurisdictions_in_Member_States/2018_Specialised_IP_Rights_Jurisdictions_in_Member_States_EN.pdf).

<sup>479</sup> Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights. Viewed at: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32004L0048R\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32004L0048R(01)&from=EN).

<sup>480</sup> Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonization of certain aspects of copyright and related rights in the information society. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32001L0029&from=EN>. An overview of the main enforcement provisions was provided by the previous Reviews. See WTO documents WT/TPR/S/317/Rev.1, para. 3.307, Table 3.23; and WT/TPR/S/357/Rev.1, 13 October 2017, paras. 3.339 et seq.

<sup>481</sup> European Commission, evaluation report. Viewed at: <https://ec.europa.eu/docsroom/documents/26601>; and Publications Office of the European Union, *Support study for the ex-post evaluation and ex-ante impact analysis of the IPR enforcement Directive (IPRED)*. Viewed at: <https://publications.europa.eu/en/publication-detail/-/publication/1e3b2f41-d4ba-11e7-a5b9-01aa75ed71a1/language-en>.

<sup>482</sup> European Commission, *Communication from the Commission to the Institutions on Guidance on certain aspects of Directive 2004/48/EC of the European Parliament and of the Council on the enforcement of intellectual property rights*. Viewed at: <https://ec.europa.eu/docsroom/documents/26582/attachments/1/translations/en/renditions/native>.

<sup>483</sup> European Commission, *Enforcement of intellectual property rights*. Viewed at: [https://ec.europa.eu/growth/industry/intellectual-property/enforcement\\_en](https://ec.europa.eu/growth/industry/intellectual-property/enforcement_en).

comprehensive package of measures to further improve the application and enforcement of IPR, and to step up the fight against counterfeiting and piracy (the "enforcement package").<sup>484</sup>

### 3.3.7.3.3 Enforcement at the EU's external borders

3.379. Since 1 January 2014, IPR enforcement at the EU borders is governed by Regulation (EU) No. 608/2013<sup>485</sup>, and Commission Implementing Regulation (EU) No. 1352/2013.<sup>486</sup>

3.380. The enforcement of IPRs by customs continues to be a priority for the Commission and for member States. At the external border of the EU, customs authorities may suspend the release of, or detain, goods that are suspected of infringing, or are found to have infringed, IPRs. In most cases, customs authorities act upon applications from right-holders. However, they may also act *ex officio* if they have sufficient grounds for suspecting that goods infringe an IPR. In such cases, they will notify the detention/suspension to the importer within one working day, and to the right-holder on the same day or promptly thereafter. The right-holder must submit an application for action within four working days of receiving the notification. If no application is submitted within this period, the goods are released.

3.381. The European Commission's annual reports provide statistical information and data about customs interventions which support the analysis of IPR infringements occurring in the EU. According to the latest report<sup>487</sup>, roughly 60,000 cases of IPR-infringing goods were detained by customs in 2016-17, representing a total of more than 40 million articles in 2016 and more than 30 million in 2017, with a domestic retail value of the genuine products of over EUR 670 million in 2016 and EUR 580 million in 2017 (Table 3.33).

**Table 3.33 Detention totals at EU borders, reported for 2016 and 2017**

Detention totals	2016	2017
Cases	63,184	57,433
Procedures	77,705	74,706
Articles	41,387,132	30,410,703
Domestic retail value	EUR 672,899,102	EUR 582,456,067

Source: European Commission (2018), Report on the EU customs enforcement of intellectual property rights: Results at the EU border, 2017.

3.382. The total number of cases (each case representing an interception by customs) decreased by 9% in 2017, for the most part in the postal, air freight and sea transportation modes. Interceptions in express courier and road transport demonstrated an increase, when compared to the figures from 2016. In terms of provenance, China is the main source country (73%) from where suspected IPR-infringing goods arrived when they were detained, and where those goods were subsequently not released. In relation to value, the order and list of countries changed in comparison

<sup>484</sup> European Commission, *Intellectual Property*. Viewed at: [https://ec.europa.eu/growth/industry/intellectual-property\\_en#enforcement\\_package](https://ec.europa.eu/growth/industry/intellectual-property_en#enforcement_package). The package included, apart from the above-referenced Guidance, Report and Study, a communication entitled *A balanced IP enforcement system responding to today's societal challenges*. Viewed at: <https://ec.europa.eu/docsroom/documents/26581>; a communication entitled *Setting out the EU approach to Standard Essential Patents*. Viewed at: <https://ec.europa.eu/docsroom/documents/26583>; and an *Overview of the functioning of the Memorandum of Understanding on the sale of counterfeit goods via the Internet*. Viewed at: <https://ec.europa.eu/docsroom/documents/26602>.

<sup>485</sup> Regulation (EU) No. 608/2013 of the European Parliament and of the Council of 12 June 2013 concerning customs enforcement of intellectual property rights and repealing Council Regulation (EC) No. 1383/2003. Viewed at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:181:0015:0034:en:PDF>. For a more detailed description of this Regulation, see WTO document WT/TPR/S/317/Rev.1, 13 October 2017, paras. 3.304-3.305. For an overview of the main provisions relating to border measures, see also Table 3.23 of that document.

<sup>486</sup> Commission Implementing Regulation (EU) No. 1352/2013 of 4 December 2013 establishing the forms provided for in Regulation (EU) No. 608/2013 of the European Parliament and of the Council concerning customs enforcement of intellectual property rights. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R1352&from=EN>.

<sup>487</sup> European Commission, *Report on the EU customs enforcement of intellectual property rights: Results at the EU border, 2017*. Viewed at: [https://publications.europa.eu/en/publication-detail/-/publication/64dda5ad-c197-11e8-9893-01aa75ed71a1/language-en/format-PDF/source-77412360?WT.mc\\_id=NEWSLETTER\\_October2018](https://publications.europa.eu/en/publication-detail/-/publication/64dda5ad-c197-11e8-9893-01aa75ed71a1/language-en/format-PDF/source-77412360?WT.mc_id=NEWSLETTER_October2018).

to former years. Hong Kong, China is at the top of the list for countries of provenance in relation to value, due to detentions of high-value luxury goods.

3.383. According to the report for 2017, top categories for detained articles in 2017 were: foodstuffs (24% of the overall amount of detained articles), toys (11%), cigarettes (9%), "other goods" (9%), and clothing (7%). As in previous years, the majority of the articles (i.e. 92% in numbers, and 94% in value) detained by customs in 2017 were suspected of infringing an EUTM, international trade mark or national trademark. In 79% of the detention procedures started by customs, the goods were destroyed after the owner of the goods and the right-holder agreed on destruction. In 10% of the detentions, a court case was initiated to determine the infringement and, in 0.2%, the goods were dealt with as part of criminal proceedings.

3.384. In the Council for TRIPS, the enforcement of IPRs pursuant to the EU's legislation was considered at its meeting on 8-9 November 2018.<sup>488</sup> In that meeting, the EU took note of the questions from the Indian delegation on the enforcement of IPRs regarding goods in transit.<sup>489</sup> The EU also submitted updated responses to the Checklist of issues on enforcement in July 2019.<sup>490</sup>

#### 3.3.7.3.4 Enforcement at the international level

3.385. The EU's current strategy to enforce IPR in non-EU countries is in place since 2014.<sup>491</sup> In the review period, the Commission published its updated Counterfeit and Piracy Watch List.<sup>492</sup> The Watch List reflects the results of stakeholder consultations, and presents a non-exhaustive list of examples of reported third-country online marketplaces or service providers which allegedly engage in, facilitate or benefit from counterfeiting and piracy. The aim is to encourage the operators and owners, as well as the responsible local enforcement authorities and governments, to take the necessary actions and measures to reduce and/or prevent any IPR infringements, and to raise consumer awareness. Furthermore, a general analysis of the protection and enforcement of IPR in third countries can be found in the Commission services' report on the protection and enforcement of IPRs in third countries.<sup>493</sup>

3.386. The EU also aims to include, in its RTAs with third countries, comprehensive IPR chapters offering similar levels of IPR protection to that existing in the EU, taking into account the level of development of the countries concerned. It engages in several active discussions on IP with other countries.<sup>494</sup> The Commission finances and steers several technical cooperation programmes, aimed at strengthening IPR protection and enforcement in third countries. In general, the EUIPO is entrusted with the technical implementation of those cooperation programmes.<sup>495</sup>

<sup>488</sup> See minutes of the meeting, in WTO document IP/C/M/90/Add.1, 15 January 2019, paras. 22-25.

<sup>489</sup> Circulated in WTO documents IP/C/W/636, 9 October 2017; and IP/C/W/636/Add.1, 25 October 2018. According to the latest report, around 70% of medicines and other medical products seized and not released by EU customs originated in India.

<sup>490</sup> *Council for Trade-Related Aspects of Intellectual Property Rights - Checklist of issues on enforcement - Responses from European Union*, WTO document IP/N/6/EU/1, 10 July 2019.

<sup>491</sup> WTO document WT/TPR/S/357/Rev.1, 13 October 2017, para. 3.354 et seq.

<sup>492</sup> European Commission, *Counterfeit and Piracy Watch List*. Viewed at: [https://trade.ec.europa.eu/doclib/docs/2018/december/tradoc\\_157564.pdf](https://trade.ec.europa.eu/doclib/docs/2018/december/tradoc_157564.pdf). The Watch List helps identify the marketplaces outside the EU where counterfeiting, piracy or other forms of IP abuse are common practice.

<sup>493</sup> European Commission, *Report on the protection and enforcement of intellectual property rights in third countries*. Viewed at: <https://ec.europa.eu/transparency/regdoc/rep/10102/2018/EN/SWD-2018-47-F1-EN-MAIN-PART-1.PDF>. The report gives EU right-holders information on the effectiveness of IPR regimes in countries outside the EU.

<sup>494</sup> For an overview, European Commission, *EU dialogues with priority countries on intellectual property issues*. Viewed at: [https://trade.ec.europa.eu/doclib/docs/2013/april/tradoc\\_151009.pdf](https://trade.ec.europa.eu/doclib/docs/2013/april/tradoc_151009.pdf).

<sup>495</sup> Under Regulation (EU) No. 386/2012, OJ EU L 129/1, 16 May 2012, the EUIPO was tasked with building strategies and developing tools to enforce IPRs through international cooperation with IP offices in third countries, as well as to build capacity in third countries. For up-to-date information, see <https://euipo.europa.eu/ohimportal/en/web/observatory/protecting-ip-in-third-countries>.



## 4 TRADE POLICIES BY SECTOR

### 4.1 Agriculture and Fisheries

#### 4.1.1 Agriculture

4.1. The total production value of agricultural products in the EU reached EUR 393.5 billion in 2018, from EUR 389 billion in 2017 and EUR 366.3 billion in 2016, representing a growth of 1.0% and 7.5%, respectively. Crops remained stable, at a level of 56.5% of production value in 2017, with cereals and fresh vegetables remaining the most valuable crops. Animals and animal products represented 43.5% of production value, with milk alone representing 14.7% of total agricultural output, followed by pigs and cattle, with just over 9% and 8%, respectively (Table 4.1). Over half of the total agricultural output value came from four producers, namely France (17%), Italy (13%), Spain and Germany (12% each).<sup>1</sup>

**Table 4.1 Total production value of agricultural products, 2014-18**

(EUR million at producer prices)

	2014	2015	2016	2017	2018
All products	383,156	376,378	366,318	389,279	393,499
Crops	211,918	213,808	209,344	216,338	222,076
Cereals	52,162	49,957	42,822	45,650	47,983
Wheat and spelt	26,096	26,519	20,755	22,776	23,251
Grain maize	11,749	9,192	9,582	9,822	10,813
Oil seeds	11,655	11,653	11,301	12,310	11,063
Forage plants	25,013	22,498	23,630	22,917	21,843
Fresh vegetables	30,024	33,394	32,682	34,442	35,166
Plants and flowers	20,706	20,916	21,254	22,260	21,857
Fruits	23,583	26,052	25,897	26,873	28,986
Wine	21,666	22,834	22,502	22,046	27,918
Potatoes	9,878	10,349	12,623	11,305	12,124
Animals and animal products	171,237	162,569	156,974	172,941	171,423
Cattle	31,522	32,759	31,184	31,745	32,476
Pigs	36,017	33,340	35,031	39,090	36,494
Poultry	21,782	22,372	21,342	21,313	22,486
Milk	60,722	52,384	48,993	58,850	57,712
Eggs	9,012	9,509	8,629	10,139	10,409

Source: Eurostat, *Economic accounts for agriculture - values at current prices* (aact\_eaa01). Viewed at: [https://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=aact\\_eaa01&lang=en](https://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=aact_eaa01&lang=en).

4.2. In 2017, agriculture contributed 1.2 % to GDP. The EU's agricultural gross value added increased by 12.4% compared to 2016, largely due to the boost of the EU's agricultural industry output value, thus confirming the upward trend recorded since 2005.<sup>2</sup> The importance of agriculture in the economy varies significantly from one member State to another, from less than 1.0% of total GDP in Belgium, the Czech Republic, Germany, Luxembourg, Malta, Austria, the Slovak Republic, Finland, Sweden and the United Kingdom to 4.1% in Romania and 3.7% in Bulgaria.<sup>3</sup>

4.3. People working in agriculture accounted for 9.7 million in 2016, representing 4.2% of total employment. The sector is particularly important in Romania, Bulgaria, Greece and Poland, accounting for 23.0%, 17.5%, 10.7% and 10.1% of total employment, respectively.<sup>4</sup>

4.4. Most of EU agriculture holdings are small, with two thirds of the 10.5 million farms being less than 5 ha in size. At the other end of the spectrum, 6.9% of the farms were of 50 ha or more in size

<sup>1</sup> Eurostat, *Output of the agricultural industry - basic and producer prices*. Viewed at: <https://ec.europa.eu/eurostat/tgm/table.do?tab=table&init=1&language=en&pcode=taq00102&plugin=1>.

<sup>2</sup> Eurostat, *Agriculture, forestry and fishery statistics - 2018 edition*. Viewed at: <https://ec.europa.eu/eurostat/en/web/products-statistical-books/-/KS-FK-18-001>.

<sup>3</sup> Eurostat, *Gross value added of the agricultural industry - basic and producer prices*. Viewed at: <https://ec.europa.eu/eurostat/databrowser/view/tag00056/default/table?lang=en>.

<sup>4</sup> Eurostat, *Agriculture, forestry and fishery statistics - 2018 edition*.

and worked two thirds of the utilized area. The average size was 16.6 ha, with only 15% of farms being that size or bigger.<sup>5</sup> Romania alone accounts for one third of the EU's agricultural holdings, with an average farm size of 3.7 ha. The standard output per holding varies from EUR 3,538 in Romania to EUR 414,638 in the Netherlands (Table 4.2).

**Table 4.2 Selected indicators of agricultural structure, 2016**

	Utilized agricultural area (UAA) ('000 ha)	Number of holdings ('000)	Average UAA per holding (ha)	Standard output (EUR/holding)	Standard output (EUR/ha)	Crop and animal production hunting (% total employment)	Manufacture of food products, beverages and tobacco (% total employment)
Belgium	1,354.3	36.9	36.7	217,891	5,935	1%	2%
Bulgaria	4,468.5	202.7	22.0	18,957	860	17%	3%
Czech Republic	3,455.4	26.5	130.2	191,555	1,471	3%	2%
Denmark	2,614.6	35.1	74.6	287,088	3,849	2%	2%
Germany	16,715.3	276.1	60.5	178,361	2,946	1%	2%
Estonia	995.1	16.7	59.6	47,997	805	3%	2%
Ireland	4,883.7	137.6	35.5	45,979	1,295	5%	3%
Greece	4,553.8	685.0	6.6	11,059	1,663	11%	3%
Spain	23,229.8	945.0	24.6	40,598	1,652	4%	2%
France	27,814.2	456.5	60.9	134,371	2,205	3%	2%
Croatia	1,563.0	134.5	11.6	15,134	1,302	6%	4%
Italy	12,598.2	1,145.7	11.0	45,115	4,103	3%	2%
Cyprus	111.9	34.9	3.2	17,650	5,510	4%	3%
Latvia	1,930.9	69.9	27.6	17,465	633	5%	3%
Lithuania	2,924.6	150.3	19.5	14,810	761	7%	3%
Luxembourg	130.7	2.0	66.3	185,283	2,794	1%	1%
Hungary	4,670.6	430.0	10.9	15,192	1,399	6%	3%
Malta	11.1	9.2	1.2	10,642	8,814	1%	2%
Netherlands	1,796.3	55.7	32.3	414,638	12,853	2%	1%
Austria	2,669.8	132.5	20.1	46,351	2,300	3%	2%
Poland	14,405.7	1,410.7	10.2	17,726	1,736	10%	3%
Portugal	3,641.7	259.0	14.1	19,863	1,413	9%	2%
Romania	12,502.5	3,422.0	3.7	3,538	968	23%	3%
Slovenia	488.4	69.9	7.0	16,578	2,373	7%	2%
Slovak Republic	1,889.8	25.7	73.6	75,270	1,022	2%	2%
Finland	2,233.1	49.7	44.9	70,702	1,574	3%	1%
Sweden	3,012.6	62.9	47.9	81,962	1,712	1%	1%
United Kingdom	16,673.3	185.1	90.1	137,271	1,524	1%	1%
<b>EU-28</b>	<b>173,338.6</b>	<b>10,467.8</b>	<b>16.6</b>	<b>34,785</b>	<b>2,101</b>	<b>4%</b>	<b>2%</b>

Source: Eurostat, *Farm indicators by agricultural area, type of farm, standard output, legal form and NUTS 2 regions* (ef\_m\_farmleg); *Economic accounts for agriculture - values at current prices* (aact\_eaa01); and *National accounts employment data by industry* (nama\_10\_a64\_e). Viewed at: [http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=ef\\_m\\_farmleg&lang=en](http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=ef_m_farmleg&lang=en); [http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=aact\\_eaa01&lang=en](http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=aact_eaa01&lang=en); and [http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=nama\\_10\\_a64\\_e&lang=en](http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=nama_10_a64_e&lang=en).

#### 4.1.1.1 Trade

4.5. In 2018, the EU had a EUR 20.9 billion surplus in trade of agricultural products (WTO definition<sup>6</sup>), with exports of EUR 137.3 billion and imports of EUR 116.4 billion. In value terms, both exports and imports slightly decreased compared to 2017. Since 2015, exports increased by 6.5% while imports increased by 2.6%. Agricultural exports and imports as a percentage of total exports and imports both decreased, to 7.0% and 5.9%, respectively, in 2018. Wine, followed by distilled spirits, are the biggest exports, while coffee and soya bean cake are the main imports (Table 4.3).

<sup>5</sup> Eurostat. *Agriculture, forestry and fishery statistics – 2018 edition*.

<sup>6</sup> For the purposes of this Section of the TPR, the definition of agriculture products used is that set out in Annex 1 of the Agreement on Agriculture, i.e. HS Chapters 01-24 less fish and fishery products (HS Chapter 03, 0508, 0511.91, 1504.10, 1504.20, 1603-1605 and 2301.20) plus some selected products (HS 2905.43-2905.45, 3301, 3501-3505, 3809.10, 3823, 3824.60, 4101-4103, 4301, 5001-5003, 5101-5103, 5201-5203, and 5301-5302).

**Table 4.3 Exports and imports of agricultural products (HS 4-digit level), 2015-18<sup>a</sup>**

(EUR billion, unless otherwise indicated)

HS4	Product description	2015	2016	2017	2018	Top 5 destinations/origins in 2018 (% of total agriculture exports/ imports)
<b>Total agriculture exports</b>		<b>128.9</b>	<b>131.0</b>	<b>137.4</b>	<b>137.3</b>	<b>United States (16.2), China (8.1), Switzerland (6), Japan (4.8), Russian Federation (4.8)</b>
<i>(% of total exports)</i>		7.2%	7.5%	7.3%	7.0%	
<i>of which:</i>						
2204	Wine of fresh grapes	9.8	10.1	11.3	11.6	United States (32.5), Switzerland (8.7), China (8.3), Canada (7.8), Japan (7.2)
2208	Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80% vol.; spirits, liqueurs and other spirituous beverages	10.3	10.2	10.7	11.3	United States (37.7), Singapore (8.7), China (5.2), Russian Federation (4.5), Canada (3)
1901	Malt extract; food preparations of flour, groats, meal, starch or malt extract	5.6	5.9	6.6	6.8	China (34.6), Hong Kong, China (9.9), Saudi Arabia (6.2), Russian Federation (2.8), Nigeria (2.3)
2106	Food preparations not elsewhere specified or included	5.1	5.5	5.9	5.9	United States (9.6), Russian Federation (5.9), Switzerland (5.5), China (5.3), Turkey (4.5)
0203	Meat of swine, fresh, chilled or frozen	4.0	5.2	5.1	4.8	Japan (26.2), China (21.7), Korea, Rep. of (15.6), United States (7.2), Australia (4.2)
2309	Preparations of a kind used in animal feed	3.4	3.6	4.2	4.1	Russian Federation (11.4), Norway (6.8), United States (5.5), Switzerland (5.2), Japan (5)
0406	Cheese and curd	3.5	3.6	4.0	4.0	United States (21.8), Japan (10.2), Switzerland (8.7), Australia (4.4), Canada (4.1)
1905	Bread, pastry, cakes, biscuits and other bakers' wares	3.4	3.5	3.8	4.0	United States (18.4), Switzerland (9.9), Norway (7.6), Russian Federation (6.3), Australia (5.8)
1806	Chocolate and other food preparations containing cocoa	3.8	3.8	3.9	4.0	United States (13), Russian Federation (9.1), Australia (5.6), Switzerland (5.3), Canada (5.3)
1001	Wheat and meslin	6.3	5.6	4.0	3.6	Algeria (28.9), Saudi Arabia (16.9), Egypt (6.2), Morocco (3.8), Jordan (3.7)
<b>Total agriculture imports</b>		<b>113.5</b>	<b>112.5</b>	<b>117.4</b>	<b>116.4</b>	<b>United States (10.4), Brazil (10.2), China (4.9), Ukraine (4.8), Argentina (4.4)</b>
<i>(% of total imports)</i>		6.6%	6.6%	6.3%	5.9%	
<i>of which:</i>						
0901	Coffee	8.9	8.5	8.8	7.8	Brazil (24.8), Switzerland (17.3), Viet Nam (16.1), Honduras (7.2), Colombia (6.3)
2304	Oil-cake and other solid residues from soya bean oil	7.5	6.4	6.3	6.3	Brazil (41.8), Argentina (38.8), Paraguay (4.7), United States (4.6), India (2.7)
1201	Soya beans	5.3	5.3	4.9	5.1	United States (49), Brazil (36.5), Canada (5.6), Ukraine (4.1), Paraguay (2.6)
1511	Palm oil and its fractions	4.4	4.1	4.9	4.2	Indonesia (46.4), Malaysia (25.1), Papua New Guinea (9), Colombia (6.3), Guatemala (5.7)
0802	Other nuts, fresh or dried, whether or not shelled or peeled	5.0	4.3	4.0	4.0	United States (56), Turkey (16.8), Chile (6), Iran (4.9), China (4)
0803	Bananas, including plantains, fresh or dried	3.4	3.5	3.9	3.9	Ecuador (25.3), Colombia (22.6), Costa Rica (19.6), Côte d'Ivoire (6), Panama (6)
1801	Cocoa beans	4.2	4.9	4.0	3.9	Côte d'Ivoire (52.1), Ghana (18), Nigeria (10.6), Cameroon (6.8), Ecuador (3.6)
1005	Maize (corn)	2.1	2.2	2.8	3.7	Ukraine (51.1), Brazil (20.5), United States (8.5), Canada (7.7), Argentina (2.5)

HS4	Product description	2015	2016	2017	2018	Top 5 destinations/origins in 2018 (% of total agriculture exports/ imports)
0804	Dates, figs, pineapples, avocados, guavas, mangoes and mangosteens, fresh or dried	2.2	2.6	2.9	2.8	Costa Rica (21.5), Peru (19.5), Brazil (7.1), Israel (6.7), Turkey (5.2)
2204	Wine of fresh grapes	2.8	2.6	2.6	2.7	Chile (22.1), Australia (16.8), United States (16), South Africa (15.1), New Zealand (14)

a Major items, according to 2018 data.

Note: WTO definition of agriculture: HS Chapters 01-24 less fish and fishery products (HS Chapter 03, 0508, 0511.91, 1504.10, 1504.20, 1603-1605 and 2301.20), plus some selected products (HS 2905.43-2905.45, 3301, 3501-3505, 3809.10, 3823, 3824.60, 4101-4103, 4301, 5001-5003, 5101-5103, 5201-5203, and 5301-5302).

Source: WTO Secretariat calculations, based on Eurostat, *International trade in goods*. Viewed at: <https://ec.europa.eu/eurostat/web/international-trade-in-goods/data/database>.

#### 4.1.1.2 Agricultural policies

4.6. Since the last Review, the Common Agricultural Policy (CAP) legislative framework has not changed dramatically. The 2013 CAP reforms have been fully applied since 2015, based on the 2013 regulations and the secondary regulations adopted in March 2014. The structure of the agricultural policies remains the same: the European Agriculture Guarantee Fund (EAGF) covers direct payments and market measures (Pillar I), and the European Agricultural Fund for Rural Development (EAFRD) finances the EU contribution to rural development programmes (Pillar II).

4.7. The main modification occurred at the end of 2017. Following a number of simplification measures, adopted through changes to Commission delegated and implementing acts and guidelines, the regulation on the financial rules applicable to the general budget of the EU, the Omnibus regulation, published in September 2016 as part of the review package of the Multiannual Financial Framework (MFF), contained changes applicable to the basic CAP regulations.<sup>7</sup> The Omnibus Agricultural Provisions Regulation (EU) 2017/2393<sup>8</sup> was adopted on 13 December 2017. It contains technical amendments relating to the four Basic Acts of the CAP: (i) direct payments<sup>9</sup>; (ii) rural development<sup>10</sup>; (iii) common market organization<sup>11</sup>; and (iv) horizontal regulation (financing, management and monitoring of the CAP).<sup>12</sup>

<sup>7</sup> European Council, *Omnibus regulation – Agricultural rules*. Viewed at:

<https://www.consilium.europa.eu/en/policies/cap-simplification/omnibus-regulation-agriculture/>.

<sup>8</sup> Regulation (EU) No. 2017/2393 of the European Parliament and of the Council of 13 December 2017 amending Regulations (EU) No. 1305/2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD), (EU) No. 1306/2013 on the financing, management and monitoring of the common agricultural policy, (EU) No. 1307/2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy, (EU) No. 1308/2013 establishing a common organisation of the markets in agricultural products and (EU) No. 652/2014 laying down provisions for the management of expenditure relating to the food chain, animal health and animal welfare, and relating to plant health and plant reproductive material. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017R2393>.

<sup>9</sup> Regulation (EU) No. 1307/2013 of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No. 637/2008 and Council Regulation (EC) No. 73/2009. Viewed at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:347:0608:0670:EN:PDF>.

<sup>10</sup> Regulation (EU) No. 1305/2013 of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No. 1698/2005. Viewed at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:347:0487:0548:en:PDF>.

<sup>11</sup> Regulation (EU) No. 1308/2013 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. Viewed at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:347:0671:0854:EN:PDF>.

<sup>12</sup> Regulation (EU) No. 1306/2013 of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No. 352/78, (EC) No. 165/94, (EC) No. 2799/98, (EC) No. 814/2000, (EC) No. 1290/2005 and (EC) No. 485/2008. Viewed at: <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32013R1306>.

#### 4.1.1.2.1 Domestic support

##### 4.1.1.2.1.1 Direct payments

4.8. Regulation (EU) No. 1307/2013 and secondary regulations<sup>13</sup> remain the current legal framework for direct payments. The national ceilings per member State for each year are set out in Regulation (EU) No. 1307/2013. The national ceilings provide for convergence among the member States, and the rules governing direct payments require internal convergence within each member State<sup>14</sup> so that payments per hectare move towards a more uniform level within and among member States.

4.9. Each member State has some flexibility to transfer some funding from direct payments to rural development, or vice versa. Twelve member States<sup>15</sup> chose to transfer funds from direct payments to rural development, with a total transfer of EUR 7.1 billion over the 2015-20 period, and five member States<sup>16</sup> transferred a total of EUR 3.4 billion from rural development to direct payments. The net amount of national ceilings for direct payments for each member State is shown in Table 4.4.

**Table 4.4 Net amounts – national ceilings for direct payments, 2015-20**

	2015	2016	2017	2018	2019	2020
Belgium	524	510	502	489	482	505
Bulgaria	721	789	790	791	793	799
Czech Republic	840	839	839	857	857	873
Denmark	870	852	834	826	818	880
Germany	4,913	4,881	4,848	4,820	4,793	5,018
Estonia	114	115	124	134	144	169
Ireland	1,215	1,213	1,212	1,211	1,211	1,211
Greece	2,110	2,087	2,064	2,043	2,022	2,119
Spain	4,902	4,911	4,926	4,940	4,953	4,954
France	7,302	7,271	7,239	6,901	6,877	7,437
Croatia	184	203	241	279	317	306
Italy	3,897	3,847	3,797	3,750	3,702	3,704
Cyprus	51	50	50	49	49	49
Latvia	181	206	230	255	280	303
Lithuania	418	443	467	475	483	517
Luxembourg	34	34	34	34	33	33
Hungary	1,277	1,276	1,274	1,274	1,274	1,269
Malta	5	5	5	5	5	5
Netherlands	749	737	724	683	671	732
Austria	693	692	692	692	692	692
Poland	3,359	3,376	3,392	3,411	3,430	3,062
Portugal	566	574	582	591	599	600
Romania	1,600	1,773	1,801	1,873	1,903	1,903

<sup>13</sup> Commission Delegated Regulation (EU) No. 639/2014 of 11 March 2014 supplementing Regulation (EU) No. 1307/2013 of the European Parliament and of the Council establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and amending Annex X to that Regulation. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014R0639>; and Commission Implementing Regulation (EU) No. 641/2014 of 16 June 2014 laying down rules for the application of Regulation (EU) No. 1307/2013 of the European Parliament and of the Council establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014R0641>.

<sup>14</sup> In the case of the Single Area Payment Scheme, a uniform payment rate already applies. Eight member States applying the Basic Payment Scheme have opted for a form of flat rate, at national or regional level: Germany, France-Corsica, Malta, the United Kingdom-England from 2015, the Netherlands, Austria, Finland, the United Kingdom-Scotland and Wales by 2019, and Sweden in 2020.

<sup>15</sup> France, Latvia, Lithuania, the United Kingdom, Belgium, the Czech Republic, Denmark, Germany, Estonia, Greece, the Netherlands, and Romania. Changes requested by France, Lithuania and the Netherlands were adopted through Commission Delegated Regulation (EU) 2018/162, 23 November 2017.

<sup>16</sup> Croatia, Malta, Poland, the Slovak Republic, and Hungary.

	2015	2016	2017	2018	2019	2020
Slovenia	138	137	136	135	134	134
Slovak Republic	436	439	442	445	449	394
Finland	523	523	524	524	525	525
Sweden	697	697	698	699	700	700
United Kingdom	3,171	3,177	3,184	3,192	3,201	3,592

Source: Regulation (EU) No. 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No. 637/2008 and Council Regulation (EC) No. 73/2009, as amended in particular by Commission Delegated Regulations (EU) No. 1378/2014, 17 October 2014 and 2018/162, 23 November 2017. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02013R1307-20190301&from=EN>.

4.10. Apart from the small farmers' scheme (see below), all direct payment programmes are subject to provisions to ensure compliance with basic standards relating to the environment, food safety, animal and plant health, and animal welfare (cross-compliance).<sup>17</sup>

4.11. In order to be eligible for direct payments, farmers must comply with the "minimum requirements"<sup>18</sup>, i.e. be active farmers<sup>19</sup> and have agricultural land at their disposal that is used for agricultural activity.<sup>20</sup>

4.12. Until 2017, in all member States, entities operating an activity on the "negative list" were not considered "active farmers" unless they could prove that their farming activity was not marginal, using one of three possibilities to rebut the negative presumption. Since 2018, the Omnibus Regulation provides greater flexibility to member States to define who is an active farmer, notably by allowing them to discontinue the application of the "negative list" or to reduce the number of possibilities for rebutting the negative presumption and/or by introducing the possibility to consider as active farmers only those registered for their agricultural activities in a national fiscal or social security register.<sup>21</sup> Member States can exempt farmers from the definition of active farmer if they received direct payments below a certain level of threshold not exceeding EUR 5,000.

4.13. Direct payments amounted to EUR 41.6 billion in 2017, including EUR 36.5 billion for decoupled direct aid, and benefitted 6.5 million farms. Roughly 76% of beneficiaries receive less than EUR 5,000, and 80% of all beneficiaries receive 20% of total direct payments.<sup>22</sup>

<sup>17</sup> Regulation (EU) No. 1306/2013 on the financing, management and monitoring of the common agricultural policy, Regulation (EU) No. 640/2014 with regard to the integrated administration and control system and conditions for refusal or withdrawal of payments and administrative penalties applicable to direct payments, rural development support and cross-compliance, and Regulation (EU) No. 809/2014 laying down rules for the application of Regulation (EU) No. 1306/2013. Viewed at: <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32013R1306>, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014R0640>, and <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:32014R0809>.

<sup>18</sup> Art. 10 of Regulation (EU) No. 1307/2013.

<sup>19</sup> Art. 9 of Regulation (EU) No. 1307/2013.

<sup>20</sup> European Commission, *Eligibility for Direct payments of the Common Agricultural Policy*. Viewed at [https://ec.europa.eu/info/sites/info/files/food-farming-fisheries/key\\_policies/documents/direct-payments-eligibility-conditions\\_en.pdf](https://ec.europa.eu/info/sites/info/files/food-farming-fisheries/key_policies/documents/direct-payments-eligibility-conditions_en.pdf).

<sup>21</sup> Art. 9.2 of Regulation (EU) No. 1307/2013. As a result, only nine member States/regions decided to continue applying it: Belgium, Bulgaria, Croatia, Ireland, Malta, Romania, Slovenia, Spain and the United Kingdom (Wales). Estonia and Finland are discontinuing it from 2019, and the other member States discontinued it in 2018.

<sup>22</sup> European Commission, *Direct payments to agricultural producers – graphs and figures – Financial year 2017*. Viewed at: [https://ec.europa.eu/agriculture/sites/agriculture/files/cap-funding/beneficiaries/direct-aid/pdf/direct-aid-report-2017\\_en.pdf](https://ec.europa.eu/agriculture/sites/agriculture/files/cap-funding/beneficiaries/direct-aid/pdf/direct-aid-report-2017_en.pdf).

### **Small farmers scheme**

4.14. Member States have the option of applying a small farmers' scheme, a simplified scheme that replaces all other direct payments<sup>23</sup> and waives eligible farmers from greening and cross-compliance penalties. Fifteen member States have opted for the small farmers' scheme.

### **Basic payments and single area payments**

4.15. Eighteen member States apply the Basic Payment Scheme<sup>24</sup>, while all others apply the Single Area Payment Scheme. Each of the ten member States<sup>25</sup> using the Single Area Payment Scheme provides a uniform payment per eligible hectare. Eligibility for either Scheme is a precondition for the complementary payments under the decoupled income schemes (the greening payment, the young farmers' scheme, payments for areas with natural constraints, the small farmers' scheme, and redistributive payments).

4.16. Amongst the 18 member States that implement the Basic Payment Scheme, 6 opted for the possibility to regionalize the scheme.<sup>26</sup>

4.17. All ten member States using the Single Area Payment Scheme decided to grant, in 2017 and in 2018, transitional national aid (TNA)<sup>27</sup>, which allows the provision of complementary support to sectors eligible for Complementary National Direct Payments in the past. However, due to budgetary constraints, Latvia did not grant any TNA in 2017 or 2018. The maximum amount of TNA will be gradually reduced, to reach, in application year 2020, 50% of the amounts payable in 2013.<sup>28</sup>

4.18. Allocations from the national ceilings to the Basic Payment Scheme or the Single Area Payments Scheme vary from 12.4% in Malta, to 68.0% in Luxembourg (Table 4.5).

### **Greening payment**

4.19. Each member State is required<sup>29</sup> to allocate 30% of the annual national ceiling for direct payments to agricultural practices beneficial for the climate and the environment (greening).<sup>30</sup> Farmers that are entitled to payment under the Basic Payment Scheme or the Single Area Payment Scheme must observe, on all their eligible hectares, the following greening practices: (i) crop diversification applying for holdings over 10 ha; (ii) maintenance of existing permanent grassland; and (iii) having an ecological focus area (EFA), applying to at least 5% of the area of holdings over 15 ha.

4.20. Exemptions to these criteria may apply, such as for farmers participating in the small farmers' scheme, farmers with a large proportion of permanent grassland, and farmers that meet the requirements for organic production.

<sup>23</sup> The level of payments under the scheme is limited to a minimum of EUR 500 and a maximum of EUR 1,250 and, depending on the method the member State opted for to determine this level, the payment may be limited to a maximum of 10% of the national direct payments. Viewed at: [https://ec.europa.eu/agriculture/sites/agriculture/files/direct-support/direct-payments/docs/small-farmers-scheme\\_en.pdf](https://ec.europa.eu/agriculture/sites/agriculture/files/direct-support/direct-payments/docs/small-farmers-scheme_en.pdf).

<sup>24</sup> Austria, Belgium, Croatia, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Malta, the Netherlands, Portugal, Slovenia, Spain, Sweden, and the United Kingdom.

<sup>25</sup> Bulgaria, the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Poland, Romania and the Slovak Republic.

<sup>26</sup> Germany, by *Länder*; Greece (3 regions according to historical land use); Spain (50 regions); France (Corsica and rest of France); Finland (2 regions); and the United Kingdom (regional model applied in Scotland and England).

<sup>27</sup> European Commission, *Direct Payments – Single Area Payment Scheme and Transitional National Aid*. Viewed at: [https://ec.europa.eu/agriculture/sites/agriculture/files/direct-support/direct-payments/docs/single-payment-scheme-and-transitional-aid\\_en.pdf](https://ec.europa.eu/agriculture/sites/agriculture/files/direct-support/direct-payments/docs/single-payment-scheme-and-transitional-aid_en.pdf).

<sup>28</sup> Art. 37, Regulation (EU) No. 1307/2013.

<sup>29</sup> Art. 47(1), Regulation (EU) No. 1307/2013.

<sup>30</sup> Arts. 43-47, Regulation (EU) No. 1307/2013.

4.21. Eight member States opted to allow farmers to meet some of their greening obligations through equivalent practices<sup>31</sup> between 2014 and 2018.<sup>32</sup>

4.22. Following the 2016 review of greening, modifications to the underlying delegated regulation<sup>33</sup>, aimed at simplifying elements of greening and increasing its effectiveness, were made in 2017.<sup>34</sup> They included flexibilities in the application of EFAs, and the prohibition of plant protection products on some EFAs from 2018.

4.23. The Omnibus Regulation also modified the greening provisions, so as to provide greater flexibility for member States. These changes notably included the extension of the list of EFA types to include areas with silvergrass (*Miscanthus*), cup plant (*Silphium perfoliatum* or "cup plant") and land lying fallow for melliferous plants. Some of these modifications were followed by changes to the delegated regulation.<sup>35</sup>

### **Payment for the young farmers' scheme**

4.24. Each member State is required to operate the young farmers' scheme<sup>36</sup>, which provides additional payments to farmers who benefit from Basic Payments or Single Area Payments, who are aged 40 years or under in the year of submission of the application under the scheme, and who are setting up in farming for the first time as head of an agricultural holding, or who have already done so within the five years preceding the scheme. Member States may define further eligibility criteria as regards appropriate skills and/or training.<sup>37</sup>

4.25. Member States can reserve up to 2% of the national ceiling for direct payments to the scheme (Table 4.5 for effective financial allocations in 2018) and have the flexibility to decide the method for calculating the payment and the maximum number of hectares for which the payment is granted (between 25 and 90).

4.26. The Omnibus regulation modified the scheme, in particular by allowing member States to increase the additional payment that can be made to young farmers to up to 50% of a reference payment per hectare (from up to 25% prior to the Omnibus).<sup>38</sup>

### **Redistributive payments and reduction of payments**

4.27. Under the optional redistributive payment<sup>39</sup>, member States may allocate up to 30% of their national ceiling for direct payments to grant an extra payment for the first eligible hectares. The number of hectares eligible for this extra payment is limited to a maximum set by each member State up to 30 hectares, or up to the average size of farms in the member State, if higher.

<sup>31</sup> Art. 43(3), Regulation (EU) No. 1307/2013.

<sup>32</sup> Austria, France, Ireland, Italy-Marche, the Netherlands, Poland, Portugal, the United Kingdom-Scotland.

<sup>33</sup> Commission Delegated Regulation (EU) No. 639/2014 of 11 March 2014 supplementing Regulation (EU) No. 1307/2013 of the European Parliament and of the Council establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and amending Annex X to that Regulation. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014R0639>.

<sup>34</sup> Commission Delegated Regulation (EU) No. 2017/1155 of 15 February 2017 amending Delegated Regulation (EU) No. 639/2014 as regards the control measures relating to the cultivation of hemp, certain provisions on the greening payment, the payment for young farmers in control of a legal person, the calculation of the per unit amount in the framework of voluntary coupled support, the fractions of payment entitlements and certain notification requirements relating to the single area payment scheme and the voluntary coupled support, and amending Annex X to Regulation (EU) No. 1307/2013 of the European Parliament and of the Council. Viewed at: [https://eur-lex.europa.eu/eli/reg\\_del/2017/1155/oj](https://eur-lex.europa.eu/eli/reg_del/2017/1155/oj).

<sup>35</sup> Commission Delegated Regulation (EU) No. 2018/1784 of 9 July 2018 amending Delegated Regulation (EU) No. 639/2014 as regards certain provisions on the greening practices established by Regulation (EU) No. 1307/2013 of the European Parliament and of the Council. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018R1784>.

<sup>36</sup> Arts. 50 and 51, Regulation (EU) No. 1307/2013.

<sup>37</sup> Bulgaria, Ireland, Spain, France, Hungary, Austria, Portugal, the Slovak Republic, and the two regions of Belgium and Northern Ireland in the United Kingdom apply such requirements

<sup>38</sup> Art. 50, Regulation (EU) No. 1307/2013.

<sup>39</sup> Arts. 41 and 42, Regulation (EU) No. 1307/2013.



4.28. Ten member States and regions opted for the redistributive payment. The amount of the per-hectare top-up payment decided varied from EUR 25 for the first 52 hectares in France to EUR 127 for the first 30 hectares in Belgium (Wallonia) (Table 4.5).

4.29. Reduction of payments imposes a reduction of at least 5% (and up to 100%) to that part of the basic payments (i.e. Basic Payment Scheme, or Single Area Payment Scheme) that exceeds EUR 150,000. Member States may decide to apply several tranches of reduction above the EUR 150,000 threshold, and may subtract salaries linked to an agricultural activity before applying the reduction (Table 4.5).

4.30. Member States using more than 5% of their annual national ceiling to grant a redistributive payment may decide not to impose the reduction of payments (Table 4.5).

4.31. The Omnibus Regulation foresees the possibility for member States to review their decisions on the reduction of direct payments on an annual basis. In 2018, 23 member States applied the reduction of payments (Table 4.5).

### **Payments for areas with natural constraints**

4.32. In addition to various schemes under the rural development programmes that support areas with natural constraints<sup>40</sup>, each member State has the option to reserve up to 5% of the national ceiling for support for areas with natural constraints.<sup>41</sup> Denmark (since 2015) and Slovenia (since 2017) are the only member States who decided to use this option.<sup>42</sup>

### **Voluntary coupled support**

4.33. EU member States have the possibility of using up to a maximum percentage of their annual national ceiling for direct payments to finance voluntary coupled support<sup>43</sup>, where payments are linked to production as notified by the EU to the WTO as blue box.

4.34. Out of the 27 member States that apply the voluntary coupled support (all but Germany), 9 have allocated to the scheme up to the baseline ceiling of 8% of their national ceiling for direct payments, 3 have allocated between 8% and 13% (plus 2% to support protein crops), 11 have allocated the maximum percentage of 13% (+ 2%) and 3 received the Commission's approval to provide more than 13% (+ 2%) (Table 4.5).<sup>44</sup> One member State is using the derogation allowing member States to use EUR 3 million for voluntary coupled support.

4.35. The Omnibus Regulation introduced several changes. In particular, member States will have the possibility to review annually their decisions regarding coupled support. The European Commission was also empowered to adopt measures to avoid beneficiaries of voluntary coupled support suffering from structural market imbalances. Among other changes, the Omnibus regulation also clarified, in addition to other pre-existing criteria, that this support is a production-limiting scheme.<sup>45</sup>

<sup>40</sup> Art. 32, Regulation (EU) No. 1305/2013.

<sup>41</sup> Arts. 48 and 49, Regulation (EU) No. 1307/2013.

<sup>42</sup> European Commission, *Direct payments 2015-2020 – Decisions taken by Member States: State of play as from December 2018, Information note*. Viewed at: [https://ec.europa.eu/info/sites/info/files/food-farming-fisheries/key\\_policies/documents/simplemplementation-decisions-ms-2018\\_en.pdf](https://ec.europa.eu/info/sites/info/files/food-farming-fisheries/key_policies/documents/simplemplementation-decisions-ms-2018_en.pdf).

<sup>43</sup> Arts. 52 to 55, Regulation (EU) No. 1307/2013.

<sup>44</sup> Belgium, Finland and Portugal.

<sup>45</sup> Changes in Articles 52 and 53 of Regulation (EU) No. 1307/2013.

**Table 4.5 Member State decisions regarding implementation of direct payments in claim year 2018**

	BPS/ SAPS <sup>a,b</sup>	Redistributive		Reduction of payments <sup>c</sup>	Young farmer payment	Voluntary coupled support <sup>d</sup>	
						Sectors/ productions	
Belgium (Wallonia)	43.85%	9.6%	First 30 entitlements- EUR 127	None	1.9%	16.80%	Beef, milk, sheep meat
Belgium (Flanders)			n.a.	Capping (i.e. 100% reduction) at EUR 150,000			Beef
Bulgaria	47.80%	7.0%	First 30 ha - EUR 77	5% reduction over EUR 150,000, capping (i.e. 100% reduction) at EUR 300,000, deductions for salaries apply	0.2%	15.00%	Beef, fruit and vegetables, milk, protein, sheep meat
Czech Republic	54.80%	n.a.	n.a.	5% reduction over EUR 150,000	0.2%	15.00%	Beef, fruit and vegetables, hops, milk, protein, sheep meat, starch potato, sugar beet
Denmark	66.14%	n.a.	n.a.	5% reduction over EUR 150,000	0.6%	2.92%	Beef
Germany	62.35%	7%	First 30 entitlements - EUR 50, next 16 - EUR 30	None	1.0%	-	
Estonia	65.08%	n.a.	n.a.	5% reduction over EUR 150,000, deductions for salaries apply	0.3%	4.59%	Fruit and vegetables, milk
Ireland	68.17%	n.a.	n.a.	Capping (i.e.100% reduction) at EUR 150,000	2.0%	0.25%	Protein
Greece	59.48%	n.a.	n.a.	Capping (i.e. 100% reduction) at EUR 150,000, deductions for salaries apply	2.0%	9.92%	Beef, cereals, fruit and vegetables, nuts, protein, rice, seeds, sheep meat, silkworms, sugar beet
Spain	58.11%	n.a.	n.a.	5% reduction over EUR 150,000, deductions for salaries apply	2.0%	11.99%	Beef, fruit and vegetables, grain legumes, milk, nuts, protein, rice, sheep meat, sugar beet
France	44.00%	10%	First 52 entitlements - EUR 25	None	1.0%	15.00%	Beef, cereals, fruit and vegetables, hemp, hops, milk, protein, rice, seeds, sheep meat, starch potato
Croatia	45.10%	10%	First 20 entitlements - EUR 33	None	2.0%	15.00%	Beef, fruit and vegetables, milk, protein, sheep meat, sugar beet
Italy	59.10%	n.a.	n.a.	50% reduction over EUR 150,000, capping (100% reduction) at EUR 500,000; deductions for salaries apply	1.0%	12.00%	Beef, cereals, fruit and vegetables, milk, olive oil, protein crops, rice, sheep meat, sugar beet
Cyprus	61.72%	n.a.	n.a.	5% reduction over EUR 150,000	1.0%	8.00%	Fruit and vegetables, milk, sheep meat
Latvia	53.75%	n.a.	n.a.	5% reduction over EUR 150,000, after deductions for salaries	1.3%	15.00%	Beef, cereals, fruit and vegetables, milk, oilseeds, protein, seeds, sheep meat, starch potato

	BPS/ SAPS <sup>a,b</sup>	Redistributive		Reduction of payments <sup>c</sup>	Young farmer payment	Voluntary coupled support <sup>d</sup>	
						Sectors/ productions	
Lithuania	38.75%	15%	First 30 ha – EUR 49	None	1.3%	15.00%	Beef, cereals, fruit and vegetables, milk, protein, seeds, sheep meat, sugar beet
Luxembourg	68.02%	n.a.	n.a.	5% reduction over EUR 150,000, deductions for salaries apply	1.5%	0.48%	Protein
Hungary	54.60%	n.a.	n.a.	5% reduction over EUR 150,000; capping (100% reduction) at EUR 176,000,	0.4%	15.00%	Beef, fruit and vegetables, milk, protein, rice, sheep meat, sugar beet
Malta	12.38%	n.a.	n.a.	5% reduction over EUR 150,000	0.4%	57.22%	Beef, fruit and vegetables, milk, sheep meat
Netherlands	69.61%	n.a.	n.a.	5% reduction over EUR 150,000	2.0%	0.49%	Beef, sheep meat
Austria	68.00%	n.a.	n.a.	Capping (i.e. 100% reduction) at EUR 150,000, deductions for salaries apply	2.0%	2.10%	Beef, sheep meat
Poland	45.70%	8.6%	First 3 ha – EUR 0, next 27 ha – EUR 40	Capping (i.e. 100% reduction) at EUR 150,000	1.0%	14.73%	Beef, flax, fruit and vegetables, hemp, hops, milk, protein, sheep meat, starch potato, sugar beet
Portugal	46.30%	3.9%	First 5 ha – EUR 50	5% reduction over EUR 150,000, capping (i.e. 100% reduction) at EUR 300,000, deductions for salaries apply	2.0%	19.90%	Beef, fruit and vegetables, milk, rice, sheep meat
Romania	52.84%	5.3%	First 5 ha – EUR 5, next 25 ha – EUR 51	None	1.0%	12.95%	Beef, fruit and vegetables, grain legumes, hemp, hops, milk, protein, rice, sheep meat, silkworms, sugar beet, seeds
Slovenia	54.97%	n.a.	n.a.	5% reduction over EUR 150,000, deductions for salaries apply	1.5%	13.00%	Beef, cereals, fruit and vegetables, milk
Slovak Republic	58.21%	n.a.	n.a.	5% reduction over EUR 150,000	0.2%	13.00%	Beef, fruit and vegetables, hops, milk, sheep meat, sugar beet
Finland	50.10%	n.a.	n.a.	5% reduction over EUR 150,000	1.0%	19.60%	Beef, cereals, fruit and vegetables, milk, protein, sheep meat, starch potato, sugar beet
Sweden	57.60%	n.a.	n.a.	5% reduction over EUR 150,000	1.5%	13.00%	Beef

	BPS/ SAPS <sup>a,b</sup>	Redistributive		Reduction of payments <sup>c</sup>	Young farmer payment	Voluntary coupled support <sup>d</sup>	
						Sectors/ productions	
United Kingdom (England)	65.80%	2.0%	n.a.	5% reduction over EUR 150,000	0.5%	1.70%	Beef, sheep meat
United Kingdom (Northern Ireland)			n.a.	Capping (i.e. 100% reduction) at EUR 150,000			
United Kingdom (Scotland)			n.a.	5% reduction over EUR 150,000, capping (i.e. 100% reduction) at EUR 600,000			
United Kingdom (Wales)			First 54 entitlements – EUR 26	15% reduction over EUR 150,000, 30% reduction over EUR 200,000, 55% reduction over EUR 250,000, capping (i.e. 100% reduction) at EUR 300,000			

n.a. Not applicable.

a % for BPS/SAPS, redistributive, young farmer payment, and voluntary coupled support refers to percentage of national direct payments ceiling for claim year 2018.

b BPS = Basic Payment Scheme; SAPS = Single Area Payment Scheme.

c The reductions of payments are a percentage of reductions applying to the total amount of the basic payments (BPS or SAPS). Member States may also deduct the amounts of salaries actually paid for agriculture.

d Beef refers to beef and veal, protein refers to protein crops, milk refers to milk and milk products, and sheep meat refers to sheep and goat meat.

Note: 30% of each national ceiling is reserved for greening, therefore, percentage allocations add up to 70% in all cases except Denmark and Slovenia, which are the member States to allocate some of Pillar I to areas with natural constraints (0.4% of the national ceiling in Denmark since 2015, and 1.58% of the national ceiling in Slovenia since 2017).

Source: European Commission, *Direct payments 2015-2020 – Decisions taken by Member States*. Regulation 2018/891 provides the budgetary ceilings corresponding to the percentages of allocation notified for calendar year 2018.

4.36. According to the EU Commission, for the voluntary coupled support, member States are planning to spend between EUR 4.1 and EUR 4.22 billion per year, distributed among approximately 260 measures. The most supported sectors remain the three animal-related sectors (beef and veal, 41% of the total; dairy products, 20%; and sheep and goat meat, 12%) followed by protein crops, fruit and vegetables, and sugar beet.<sup>46</sup>

4.37. In addition to voluntary coupled support, the EU provides for payment for cotton in Bulgaria, Greece and Spain (Table 4.6).<sup>47</sup>

**Table 4.6 Crop-specific payment for cotton**

	Area (ha)	Fixed yield (tonne/ha)	Payment (EUR/ha)
Bulgaria	3,342	1.2	2015: 584.88 2016 and onward: 649.45
Greece	250,000	3.2	234.18
Spain	48,000	3.5	362.15

Source: Regulation (EU) No. 1307/2013, Article 58.

<sup>46</sup> European Commission, *Direct payments 2015-2020 – Decisions taken by Member States: State of play as from December 2018, Information note*. Viewed at: [https://ec.europa.eu/info/sites/info/files/food-farming-fisheries/key\\_policies/documents/simplemplementation-decisions-ms-2018\\_en.pdf](https://ec.europa.eu/info/sites/info/files/food-farming-fisheries/key_policies/documents/simplemplementation-decisions-ms-2018_en.pdf).

<sup>47</sup> Arts. 56-58, Regulation (EU) No. 1307/2013 also provide for payments in Portugal for a national base area of 360 ha but there is no production in Portugal, and no payments are made.

### **Discussions on CAP beyond 2020**

4.38. In February 2017, the European Commission launched a three-month consultation on the future of the CAP, followed by a conference on the future of the CAP in July 2017, and circulated, on 29 November 2017, a communication on the "Future of Food and Farming".<sup>48</sup>

4.39. Following this preparatory process and as part of the Commission proposals for the Multiannual financial framework (MFF) 2021-27, on 1 June 2018, the Commission published three legislative proposals for a reform of the CAP beyond 2020: (i) a regulation establishing rules on strategic plans to be drawn up by member States under the CAP<sup>49</sup>; (ii) a regulation amending Regulation (EU) No. 1308/2013 establishing a common market organization and some other regulations<sup>50</sup>; and (iii) a horizontal regulation on the financing, managing and monitoring of the CAP.<sup>51</sup>

4.40. The proposals identified three general objectives to be pursued through EU support, funded by the EAGF and by the EAFRD under the CAP: (i) to foster a smart, resilient and diversified agricultural sector ensuring food security; (ii) to bolster environmental care and climate action, and to contribute to the environmental- and climate-related objectives of the EU; (iii) to strengthen the socio-economic fabric of rural areas.

4.41. These three general objectives ought to be achieved through nine specific objectives: (i) support viable farm income and resilience across the territory, to enhance food security; (ii) enhance market orientation and increase competitiveness, including greater focus on research, technology and digitalization; (iii) improve farmers' position in the value chain; (iv) contribute to climate change mitigation and adaptation, and sustainable energy; (v) foster sustainable development and efficient management of natural resources, such as water, soil and air; (vi) contribute to the protection of biodiversity, enhance ecosystem services, and preserve habitats and landscapes; (vii) attract young farmers, and facilitate business development in rural areas; (viii) promote employment, growth, social inclusion and local development in rural areas, including bio-economy and sustainable forestry; and (ix) improve the response of EU agriculture to societal demands on food and health, including safe, nutritious and sustainable food, and animal welfare.

4.42. Each member State is expected to prepare strategic plans setting out how to meet the objectives, to be assessed through performance and an evaluation based on a set of common indicators related to output, result and impact. According to the Commission, the proposals are notably characterized by more flexibility in the use of funding allocation (including the transfer between rural development and direct payments of up to 15% of the CAP allocations), better targeting of support (with a focus on SMEs and young farmers), a higher level of ambition regarding environmental and climatic requirements, greater use of knowledge and innovation, the provision of complementary support for young farmers, and a stronger focus on support for small and medium-sized farms.<sup>52</sup>

<sup>48</sup> European Commission, *The Future of Food and Farming*. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52017D0713>.

<sup>49</sup> Proposal for a Regulation of the European Parliament and of the Council establishing rules on support for strategic plans to be drawn up by Member States under the Common agricultural policy (CAP Strategic Plans) and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulation (EU) No. 1305/2013 of the European Parliament and of the Council and Regulation (EU) No. 1307/2013 of the European Parliament and of the Council. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2018%3A392%3AFIN>.

<sup>50</sup> Proposal for a Regulation of the European Parliament and of the Council amending Regulations (EU) No. 1308/2013 establishing a common organisation of the markets in agricultural products, (EU) No. 1151/2012 on quality schemes for agricultural products and foodstuffs, (EU) No. 251/2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products, (EU) No. 228/2013 laying down specific measures for agriculture in the outermost regions of the Union and (EU) No. 229/2013 laying down specific measures for agriculture in favour of the smaller Aegean islands. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1530715098374&uri=CELEX%3A52018PC0394R%2801%29>.

<sup>51</sup> Proposal for a Regulation of the European Parliament and of the Council on the financing, management and monitoring of the common agricultural policy and repealing Regulation (EU) No. 1306/2013. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2018%3A393%3AFIN>.

<sup>52</sup> European Commission, *EU budget: the Common Agricultural Policy beyond 2020*. Viewed at: [https://europe.eu/rapid/press-release\\_IP-18-3985\\_en.htm](https://europe.eu/rapid/press-release_IP-18-3985_en.htm); and European Parliament, *CAP strategic plans*.

4.43. As of October 2019, the proposals of the Commission from June 2018 to September 2019 were still under discussion in the inter-institutional process with the European Parliament and the Council. The outcome of these discussions cannot be pre-judged.

#### 4.1.1.2.1.2 Internal market support measures

4.44. For the purposes of this Section, internal market support measures are defined as those that work inside the customs territory of the EU to support prices paid to farmers through reduced production or other supply control measures, or by encouraging consumption, as well as some regulatory measures and aids covered by the EU common organization of the markets. Market access and export measures, which can also lead to positive transfers to producers through higher domestic prices, are dealt with below under export subsidies and export measures with equivalent effect and market access.

4.45. The Common Market Organisation (CMO) for agricultural products set out in Regulation (EU) No. 1308/2013 was also amended by the Omnibus Regulation.<sup>53</sup> Regarding producer organizations, some activities, such as planning production, optimizing production costs, placing on the market, and negotiating contracts for the supply of agricultural products, were extended beyond sectors like olive oil, beef and arable crops, for which they already existed. The possibility for farmers and their first purchasers to negotiate collectively voluntary value-sharing clauses was also extended to sectors other than sugar.

4.46. The reserve for crises in the agricultural sector (EUR 400 million in 2011 prices, corresponding to EUR 469 million in the 2019 budget) has not been used since its establishment in 2014, and the money set aside each year has been made available again to farmers.<sup>54</sup>

4.47. In order to provide more flexibility to member States to support farmers, notably in times of crisis, the EU revised its rules on state aid in the agricultural sector<sup>55</sup> to raise the *de minimis* level of national support that can be provided to a farmer without approval by the Commission, from EUR 15,000 per period of three years to EUR 20,000, and EUR 25,000 under certain conditions, with a national ceiling of 1.25% and 1.5%, respectively, of the national agricultural output for a period of three years.

4.48. Intervention and private storage aid were used only for skimmed milk powder in 2017 (Table 4.7).

**Table 4.7 Intervention and private storage aid, 2017 and 2018**

(Tonnes)

	Intervention price EUR/tonne	Period	Limits <sup>9</sup>	Purchases 2017	Purchases 2018	Sales 2017	Sales 2018
Common wheat <sup>a</sup>	101.31	1 Nov.-31 May	3,000,000				
Durum wheat <sup>a</sup>	101.31	1 Nov.-31 May	0				
Barley <sup>a</sup>	101.31	1 Nov.-31 May	0				
Maize <sup>a</sup>	101.31	1 Nov.-31 May	0				
Paddy rice <sup>b</sup>	150.00	1 Apr.-31 July	0				
Beef and veal <sup>c</sup>	1,890.40	All year	0				

Viewed at:

[http://www.europarl.europa.eu/RegData/etudes/BRIE/2018/630324/EPRS\\_BRI\(2018\)630324\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2018/630324/EPRS_BRI(2018)630324_EN.pdf).

<sup>53</sup> Regulation (EU) No. 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organization 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, as amended by the regulation (EU) No. 2017/2393 of the European Parliament and of the Council of 13 December 2017. Viewed at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:347:0671:0854:EN:PDF>.

<sup>54</sup> The measures listed below were therefore financed without having recourse to the reserve.

<sup>55</sup> Commission Regulation (EU) 2019/316 of 21 February 2019 amending Regulation (EU) No. 1408/2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid in the agriculture sector. Viewed at: <https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX:32019R0316>.

	Intervention price EUR/tonne	Period	Limits <sup>g</sup>	Purchases 2017	Purchases 2018	Sales 2017	Sales 2018
Butter <sup>d</sup>	2,217.51	1 Mar.-30 Sept.	50,000				
Skimmed milk powder <sup>e</sup>	1,698.00	1 Mar.-30 Sept.	109,000 <sup>f</sup>	29,193		2,170	202,624
	Reference price EUR/tonne					Aid for storage 2017	Aid for storage 2018
White sugar <sup>h</sup>	404.40						
Raw sugar	335.20						
Olive oil							
Extra virgin	1,779.00						
Virgin	1,710.00						
Lampante (2 degrees)	1,524.00						
Beef and veal	2,224.00						
Butter	2,463.90						
Cheese							
Skimmed milk powder	1,698.00					24,606	
Pig meat	1,509.39						
Sheep and goat meat							
Flax fibre							

- a The reference price for the cereal sector is fixed at EUR 101.31 per tonne, and the public intervention price is equal to the reference threshold (Article 7.1(a) of Regulation (EU) No. 1308/2013 and Article 2.1(a) of Council Regulation EU No. 1370/2013).
- b The reference price for paddy rice is fixed at EUR 150 per tonne, and the public intervention price is equal to the reference threshold (Article 7.1(b) of Regulation (EU) No. 1308/2013 and Article 2.1(a) of Council Regulation EU No. 1370/2013).
- c The public intervention price for beef and veal shall not exceed 85% of the reference threshold (Articles 7.1(d) and 13.1(c) of Regulation (EU) No. 1308/2013).
- d The public intervention price for butter is 90% of the reference price (Article 2.1(b) of Council Regulation EU No. 1370/2013).
- e The public intervention price for skimmed milk powder is equal to the reference price (Article 2.1(a) of Council Regulation EU No. 1370/2013).
- f By way of derogation, the quantitative limit was set at 0 for 2018 and 2019 (Council Regulations (EU) 2018/147 and 2018/1554).
- g Beyond the limit, buying in shall be carried out by way of a tendering procedure, with the maximum price not exceeding the intervention price (Article 3 of Council Regulation EU No. 1370/2013).
- h Only white sugar is eligible for the aid for private storage (Article 17 of Regulation (EU) No. 1308/2013).

Note: There are no "sales" from private storage, as property remains with the private operators who store the product under contract with no obligation to sell at the end of the contract period.

Source: 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. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32013R1308>; and Council Regulation (EU) No. 1370/2013 of 16 December 2013 determining measures on fixing certain aids and refunds related to the common organisation of the markets in agricultural products. Viewed at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:346:0012:0019:EN:PDF>; and European Commission.

### Dairy and livestock

4.49. The various exceptional measures, including adjustment aid to milk producers and farmers in other livestock sectors adopted in 2016 in response to severe market disturbance, including

overproduction, falling prices, and the ban on imports of certain agricultural products by the Russian Federation in August 2014<sup>56</sup>, have been implemented in 2016 and 2017.<sup>57</sup>

4.50. The butter and skimmed milk powder stocks accumulated during the period 2015-17, with total public and private stocks of skimmed milk powder reaching more than 415,000 tonnes at the end of 2016; public intervention stocks reached 380,000 tonnes at the end of 2017. The intervention stocks were progressively put back on the market through a tendering process, and decreased regularly in 2018 and in the first half of 2019, down to zero in July 2019.<sup>58</sup>

4.51. In 2019, an amount of EUR 50 million of EU funding, to be matched by national funds to a maximum amount of EUR 100 million, was made available for a temporary exceptional adjustment aid to farmers in the beef and veal sector in Ireland<sup>59</sup>, due to particular challenges faced by the sector, including concerns over the sector's contribution to GHG emissions, falling domestic consumption, and the uncertainty around the withdrawal of the United Kingdom from the EU.

### **Fruits and vegetables**

4.52. The legal framework for fruit and vegetables, defined by Regulation (EU) No. 1308/2013 and Commission Implementing Regulation (EU) No. 543/2011, was amended and complemented in March 2017 by Commission Delegated Regulation (EU) 2017/891<sup>60</sup> and Commission Implementing Regulation (EU) 2017/892 of 13 March 2017, and again in December 2017 by the Omnibus Regulation.

4.53. As described by the Commission<sup>61</sup>, the new provisions agreed in 2017 aimed at simplifying rules, reducing administrative burden and providing greater financial support in times of crises, notably through: (i) an increase of the withdrawal prices for free distribution and for other purposes (compost, animal feed, distillation, etc); (ii) greater attractiveness of producer organizations, by providing more clarity about the actions eligible to EU funding and by setting at 25% the maximum percentage of products than can be marketed outside the producer organization (subject to modification by the member States); and (iii) simplification and clarification of the legislation with regards to transnational producer organizations and their associations.

4.54. Support for fruit and vegetable production is focused on producer organizations that can use their operational funds to finance operational programmes submitted to and approved by EU member States.

4.55. Operational programmes in the fruit and vegetable sector must have at least two objectives among a list of objectives, including specifically<sup>62</sup> for the fruit and vegetable sector: planning of production; improvement of product quality; boosting products' commercial value; promotion of the products; environmental measures; and crisis prevention and management. The following type of activities are covered under this latter objective: market withdrawal; green harvesting or non-harvesting; promotion and communication; training measures and exchange of best practices; harvest insurance; support for the administrative costs of the setting up and replenishment of mutual funds (farmer-owned stabilization funds); investments making the management of the volumes

<sup>56</sup> WTO document WT/TPR/S/357/Rev.1, 13 October 2017.

<sup>57</sup> According to the Commission, out of the original budget of EUR 150 million allocated for milk production reduction under Commission Delegated Regulation (EU) 2016/1612, close to EUR 112 million had been disbursed. European Commission, *Final figures reflect success of EU milk production reduction scheme*. Viewed at: [https://ec.europa.eu/info/news/final-figures-reflect-success-eu-milk-production-reduction-scheme\\_en](https://ec.europa.eu/info/news/final-figures-reflect-success-eu-milk-production-reduction-scheme_en).

<sup>58</sup> European Commission, *Milk market observatory*. Viewed at: [https://ec.europa.eu/agriculture/market-observatory/milk\\_en](https://ec.europa.eu/agriculture/market-observatory/milk_en).

<sup>59</sup> Commission Implementing Regulation (EU) 2019/1132 of 2 July 2019 providing temporary exceptional adjustment aid to farmers in the beef and veal sector in Ireland. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019R1132>.

<sup>60</sup> Further amended by Commission Delegated Regulation (EU) 2018/1145 of 7 June 2018 amending Delegated Regulation (EU) 2017/891 as regards producer organisations in the fruit and vegetables sector, as regards the temporary exceptional support measures for producers of peaches and nectarines in Greece, Spain and Italy. Viewed at: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32018R1145>.

<sup>61</sup> European Commission, *Simpler rules and more support for fruit and vegetable producers*. Viewed at: [https://europa.eu/rapid/press-release\\_IP-17-526\\_en.htm](https://europa.eu/rapid/press-release_IP-17-526_en.htm).

<sup>62</sup> In addition to the general list of objectives for all producer organizations.



placed on the market more efficient; replanting of orchards following mandatory grubbing up; and coaching for other producer organizations, associations thereof, or individual producers.<sup>63</sup>

4.56. In parallel, the temporary exceptional measures for fruit and vegetables to reduce supply in response to the ban on imports of certain agricultural products by the Russian Federation in August 2014<sup>64</sup> were complemented by a further tranche of support through Commission Delegated Regulation (EU) 2017/1165 of 20 April 2017 and implemented until the end of June 2018. These measures increased EU financial support for the activation of existing provisions on market withdrawals, green harvesting and non-harvesting.

### **Sugar**

4.57. The sugar quota regime, introduced in 1968, came to an end on 30 September 2017. White sugar remains eligible for private storage. While this provision was maintained it has not been used thus far. The existing provisions for agreements between EU beet producers and sugar processors, including value-sharing clauses, are maintained.

### **Responses to sanitary crises**

4.58. From 2017 to 2019, the EU continued to adopt measures to address animal disease and quarantine pest outbreaks, and, in particular, the wave of highly pathogenic avian influenza (HPAI) and African swine fever in wild boar and domestic pigs outbreaks confirmed on its territory over the last years (Section 3.3.3). This included the co-financing of specific measures and veterinary programmes to prevent, control, eradicate and compensate for the losses and damage caused by animal diseases and plant pests pursuant to available instruments<sup>65</sup> in addition to EU member States' national aid.<sup>66</sup>

4.59. From 2017 to 2019, the EU also enacted exceptional measures to compensate farmers for economic losses resulting from the sanitary crises in the poultry and pigmeat sectors (Table 4.8), in addition to the instruments already available to face such situations.

**Table 4.8 Market support measures for poultry and pigmeat, linked to sanitary crises, 2017-19**

<b>Date</b>	<b>Delegated Regulation (EU) No.</b>	<b>Description</b>
20 February 2017	Commission Implementing Regulation 2017/295	Exceptional support measures for the poultry meat sector in France to support the market affected by HPAI H5 (maximum co-financing: EUR 40 million)
5 April 2017	Commission Implementing Regulation 2017/647	Exceptional support measures for the pigmeat market in Poland to grant aid to producers whose holdings were subject to animal health measures for the control of African swine fever (maximum co-financing: 50% of the aid covering a maximum of 50,000 animals)

<sup>63</sup> Art. 33, Regulation (EU) No. 1308/2013.

<sup>64</sup> WTO document WT/TPR/S/357/Rev.1, 13 October 2017.

<sup>65</sup> See, in particular, Council Decision 90/424 of 26 June 1990 on expenditure in the veterinary field Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31990D0424>; Regulation (EU) 652/2014 of the European Parliament and of the Council of 15 May 2014 laying down provisions for the management of expenditure relating to the food chain, animal health and animal welfare, and relating to plant health and plant reproductive material, amending Council Directives 98/56/EC, 2000/29/EC and 2008/90/EC, Regulations (EC) No. 178/2002, (EC) No. 882/2004 and (EC) No. 396/2005 of the European Parliament and of the Council, Directive 2009/128/EC of the European Parliament and of the Council and Regulation (EC) No. 1107/2009 of the European Parliament and of the Council and repealing Council Decisions 66/399/EEC, 76/894/EEC and 2009/470/EC. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014R0652>; and Regulation (EU) 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No. 1698/2005. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013R1305>.

<sup>66</sup> Art. 26, Commission Regulation (EU) No. 702/2014.

Date	Delegated Regulation (EU) No.	Description
11 September 2017	Commission Implementing Regulation 2017/1536	Emergency measure in the form of aid to holdings with no more than 50 animals of the porcine species located in certain areas of Poland when ceasing pig meat production due to new requirements in relation to African swine fever (maximum co-financing: EUR 9.3 million)
19 February 2018	Commission Implementing Regulation 2018/252	Exceptional market support measures for the poultry sector in France to support the market affected by HPAI H5 between 1 December 2016 and 30 June 2017 (maximum co-financing: EUR 32.5 million)
10 October 2018	Commission Implementing Regulation (EU) 2018/1506	Exceptional market support measures for the egg and poultry meat sectors in Italy affected by HPAI H5 and H7 between 30 April 2016 and 28 September 2017 (maximum co-financing: EUR 11.1 million)
10 October 2018	Commission Implementing Regulation 2018/1507	Exceptional market support measures for the egg and poultry meat sectors in Poland affected by HPAI H5 between 3 December 2016 and 16 March 2017 (maximum co-financing: EUR 1.411 million)
2 August 2019	Commission Implementing Regulation (EU) 2019/1323	Exceptional market support measures for the egg and poultry meat sectors in Italy affected by HPAI H5 between 1 October 2017 and 30 June 2018 (maximum co-financing: EUR 32.1 million)

Source: WTO Secretariat.

### Responses to adverse weather conditions

4.60. Adverse weather conditions in 2017, 2018 and 2019 triggered exceptional responses at the EU level. In 2017, 15 member States were first allowed to increase advance payments to farmers affected by heavy rains and drought<sup>67</sup>, before an exceptional aid package for a total amount of EUR 15 million, to be matched by national funds, was granted to Lithuania, Latvia, Estonia and Finland, following heavy rainfalls in the second half of the year.<sup>68</sup> Higher advanced payments to farmers were also granted following drought conditions in the summer of 2018.<sup>69</sup>

4.61. On account of drought in 2017, exceptional rainfalls or snowfalls in late 2017 and the beginning of 2018, and drought again in the summer of 2018, affecting several member States, derogations were also granted in relation to certain greening rules (crop diversification and EFAs).<sup>70</sup> Similar measures were announced on 25 July 2019 as a result of the new wave of drought conditions.<sup>71</sup>

4.62. These exceptional measures came in addition to the instruments already available to face such situations, including rural development risk management tools, and options provided to fund investment costs to restore agricultural land and production potential damaged in the case of natural disasters.<sup>72</sup>

4.63. Agricultural state aid rules also provide that aid of up to 80% of the damage caused by drought (or up to 90% in Areas of Natural Constraints) can be provided, subject to certain specific conditions,

<sup>67</sup> European Commission, *Farmers from five more countries to receive support for tackling climate-related problems*. Viewed at: [https://ec.europa.eu/info/news/farmers-five-more-countries-receive-support-tackling-climate-related-problems\\_en](https://ec.europa.eu/info/news/farmers-five-more-countries-receive-support-tackling-climate-related-problems_en).

<sup>68</sup> Commission Implementing Regulation (EU) 2018/108 of 23 January 2018 on an emergency measure in the form of aid to farmers due to the floods and heavy rainfalls in certain areas of Lithuania, Latvia, Estonia and Finland. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018R0108>.

<sup>69</sup> European Commission, *Commission offers further support to European farmers dealing with droughts*. Viewed at: [https://europa.eu/rapid/press-release\\_IP-18-4801\\_en.htm](https://europa.eu/rapid/press-release_IP-18-4801_en.htm).

<sup>70</sup> Commission Implementing Decisions C(2017) 5807 of 28 August 2017, C(2018)2102 of 12 April 2018, C(2018)3861 of 21 June 2018, C(2018)5458 of 14 August 2018 and C(2018)6085 of 18 September 2018. European Commission, *Drought in Europe*. Viewed at: [https://ec.europa.eu/commission/news/drought-europe-2018-aug-30\\_en](https://ec.europa.eu/commission/news/drought-europe-2018-aug-30_en).

<sup>71</sup> European Commission, *Drought in Europe: the Commission offers further support to European farmers*. Viewed at: [https://europa.eu/rapid/press-release\\_IP-19-4729\\_fr.htm](https://europa.eu/rapid/press-release_IP-19-4729_fr.htm).

<sup>72</sup> Arts. 18 and 36, Regulation (EU) No. 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development.

and that the purchase of fodder can qualify for aid as income loss.<sup>73</sup> Several member States announced emergency compensations in this regard for farms affected by the drought.<sup>74</sup>

### Other

4.64. The total allocation earmarked for the distribution of fruit including bananas, vegetables, and milk and milk products under the School Scheme<sup>75</sup> for the 2019/20 school year amounted to EUR 250 million (EUR 145 million for fruit and vegetables, and EUR 105 million for milk and other dairy products), allocated among the 28 EU member States.<sup>76</sup>

4.65. The Fund for European Aid to the Most Deprived (FEAD), which is administered by the Directorate-General for Employment, Social Affairs and Inclusion (DG EMPL), supports the member States' actions to provide material assistance to deprived persons, including food aid, based on each member State's operational programme. A total of EUR 3.8 billion in real terms was earmarked for the FEAD for 2014-20, with additional co-financing of at least 15% from member States.<sup>77</sup>

4.66. In November 2018, the Commission adopted the work programme for 2019<sup>78</sup> on information provision and promotion measures for agricultural products on internal and external markets.<sup>79</sup> EU co-financing rates range from 70% to 85%.<sup>80</sup> The total amount available in 2019 increased, to EUR 201.1 million, from EUR 142.5 million in 2017 and EUR 188.6 in 2018, notably in order to help boost exports to alternative markets for EU agricultural products.<sup>81</sup>

4.67. To address the fast evolution in the organic sector, a new regulation on organic production and labelling was adopted in May 2018.<sup>82</sup> This will apply from 1 January 2021. According to the

<sup>73</sup> European Commission, *Drought in Europe*. Viewed at: [https://ec.europa.eu/commission/news/drought-europe-2018-aug-30\\_en](https://ec.europa.eu/commission/news/drought-europe-2018-aug-30_en); and Art. 25, Commission Regulation (EU) No. 702/2014.

<sup>74</sup> Farm Europe, *Drought in Europe Summer 2018: Crisis Management in an Orderly Chaos*. Viewed at: <https://www.farm-europe.eu/blog-en/drought-in-europe-summer-2018-crisis-management-in-an-orderly-chaos/>.

<sup>75</sup> Resulting from the merging of the School Fruit and Vegetables and School Milk Schemes, following Regulation (EU) 2016/791, Commission Implementing Regulation (EU) 2017/39, Commission Delegated Regulation (EU) 2017/40.

<sup>76</sup> European Commission, *The EU school fruit, vegetables and milk scheme*. Viewed at: [https://ec.europa.eu/commission/news/eu-school-fruit-vegetables-and-milk-scheme-2019-mar-27\\_en](https://ec.europa.eu/commission/news/eu-school-fruit-vegetables-and-milk-scheme-2019-mar-27_en); Commission Implementing Decision C(2019) 2249 final of 27 March 2019 fixing the definitive allocation of Union aid to Member States for school fruit and vegetables and for school milk for the period from 1 August 2019 to 31 July 2020 and amending Implementing Decision C(2018)1762 final. Viewed at: [https://ec.europa.eu/info/sites/info/files/food-farming-fisheries/key\\_policies/documents/commission-decision-c2019-2249\\_en.pdf](https://ec.europa.eu/info/sites/info/files/food-farming-fisheries/key_policies/documents/commission-decision-c2019-2249_en.pdf); and European Commission, *School year 2019-2020*. Viewed at: [https://ec.europa.eu/info/sites/info/files/food-farming-fisheries/key\\_policies/documents/school-scheme-budget-by-country-2019-20\\_en.pdf](https://ec.europa.eu/info/sites/info/files/food-farming-fisheries/key_policies/documents/school-scheme-budget-by-country-2019-20_en.pdf).

<sup>77</sup> European Commission, *Fund for European Aid to the Most Deprived (FEAD)*. <https://ec.europa.eu/social/main.jsp?catId=1089>.

<sup>78</sup> Commission Implementing Decision of 14 November 2018 on the adoption of the work programme for 2019 of information provision and promotion measures concerning agricultural products implemented in the internal market and in third countries in application of Regulation (EU) No. 1144/2014 of the European Parliament and of the Council. Viewed at: [https://ec.europa.eu/research/participants/data/ref/other\\_eu\\_prog/agriprod/wp-call/agriprod-wp-2019\\_en.pdf](https://ec.europa.eu/research/participants/data/ref/other_eu_prog/agriprod/wp-call/agriprod-wp-2019_en.pdf).

<sup>79</sup> Consisting of either simple programmes (submitted by one or several proposing organizations from the same member State); or multi programmes (submitted by at least two proposing organizations from at least two member States, or one or more EU organizations). See point 1.2 of Annex I of the Commission Implementing Decision of 14 November 2018.

<sup>80</sup> Subject to approval, the EU co-financing would amount to: 70% for simple programmes; 80% for multi programmes and third countries; 85% for crisis programmes; and up to 90% for beneficiaries from member States under EU financial assistance. See Annex I of the Commission Implementing Decision of 14 November 2018.

<sup>81</sup> European Commission, *Commission to focus on growth markets for EU food and drink in 2018 promotion programmes*. Viewed at: [https://ec.europa.eu/info/news/commission-focus-growth-markets-eu-food-and-drink-2018-promotion-programmes\\_en](https://ec.europa.eu/info/news/commission-focus-growth-markets-eu-food-and-drink-2018-promotion-programmes_en).

<sup>82</sup> Regulation (EU) 2018/848 of the European Parliament and of the Council of 30 May 2018 on organic production and labelling of organic products and repealing Council Regulation (EC) No. 834/2007. Viewed at: [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L\\_.2018.150.01.0001.01.ENG](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2018.150.01.0001.01.ENG).

Commission<sup>83</sup>, it was designed to modernize the sector, harmonize rules, and ensure fair competition for farmers, while preventing fraud and maintaining consumer confidence. Production rules should be simplified and the control system strengthened. It should also operate a shift from the principle of equivalence to the principle of conformity: producers from third countries should be required to comply with the same set of rules as those prevalent in the EU. The new rules also set out simplification elements, such as the establishment of a procedure exempting low-risk operators from the yearly control, and the introduction of the group certification scheme for small producers, with a view to reducing administrative and certification costs. The reform also includes a wider range of products eligible for organic certification<sup>84</sup>, as well as new rules to facilitate the conversion to organic production.<sup>85</sup>

4.68. On 12 June 2019, the Commission approved the 28 EU member States' national programmes in favour of apiculture, pursuant to Articles 55 to 57 of EU Regulation 1308/2013<sup>86</sup>, for a total amount of EUR 120 million, during the period starting on 1 August 2019 and running until 31 July 2022, an increase of EUR 12 million compared to the previous three-year period, reflecting the importance of the sector. National apiculture programmes are co-financed by the EU at a level of 50%.

4.69. Adding to the already existing EU Market Observatories for the milk and meat markets, two new observatories were put in place in 2017, for the crops and sugar markets; the latter is in anticipation of the end of the quota system. The creation of two more observatories for wine and for fruit and vegetables was announced in February 2019.

#### 4.1.1.2.1.3 Rural development

4.70. Rural development, or Pillar II of the CAP, is funded through the EAFRD under Regulation (EU) No. 1305/2013 of 17 December 2013, and secondary regulations.<sup>87</sup>

4.71. In addition to the funds provided by the EU under the EAFRD, member States provide co-funding at rates that depend on the type of project and the member State. Total funding from the EAFRD for 2014-20 is EUR 100 billion, and co-funding from the member States is an additional EUR 61 billion (with different co-financing rates depending on the measure and region involved).<sup>88</sup> The national envelopes for EAFRD funding are shown in Table 4.9.

**Table 4.9 National envelopes for rural development, 2014-20**

(Current prices, EUR million)

	2014	2015	2016	2017	2018	2019	2020	Total 2014-20
Belgium	41	97	110	97	97	103	103	648
Bulgaria	0	503	505	340	340	340	339	2,367
Czech Republic	0	470	503	345	343	323	322	2,306

<sup>83</sup> European Commission, *New legislation from 2021*. Viewed at: [https://ec.europa.eu/info/food-farming-fisheries/farming/organic-farming/future-organics\\_en](https://ec.europa.eu/info/food-farming-fisheries/farming/organic-farming/future-organics_en).

<sup>84</sup> I - Live and unprocessed agricultural products, animals, plants and seed, mushrooms; II - Processed food; and III -Feed. Annex I of Regulation (EU) 2018/848.

<sup>85</sup> EU specific support measures to organic farming are covered by other EU regulations. See notably EU Regulations 1305/2013 (Arts. 16 and 29) and 702/2014 (Art. 20).

<sup>86</sup> Commission Delegated Regulation (EU) 2015/1366 of 11 May 2015 supplementing Regulation (EU) No. 1308/2013 of the European Parliament and of the Council with regard to aid in the apiculture sector; Commission Implementing Regulation (EU) 2015/1368 of 6 August 2015 laying down rules for the application of Regulation (EU) No. 1308/2013 of the European Parliament and of the Council with regard to aid in the apiculture sector and Commission Implementing Decision (EU) 2019/974 of 12 June 2019 approving the national programmes. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1574847836532&uri=CELEX:32019D0974>.

<sup>87</sup> Commission Delegated Regulation (EU) No. 807/2014 of 11 March 2014 supplementing Regulation (EU) No. 1305/2013 of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and introducing transitional provisions; and Commission Implementing Regulation (EU) No. 808/2014 of 17 July 2014 laying down rules for the application of Regulation (EU) No. 1305/2013 of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD). Viewed at: <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32014R0808>.

<sup>88</sup> European Commission, *Rural development 2014-2020*. Viewed at: [https://ec.europa.eu/agriculture/rural-development-2014-2020\\_en](https://ec.europa.eu/agriculture/rural-development-2014-2020_en).

	2014	2015	2016	2017	2018	2019	2020	Total 2014-20
Denmark	90	90	136	145	153	152	152	919
Germany	665	1,498	1,686	1,404	1,401	1,398	1,395	9,446
Estonia	104	104	111	123	126	127	129	823
Ireland	0	470	470	313	313	313	313	2,191
Greece	0	907	1,008	703	702	700	698	4,718
Spain	0	1,780	1,780	1,186	1,184	1,183	1,183	8,297
France	4	2,336	3,364	1,666	1,668	1,985	1,988	12,011
Croatia	0	448	448	282	282	282	282	2,026
Italy	0	2,223	2,232	1,493	1,496	1,499	1,502	10,444
Cyprus	0	28	28	19	19	19	19	132
Latvia	138	151	153	155	157	159	161	1,076
Lithuania	230	230	230	230	230	247	264	1,664
Luxembourg	0	21	21	14	14	14	15	101
Hungary	0	743	737	489	488	487	487	3,431
Malta	0	21	21	14	14	14	14	97
Netherlands	87	87	118	118	118	148	148	825
Austria	558	559	561	562	564	566	567	3,938
Poland	1,570	1,176	1,193	1,192	1,191	1,189	1,187	8,698
Portugal	577	578	579	580	581	582	582	4,058
Romania	0	1,723	1,752	1,187	1,185	1,142	1,140	8,128
Slovenia	119	119	119	120	120	120	121	838
Slovak Republic	271	213	216	215	215	215	215	1,560
Finland	335	337	338	340	342	343	345	2,380
Sweden	0	387	378	249	250	250	250	1,764
United Kingdom	476	848	851	755	754	755	756	5,195
Technical assistance	34	34	34	34	34	34	34	239
<b>Total</b>	<b>5,299</b>	<b>18,184</b>	<b>18,684</b>	<b>14,371</b>	<b>14,381</b>	<b>14,691</b>	<b>14,709</b>	<b>100,318</b>

Source: Annexe I (pp. 72-73) of Regulation No. 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No. 1698/2005. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02013R1305-20190301&from=EN>.

4.72. Regulation (EU) No. 1305/2013 sets out common priorities for rural development, and each member State, or region in a member State, has drawn up a rural development programme based on at least four of these priorities. Each priority has a number of focus areas, and the rural development programmes include quantitative targets for each focus area (Table 4.10). The rural development programmes must implement a strategy to meet the priorities through a list of measures defined in Title III of the Regulation.

4.73. There are 118 rural development programmes in the 28 member States, with 20 national programmes, and eight member States with two or more regional programmes. Each programme sets targets for the priorities, and at least 30% of funding must be for measures relating to the environment and climate change, and 5% for the LEADER programme, which provides grants for a variety of community-led programmes under the sixth priority on social inclusion, poverty reduction and economic development in rural areas.

4.74. The support for risk management, which constitutes one of the priorities (under 3.B – Table 4.10) identified by Regulation (EU) No. 1305/2013, can take different forms<sup>89</sup>: (i) financial contributions to insurance premiums against economic losses caused by adverse climatic events, animal or plant diseases, pest infestations, or environmental incidents; (ii) financial contributions to mutual funds compensating for economic losses resulting from the same kind of events; and

<sup>89</sup> Art. 36, Regulation (EU) No. 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No. 1698/2005. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013R1305>.

(iii) income stabilization tools in the form of financial contributions to mutual funds to compensate for severe drops in incomes.

4.75. The Omnibus Regulation brought several changes to the risk management tools through: the creation of a sector-specific income stabilization tool, triggered by a drop of income threshold of 20% (instead of 30% for the general income stabilization tool); the reduction of the drop in production threshold for the financial contributions to insurance premiums from 30% to 20%; an increase of the EU support rate, from 65% to up to 70%, for all these risk management tools (support to insurance premiums, mutual funds in case of adverse events, and income stabilization tools).<sup>90</sup>

4.76. The Omnibus Regulation also introduced some changes in relation to selection and flexibility criteria of rural development plans, as well as to the way financial instruments can be adopted.<sup>91</sup>

4.77. According to the Commission, 45% of funds of all the rural development plans are for improving ecosystems, 20% for improving farm viability and competitiveness, and 10% for food chain organization, animal welfare and risk management (Table 4.10).

**Table 4.10 Rural development priorities and focus areas**

	<b>Priority</b>	<b>% of funds</b>
<b>1</b>	<b>Knowledge transfer and innovation</b>	<b>3</b>
1.A	Innovation, cooperation, and the development of the knowledge base	
1.B	Links between agriculture, food production, forestry, research and innovation, including for the purpose of improved environmental management and performance	
1.C	Learning and vocational training	
<b>2</b>	<b>Farm viability and competitiveness, and promoting innovative farm technologies and sustainable management of forests</b>	<b>20</b>
2.A	Improving the economic performance of all farms	
2.B	Entry of adequately skilled farmers	
<b>3</b>	<b>Food chain organization, including processing and marketing of agricultural products, animal welfare, and risk management</b>	<b>10</b>
3.A	Improving competitiveness	
3.B	Risk prevention and management	
<b>4</b>	<b>Restoring, preserving and enhancing biodiversity</b>	<b>45</b>
4.A	Biodiversity	
4.B	Water management	
4.C	Preventing soil erosion and improving soil management	
<b>5</b>	<b>Resource efficiency, and supporting the shift towards a low-carbon and climate-resilient economy in the agriculture, food and forestry sectors</b>	<b>7</b>
5.A	Efficiency in water use	
5.B	Efficiency in energy use	
5.C	Supply and use of renewable sources of energy	
5.D	Reducing GHG and ammonia emissions	
5.E	Carbon conservation and sequestration	

<sup>90</sup> European Commission, *Summary of main changes introduced to the four basic regulations of the CAP through the Omnibus regulation*. Viewed at: [https://ec.europa.eu/agriculture/cap-overview/summary-changes-omnibus\\_en.pdf](https://ec.europa.eu/agriculture/cap-overview/summary-changes-omnibus_en.pdf).

<sup>91</sup> European Commission, *Summary of main changes introduced to the four basic regulations of the CAP through the Omnibus regulation*.

	Priority	% of funds
<b>6</b>	<b>Social inclusion, poverty reduction and economic development</b>	<b>16</b>
6.A	Diversification, creation and development of small enterprises	
6.B	Local development	
6.C	Accessibility, use and quality of ICT	

Note: The figures may not total to 100% due to technical assistance and discontinued measures.

Source: EU Commission; Regulation (EU) No. 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No. 1698/2005. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013R1305>; and DG AGRI *Rural development programmes 2014-2020*. Viewed at: [https://ec.europa.eu/agriculture/sites/agriculture/files/rural-development-2014-2020/country-files/common/rdp-list\\_en.pdf](https://ec.europa.eu/agriculture/sites/agriculture/files/rural-development-2014-2020/country-files/common/rdp-list_en.pdf).

#### 4.1.1.2.2 Export subsidies and export measures with equivalent effect

4.78. Following the elimination of sugar quotas in September 2017, the EU discontinued the notification of out-of-quota sugar exports, and the most recent notification, for the 2017/18 marketing year, shows that no export subsidies were provided in that year.<sup>92</sup> Although Regulation (EU) No. 1308/2013 still provides for export refunds in exceptional situations, refund rates were set at zero in 2013 and have not changed.

4.79. On 6 October 2017, the EU circulated, as part of document G/MA/TAR/RS/506 which is currently undergoing certification, its revised annual export subsidies commitment levels, pursuant to the December 2015 Nairobi Ministerial Conference Decision on export competition.<sup>93</sup>

4.80. While no export financing programmes for agricultural products are operated at EU level, EU member States, with the exception of Belgium, Cyprus, Greece, Ireland, Italy, Luxembourg, Malta, Portugal and Spain, indicated the existence, at national level, of general programmes that may cover agricultural products. The EU delivered around 24,000 tonnes of milk in the form of full grant, in-kind emergency food aid during the period June 2016-May 2018. The aid was part of the World Food Programme's existing activities.<sup>94</sup>

#### 4.1.1.2.3 Market access

4.81. During the period under review, there was no substantial change with regard to market access for imports of agricultural products into the EU.

4.82. On average, EU bound tariffs on agricultural products (WTO definition; simple average MFN tariff of 14.2% in 2019) remain higher than on non-agricultural products (simple average MFN tariff of 4.2% in 2019), and vary considerably from one agricultural product to another, with a standard deviation of 18.3 compared to 4.4 for non-agricultural products (Section 3.1.3). In addition, many agricultural products are subject to non-*ad valorem* duties that can also vary from simple specific duties to more complex forms, such as those in the Meursing Table.<sup>95</sup> However, imports of agricultural products from LDCs and from many developing countries can enter the EU at zero or reduced tariffs under the EBA initiative, its GSP and GSP+ schemes, and its network of trade agreements.

<sup>92</sup> WTO document G/AG/N/EU/51, 22 February 2019. This does not cover general schemes, which neither specifically cover nor specifically exclude agricultural products.

<sup>93</sup> WTO document G/AG/N/EU/51, 22 February 2019; and European Commission, *EU leads the way by eliminating export subsidies ahead of WTO conference in Buenos Aires*. Viewed at: <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1738>.

<sup>94</sup> WTO document G/AG/W/125/Rev.11, 19 September 2019.

<sup>95</sup> Regulation (EU) No. 510/2014 of the European Parliament and of the Council of 16 April 2014 laying down the trade arrangements applicable to certain goods resulting from the processing of agricultural products and repealing Council Regulations (EC) No. 1216/2009 and (EC) No. 614/2009. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014R0510>.

4.83. Tariffs for some cereals may be adjusted, based on import prices. For high-quality common wheat, durum wheat (high-, medium- and low-quality), maize, flint maize, sorghum, and rye<sup>96</sup>, the duty is EUR 157.04<sup>97</sup> minus the c.i.f. import price, with further adjustments depending on the product, port of unloading, quality, and other factors as set out in Commission Regulation (EU) No. 642/2010.<sup>98</sup> On the basis of these calculations, the import duty that had been fixed at zero in November 2014<sup>99</sup> increased for rye, maize and sorghum from early August 2017 to early March 2018.<sup>100</sup>

4.84. In the case of husked rice, the level of import duty was modified in early March 2019 for the first time since March 2012, following the importation of 265,000 tonnes of non-basmati rice during the first six months of marketing year 2017/18 that triggered an increase from EUR 30 up to EUR 65 per tonne.<sup>101</sup>

4.85. The entry price system applying to certain fruit and vegetables<sup>102</sup> continues to be applied as set out in Commission Implementing Regulation (EU) 2017/892 of 13 March 2017 laying down rules for the application of Regulation (EU) No. 1308/2013 with regard to the fruit and vegetables and processed fruit and vegetables. The standard import values that used to be published through Commission implementation regulations are now made available via the TARIC.

4.86. Previously, the EU notified, in its two latest WTO notifications on imports under tariff and other quotas<sup>103</sup>, a total of 124 TRQs<sup>104</sup>, including 60 for marketing year 2017/18 and 64 for calendar year 2018. As reflected in the latest EU information on the administration of TRQs<sup>105</sup>, of the 124 TRQs, 82 were *erga omnes* and 42 had country-specific allocations. According to the Commission, and as enumerated in its notifications, the EU uses first-come first-served and licences to allocate agricultural TRQs.

4.87. Several Commission implementation regulations were adopted during the period under review in relation to TRQs, notably as a result of Article XXIV.6 and Article XXVIII GATT negotiations. The EU Commission noted that it had reflected these changes<sup>106</sup> in the draft schedule in document G/MA/TAR/RS/506.<sup>107</sup>

4.88. Changes were also brought about, following the provisional application of the CETA between the EU and Canada<sup>108</sup>, including, in particular, changes to Commission Implementation Regulation

<sup>96</sup> CN codes 1001 11 00, 1001 19 00, ex 1001 91 20 (common wheat seed), ex 1001 99 00 (high-quality common wheat other than for sowing), 1002 10 00, 1002 90 00, 1005 10 90, 1005 90 00, 1007 10 90 and 1007 90 00.

<sup>97</sup> That is, the intervention price (EUR 101.31 per tonne) plus 55%.

<sup>98</sup> Commission Regulation (EU) No. 642/2010 of 20 July 2010 on rules of application (cereal sector import duties) for Council Regulation (EC) No. 1234/2007. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32010R0642>, as notably amended by Commission Implementing Regulation (EU) 2017/1587 of 19 September 2017 amending Regulation (EU) No. 642/2010 on rules of application (cereal sector import duties) for Council Regulation (EC) No. 1234/2007. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017R1587>, following the provisional application of CETA between the EU and Canada.

<sup>99</sup> Commission Implementing Regulation (EU) No. 1206/2014 of 7 November 2014 fixing the import duties in the cereals sector applicable from 8 November 2014. Viewed at: <https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX:32014R1206>.

<sup>100</sup> Commission Implementing Regulations (EU) 2017/1434, 2017/1517, 2017/1835 and 2018/316. Duties rose up to EUR 10,95 per tonne on 1 September 2017 and started decreasing on 10 October 2017.

<sup>101</sup> Commission Implementing Regulation (EU) 2019/371 of 7 March 2019 fixing the import duties applicable to certain type of husked rice from 8 March 2019. Viewed at: <https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX:32019R0371>.

<sup>102</sup> The products covered as listed in Annex VII of Implementing Regulation (EU) 2017/892 are: tomatoes; cucumbers; artichokes; courgettes; oranges; clementines; mandarins; lemons; table grapes; apples; pears; apricots; cherries, other than sour; peaches, including nectarines; and plums

<sup>103</sup> WTO documents G/AG/N/EU/48, 25 October 2018; and G/AG/N/EU/50, 15 February 2019.

<sup>104</sup> Corresponding to the number of TRQs contained in Section I-B of the draft EU-28 schedule circulated in WTO document G/MA/TAR/RS/506, 6 October 2017.

<sup>105</sup> WTO documents G/AG/N/EU/31, 2 September 2016; G/AG/N/EU/31/Corr.1, 13 January 2017; G/MA/TAR/RS/506; and information provided by the Commission.

<sup>106</sup> Commission Implementing Regulations (EU) 2017/1085, 2017/1156, 2018/82, 2018/1232 and 2019/675.

<sup>107</sup> As amended by document G/MA/TAR/RS/506/Add.2, 17 October 2018.

<sup>108</sup> Commission Implementing Regulations (EU) 2017/1585, 2017/1586 and 2017/1588.



(EU) No. 481/2012<sup>109</sup> in relation to the autonomous TRQ of high-quality beef, opened pursuant to Council Regulation 617/2009 as amended by Regulation (EU) No. 464/2012 of the European Parliament and of the Council, following the memoranda of understanding signed in the context of WTO disputes DS26 and DS48 launched by the United States and Canada (case *European Communities – Measures Concerning Meat and Meat Products (Hormones)*).<sup>110</sup> The EU and Canada notified a mutually-agreed solution for WTO dispute DS48 on 28 September 2017.<sup>111</sup>

4.89. The Council also adopted, on 15 July 2019<sup>112</sup>, a Decision on the signing of an agreement with the United States on the allocation of a share of 35,000 tonnes within this autonomous TRQ of high-quality beef, as resulting from the revised memorandum of understanding signed on 21 October 2013.<sup>113</sup>

4.90. As a result of the agreement signed between the EU and China in relation to WTO dispute DS492 *Measures affecting tariff concessions on certain poultry meat products*<sup>114</sup>, Commission Regulation No. 616/2007, opening TRQs in the sector of poultry meat, was amended<sup>115</sup>, and a mutually-agreed solution was notified to the WTO.<sup>116</sup>

4.91. The Omnibus Regulation also provides for the Commission to make the results of the allocations of TRQs public through an appropriate web-publication.

4.92. Under the Agreement on Agriculture, the EU has the right to use the agricultural special safeguard mechanism for certain agricultural products designated as such in its WTO schedule of commitments, as negotiated in the Uruguay Round. According to the notifications made to the Committee on Agriculture during the period under review, the EU invoked the special safeguard for six tariff lines of poultry or egg products in the marketing years 2016/17, 2017/18, and 2018/19 pursuant to the price-based special safeguard system (SSG). The EU noted that the volume-based SSG was not invoked in 2016/17, 2017/18, and 2018/19, although it was made operational on 18 tariff lines (corresponding to 15 products) for fruit and vegetable products. In these cases, the term "made operational" means that prices are monitored and the price-based SSG may be charged if the import price is below the trigger price or, for the volume-based SSG, import volumes are calculated.<sup>117</sup> The trigger volumes for the years 2018 and 2019 for the possible application of additional import duties on certain fruit and vegetables are fixed in Commission Implementing Regulation (EU) 2018/3 of 4 January 2018.

#### 4.1.1.3 Domestic support levels

##### 4.1.1.3.1 WTO notifications

4.93. The two last DS:1 notifications from the EU for domestic support were for marketing years 2015/16 and 2016/17, and include changes that resulted from the 2013 reform of the CAP (Chart 4.1).<sup>118</sup>

<sup>109</sup> Commission Implementing Regulation (EU) 2017/1585.

<sup>110</sup> WTO documents WT/DS26/28, 30 September 2009; WT/DS26/29, 17 April 2014; and WT/DS48/26, 22 March 2011.

<sup>111</sup> WTO document WT/DS48/27, 3 October 2017.

<sup>112</sup> European Council, *Imports of hormone-free beef: EU-US agreement confirmed*. Viewed at: <https://www.consilium.europa.eu/en/press/press-releases/2019/07/15/imports-of-hormone-free-beef-eu-us-agreement-confirmed/>.

<sup>113</sup> WTO document WT/DS26/29, 17 April 2014.

<sup>114</sup> Council Decision (EU) 2018/1252, 28 January 2019.

<sup>115</sup> Commission Implementing Regulation (EU) 2019/398 of 8 March 2019 amending Regulation (EC) No. 616/2007 as regards some additional tariff quotas in the sector of poultrymeat and derogating from that Regulation for the quota year 2018/2019. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019R0398>.

<sup>116</sup> WTO document WT/DS492/9, 30 May 2019.

<sup>117</sup> WTO documents G/AG/N/EU/39, 4 October 2017; G/AG/N/EU/47, 30 October 2018; and G/AG/N/EU/56, 24 September 2019.

<sup>118</sup> WTO documents G/AG/N/EU/46, 23 August 2018 and corrigenda; and G/AG/N/EU/55, 1 April 2019.

**Chart 4.1 Domestic support, 2007/08-2016/17**

(EUR million)



Source: WTO notifications.

4.94. The notified value of support shows a significant increase, by 50%, in Blue Box payments from marketing year 2014/2015 to 2015/16; they then remained stable from marketing year 2015/16 to 2016/17, reflecting the introduction of the voluntary coupled support scheme (Section 4.1.2.1.1 above), to replace the previous "Article 68" coupled support scheme.<sup>119</sup>

4.95. According to the EU, the increase in the amounts available for payments under the Blue Box was obtained entirely by reducing the available amounts for decoupled direct payments in the 2013 CAP reform.<sup>120</sup>

#### 4.1.1.3.2 OECD monitoring and evaluation of agricultural policies

4.96. Compared to the methodology used to calculate the level of support provided under the Amber, Blue, and Green Boxes in the WTO, the OECD's annual monitoring and evaluation reports on support to agriculture in OECD countries use a different methodology to calculate the value of support which is expressed in a number of indicators, including: the Produce Support Estimate (PSE) for gross transfers from consumers and tax payers to agricultural producers; the Total Support Estimate (TSE) for transfers to the agricultural sector in general; and the Single Commodity Transfers (SCTs) for transfers to specific commodities. As previously noted, the PSE represents the value of transfers to producers, unlike support under the Amber Box, Blue Box and Green Box, which measure compliance with WTO commitments. Therefore, the value of support as notified to the WTO is neither compatible nor comparable with the values calculated by the OECD.

4.97. Overall, the percentage PSE (that is, support as a percentage of gross farm receipts) confirmed, during the 2016-18 period, its stabilization since 2010, at a level of around 20%, considerably below the levels of the 1990s. Market price support increased between 2016 and 2018, from EUR 16 billion to close to EUR 20 billion, essentially due to the beef and veal sector, for which the market price differential increased significantly (Table 4.11).

**Table 4.11 OECD indicators for support to agriculture, 2011-18**

(EUR million - except producer NPC)

	2011	2012	2013	2014	2015	2016	2017	2018
<b>Total</b>								
Value of production	364,601.49	376,186.24	386,582.89	386,582.89	376,374.27	366,314.20	389,276.12	393,092.18
TSE	92,293.31	100,967.36	105,351.01	90,707.55	97,752.08	99,114.93	99,200.75	104,530.23
PSE	79,102.50	87,623.92	92,240.27	79,005.95	85,573.33	88,151.64	88,376.04	93,471.69
SCT	14,664.88	21,573.40	26,262.93	18,846.57	22,169.04	21,481.90	20,872.53	25,447.81
MPS	10,409.48	17,611.73	22,332.30	14,666.04	17,091.68	16,000.84	15,513.37	19,893.31
Producer NPC								
<b>Common wheat</b>								
Value of production	26,727.20	30,291.40	30,033.52	28,020.71	27,188.62	20,742.70	23,106.88	23,188.72
SCT	0.13	1,195.87	1,328.97	685.16	1,437.46	176.33	228.71	170.59
MPS	0.00	1,195.86	1,328.97	685.16	1,437.46	176.33	228.71	170.59
Producer NPC	1.00	1.04	1.04	1.02	1.05	1.01	1.01	1.01
<b>Refined sugar</b>								
Value of production	3,684.80	3,833.66	3,620.64	3,975.63	2,994.72	3,166.27	3,408.77	2,167.22
SCT	41.04	48.52	692.94	721.80	603.92	193.52	193.63	442.52
MPS	0.00	0.00	636.33	699.46	411.62	0.00	0.00	248.62
Producer NPC	1.00	1.00	1.22	1.22	1.16	1.00	1.00	1.13

<sup>119</sup> Art. 68, Council Regulation (EC) No. 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No. 1290/2005, (EC) No. 247/2006, (EC) No. 378/2007 and repealing Regulation (EC) No. 1782/2003. Viewed at: <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32009R0073>.

<sup>120</sup> See EU's answer to the question, raised during the November 2018 Regular Committee on Agriculture (ID89038, available at: [agims.wto.org](http://agims.wto.org)).

	2011	2012	2013	2014	2015	2016	2017	2018
<b>Milk</b>								
Value of production	52,139.28	50,411.02	57,032.57	60,178.71	51,280.00	48,039.26	58,300.46	57,533.12
SCT	625.44	661.04	691.56	935.82	2,241.41	1,621.12	1,372.54	1,370.87
MPS	-29.71	-58.81	-92.38	-44.57	814.37	134.24	-39.75	-9.70
Producer NPC	1.01	1.01	1.01	1.01	1.03	1.01	1.01	1.01
<b>Beef and veal</b>								
Value of production	26,586.66	28,666.26	28,288.18	28,000.60	29,432.55	2,685.15	27,994.90	28,508.60
SCT	4,086.36	9,461.61	11,814.62	7,307.83	8,907.30	5,574.96	6,971.41	10,434.86
MPS	2,481.73	7,939.13	10,338.65	5,874.00	7,059.52	3,725.47	5,123.75	8,561.79
Producer NPC	1.10	1.39	1.58	1.27	1.32	1.17	1.23	1.43
<b>Pig meat</b>								
Value of production	33,822.12	36,852.72	37,620.52	35,625.75	32,746.49	34,861.43	38,037.15	34,134.78
SCT	-53.03	-126.48	521.83	-107.64	-183.07	-127.85	-97.56	24.43
MPS	-76.34	-153.95	508.44	-116.10	-187.78	-146.18	-102.70	-25.40
Producer NPC	1.00	1.00	1.02	1.00	1.00	1.00	1.00	1.00
<b>Poultry</b>								
Value of production	14,990.37	15,777.56	16,237.06	16,470.03	16,757.26	16,758.37	17,231.01	18,035.46
SCT	3,456.28	3,084.64	1,664.47	2,062.96	1,317.90	4,760.88	4,180.39	4,235.89
MPS	3,436.74	3,058.87	1,658.06	2,057.05	1,317.90	4,731.91	4,163.39	4,199.15
Producer NPC	1.30	1.25	1.12	1.15	1.10	1.40	1.32	1.31
<b>Sheep meat</b>								
Value of production	4,829.09	4,680.86	4,580.85	4,567.07	4,621.69	4,512.73	4,597.60	5,051.48
SCT	318.59	301.03	698.81	446.84	607.09	1,361.65	681.14	735.21
MPS	-6.91	-5.86	391.00	26.86	-10.55	637.74	6.72	53.31
Producer NPC	1.00	1.00	1.10	1.01	1.00	1.17	1.00	1.01

Source: OECD, *Getting the agricultural policy mix right*. Viewed at: <http://www.oecd.org/agriculture/topics/agricultural-policy-monitoring-and-evaluation/>.

## 4.1.2 Fisheries

### 4.1.2.1 Fisheries

4.98. The EU ranks among the top five fishing producers in terms of production (3.2% of total world fisheries in volume) and trade (16.0% of total world fisheries in value, excluding intra-EU-28).<sup>121</sup> Since the last Review, the EU demand for fish products has continued to increase, resulting in it greatly exceeding its own supply and being the largest importer of fish and fish products in the world.<sup>122</sup> The fisheries sector was, nonetheless, relatively small in terms of its contribution to its economy (0.06% of total gross value added (GVA)). Its importance varies from one member State to another, being most important in Greece (0.44% of GVA), Malta (0.31%), and Croatia (0.35%) during the period under review.<sup>123</sup>

4.99. The EU's total production of fisheries products (fish catch and aquaculture) in terms of volume was estimated to be about 6.3 million tonnes in 2016, which was still down on the corresponding

<sup>121</sup> WTO Secretariat calculations based on *Eurostat Statistics Explained, Fishery statistics*. Viewed at: [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Fishery\\_statistics#Total\\_fisheries\\_production\\_and\\_employment](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Fishery_statistics#Total_fisheries_production_and_employment); FAO Stat database. Viewed at: <http://www.fao.org/fishery/statistics/global-production/en>; and FAO (2017). FAO yearbook. *Fishery and Aquaculture Statistics 2017*. Viewed at: <http://www.fao.org/fishery/statistics/yearbook/en>.

<sup>122</sup> FAO (2017). FAO yearbook. *Fishery and Aquaculture Statistics 2017*. Viewed at: <http://www.fao.org/fishery/statistics/yearbook/en>; and EUMOFA, *The EU Fish Market – 2018 Edition*, pp. 23.

<sup>123</sup> Eurostat, *National Accounts (including GDP), (nama\_10\_a64)*. Viewed at: <https://ec.europa.eu/eurostat/web/national-accounts/data/database>. Figures are based on 2015-17 averages.

level in 2000<sup>124</sup> (Chart 4.2). The EU's total fish catch was estimated at 5 million tonnes in 2016, which accounted for about 80% of total EU fisheries production. Despite the long-term downward trend in capture production in terms of volume, according to a 2018 Eurostat report, recent figures for fish catches showed a nearly 6% increase from 2016 to 2017.<sup>125</sup> Aquaculture production was small relative to capture, with total production of 1.3 million tonnes (20% of total EU fisheries production), valued at EUR 4.3 billion in 2016.<sup>126</sup> Main producers include Spain, the United Kingdom, Denmark, France, and the Netherlands.

#### 4.1.2.2 Trade performance<sup>127</sup>

4.100. The EU has continued to be highly dependent on imports for fish and fish products since the last Review. This led to a record high trade deficit of EUR 20.9 billion, with imports of EUR 26.4 billion and exports of EUR 5.5 billion in 2018 (Chart 4.2). The deficit increase was mainly due to the growing value of frozen and fresh products, and prepared/preserved products. Fish products imported into the EU expanded more rapidly in value than in volume terms (5.1% per year in value from 2015 to 2018, compared to 1.9% in volume), primarily due to rising prices (e.g. the import price for salmon increased from EUR 5.22/kg in 2015 to EUR 6.63/kg in 2018) (Chart 4.2). Among EU members, most of the member States had trade deficits (including intra-EU trade): Italy had the largest trade deficit, of EUR 5.3 billion, in 2018, followed by France (EUR 4.4 billion). Trade in fish and fish products, however, remains relatively small: 1.3% of total extra-EU-28 imports and 0.3% of exports in 2018.

4.101. Norway remained the leading supplier of fish and fish products for extra-EU-28 imports, accounting for 26% of total extra-EU imports, followed by China (7%), Morocco, and Ecuador (5% each) in 2018. Main imported products (over EUR 1 billion) included salmon, cod, shrimp, skipjack tuna, and octopus, representing about 58% of total extra-EU-28 imports in 2018. According to a 2018 European Market Observatory for Fisheries and Aquaculture Products (EUMOFA) report, Ecuadorian fish products (mainly skipjack) benefitted from duty-free entry under the EU-Ecuador FTA, effective from January 2017; this contributed to an increased import value and volume from Ecuador.<sup>128</sup> The top three EU destinations for extra-EU imports were Spain, Sweden, and Denmark, which accounted for over 45% of total extra-EU-28 imports in 2018.<sup>129</sup>

4.102. Extra-EU exports increased to EUR 5.5 billion in 2018, up from EUR 4.8 billion in 2015, with a growth rate of 4.7% per year. In 2018, the United States was the largest destination market for EU exports (14.0% of total extra-EU-28 exports), followed by China (13.2%), Switzerland (8.6%), and Norway (8.4%). With regard to species, salmon accounted for the largest share (16.7%) of extra-EU-28 exports in 2018.

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<sup>124</sup> Eurostat Statistics Explained, *Fishery statistics*. Viewed at: [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Fishery\\_statistics#Total\\_fisheries\\_production\\_and\\_employment](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Fishery_statistics#Total_fisheries_production_and_employment).

<sup>125</sup> Eurostat (2018). *Agriculture, forestry, and fishery statistics, 2018 Edition*, pp. 117. Viewed at: <https://ec.europa.eu/eurostat/web/products-statistical-books/-/KS-FK-18-001>.

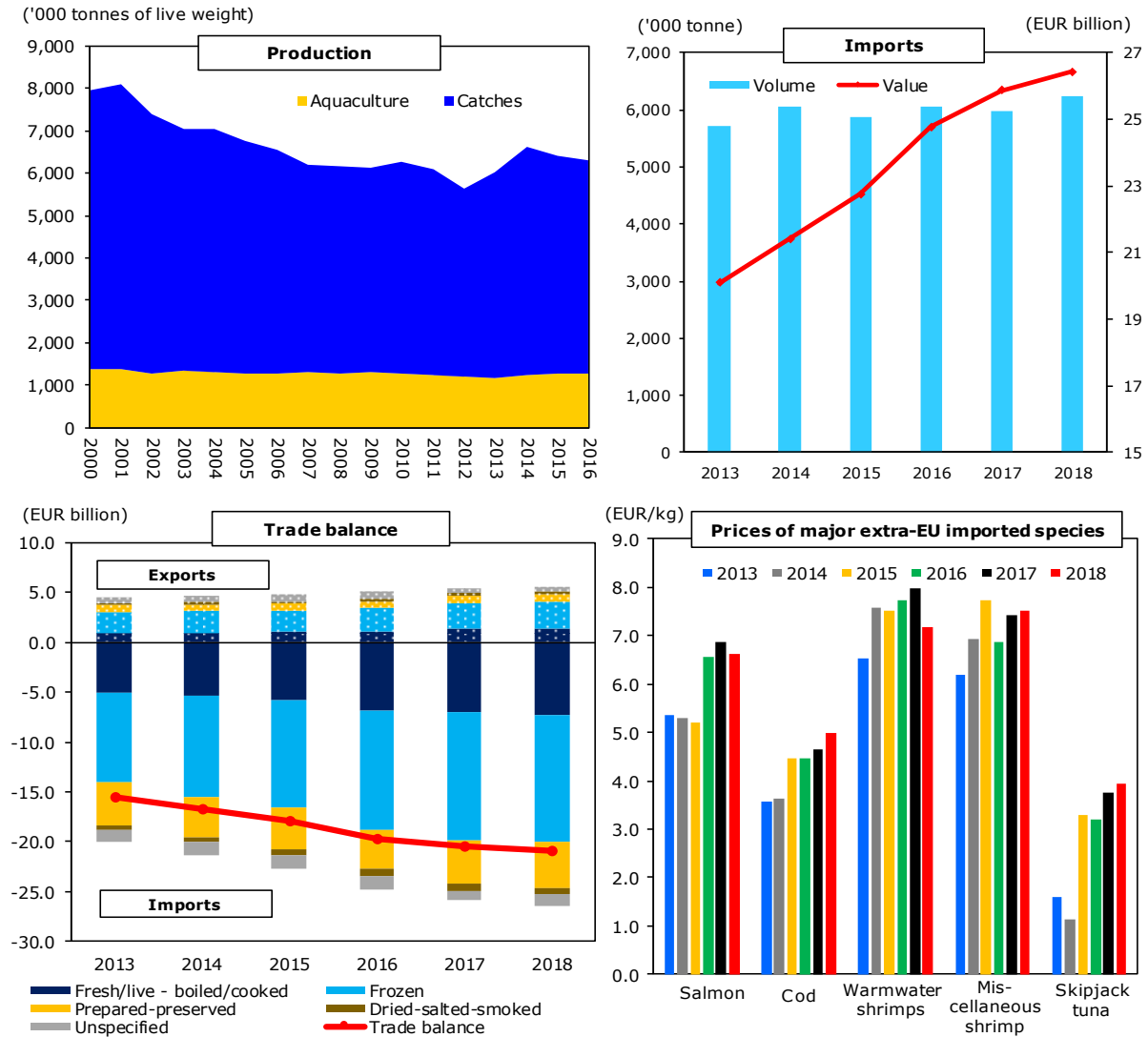
<sup>126</sup> Information provided by the authorities.

<sup>127</sup> For data analysis, fish and fish products are based on HS 03, HS 0508, HS 051191, HS 150410, HS 150420, HS 1603-05, and HS 230120. Also, EUMOFA's correlation table "Annex 4 Correlation between Main commercial species/Commodity Groups and CN-8 from 2001 to 2019" is applied. Viewed at: <https://www.eumofa.eu/supply-balance-and-other-methodologies>.

<sup>128</sup> EUMOFA, *The EU Fish Market – 2018 Edition*, pp. 55.

<sup>129</sup> Eurostat. Viewed at: <https://ec.europa.eu/eurostat/data/database>.

**Chart 4.2 Production and trade of fish and fishery products**



Source: Eurostat, *International trade in goods*. Viewed at: <https://ec.europa.eu/eurostat/web/international-trade-in-goods/data/database>; EUMOFA, *the EUMOFA database*. Viewed at: <http://www.eumofa.eu/web/eumofa/data>; and Eurostat *Statistics Explained, Fishery statistics*. Viewed at: [https://ec.europa.eu/eurostat/statisticsexplained/index.php?title=Fishery\\_statistics#Total\\_fisheries\\_production\\_and\\_employment](https://ec.europa.eu/eurostat/statisticsexplained/index.php?title=Fishery_statistics#Total_fisheries_production_and_employment).

**4.1.2.3 Law, regulations, and polices**

4.103. Article 3 of the TFEU stipulates that the EU has exclusive competence for the conservation of marine biological resources under the Common Fisheries Policy (CFP) and for the conclusion of international agreements. Article 4 of the TFEU stipulates that other fisheries policy areas including responsibility for the implementation of EU rules and for registration of vessels falling under shared competence between the EU and the member States.

4.104. The CFP provides a set of rules for managing European fishing fleets and for conserving fish stocks. The reformed CFP<sup>130</sup>, effective from 1 January 2014, ensures that fishing and aquaculture activities are environmentally, economically and socially sustainable in the long term, and that they are managed under an ecosystem approach.<sup>131</sup> The fisheries regime is based on three main

<sup>130</sup> Since its introduction in 1970, the CFP has been reformed several times (e.g. the 1983 regulation, the 1992 regulation, and the 2002 reform), most recently in 2014.

<sup>131</sup> European Parliament and the Council Regulation (EU) No. 1380/2013, Article 2.

regulations: the basic regulation on the CFP (Regulation (EU) No. 1380/2013 of the European Parliament and the Council); the common organization of the markets in fishery and aquaculture products (Regulation (EU) No. 1379/2013 of the European Parliament and the Council); and the European Maritime and Fisheries Fund (Regulation (EU) No. 508/2014 of the European Parliament and the Council).

4.105. Since the last Review, there have been no significant changes with respect to fisheries management under the CFP. However, in the sixth year of the implementation of the CFP, which set the objective of restoring and maintaining fish stocks at sustainable levels by 2020, the EU has been carrying out an overall assessment of the implementation of the CFP through the European Commission's report on the status of play on the CFP<sup>132</sup> as well as a public consultation for preparing proposals on fishing opportunities.<sup>133</sup> Also, as part of managing fisheries, the Commission recently adopted the regulation on technical measures (in force since 14 August 2019)<sup>134</sup> and put forward a proposal to revise the existing regulation on the fisheries control system<sup>135</sup> in order to ensure their compliance with the reformed CFP.

4.106. The CFP covers several instruments managing fisheries. Under it, the multi-annual recovery and management plans continue to play an important role in managing almost all important stocks and fisheries, with clear objectives and rules at the core of the conservation policy. As at August 2019, five new-generation plans<sup>136</sup> were in force (e.g. over-fished species such as cod, herring and sprat in the Baltic Sea).<sup>137</sup> These plans contain, *inter alia*, the goal for fish stock management (in terms of fishing mortality and/or targeted stock size); the target of fishing at maximum sustainable yield and a deadline for achieving this target; the implementation of the landing obligation; safeguards for remedial action where needed; review clauses; and technical measures (Table 4.12). Since 1 January 2019, the landing obligation has fully applied to all catches of regulated species (i.e. catch limits and minimum fishing size)<sup>138</sup>; fish caught are required to be landed, and discarding is not allowed anymore, with some exceptions such as *de minimis* and species with high survival rates.<sup>139</sup>

4.107. The EU has demonstrated its fishing effort management, which is an essential part of ensuring sustainable fishing, one of the main objectives of the CFP. Fleet capacity continued to decline, in number, capacity and power; the number of vessels decreased from some 84,000 in 2015 to 82,000 in 2017.<sup>140</sup> However, in 2017, the fleet showed a net profit of EUR 1.3 billion, mainly as a result of low fuel prices, higher average prices of several species, increased landings, improved stocks, and technological advances.<sup>141</sup> The total capacity of the fleet may not be increased; the

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<sup>132</sup> European Commission, *Communication on the State of Play of the Common Fisheries Policy and Consultation on the Fishing Opportunities for 2020*. Viewed at: <https://ec.europa.eu/transparency/regdoc/rep/1/2019/EN/COM-2019-274-F1-EN-MAIN-PART-1.PDF>; and *Commission Staff Working Document*. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52019SC0205&from=EN>.

<sup>133</sup> European Union, *Sustainable fisheries: Commission presents progress made and opportunities for 2020*. Viewed at: [https://ec.europa.eu/fisheries/press/sustainable-fisheries-commission-presents-progress-made-and-opportunities-2020\\_en](https://ec.europa.eu/fisheries/press/sustainable-fisheries-commission-presents-progress-made-and-opportunities-2020_en).

<sup>134</sup> Regulation (EU) 2019/1241 of the European Parliament and of the Council, 20 June 2019. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32019R1241>.

<sup>135</sup> European Commission, *The EU's fisheries control system*. Viewed at: [https://ec.europa.eu/fisheries/cfp/control\\_en](https://ec.europa.eu/fisheries/cfp/control_en).

<sup>136</sup> The fisheries agreements after the reform of the CFP in 2013. They include special provisions on human rights, and the rule that sectoral support is decoupled from payments for access to fisheries resources.

<sup>137</sup> European Commission, *Multi-Annual Plans*. Viewed at: [https://ec.europa.eu/fisheries/cfp/fishing\\_rules/multi\\_annual\\_plans\\_en](https://ec.europa.eu/fisheries/cfp/fishing_rules/multi_annual_plans_en).

<sup>138</sup> European Commission, *Communication on the State of Play of the Common Fisheries Policy and Consultation on the Fishing Opportunities for 2020*. Viewed at: <https://ec.europa.eu/transparency/regdoc/rep/1/2019/EN/COM-2019-274-F1-EN-MAIN-PART-1.PDF>.

<sup>139</sup> European Commission, *Discarding and the landing obligation*. Viewed at: [https://ec.europa.eu/fisheries/cfp/fishing\\_rules/discards\\_en#Landing%20obligation](https://ec.europa.eu/fisheries/cfp/fishing_rules/discards_en#Landing%20obligation).

<sup>140</sup> Eurostat, *Fishing fleet by age, length and gross tonnage (fish\_fleet\_alt)*. Viewed at: <https://ec.europa.eu/eurostat/web/fisheries/data/database>.

<sup>141</sup> STECF, *JRC Science for Policy Report, The 2019 Annual Economic Report on the EU Fishing Fleet (STECF 19-06)*. Viewed at: <https://stecf.jrc.ec.europa.eu/documents/43805/2483556/STECF+19-06+-+AER+-+2019.pdf>.

member States are required to comply with a fleet entry/exit scheme without introducing additional fishing capacity.<sup>142</sup>

**Table 4.12 Main fisheries management principles/instruments**

	<b>Functions</b>
The Total Allowable Catches (TACs)	TACs are catch limits (i.e. the amount of each species to be caught) for most commercial fish stocks in EU waters (there are only a few TACs in the Mediterranean Sea). TACs are shared between EU members in the form of national quotas, and are fixed on an annual or bi-annual basis (for deep-sea stocks) on the basis of scientific advice on the stock status from advisory bodies such as the International Council for the Exploration of the Sea (ICES) and the Scientific, Technical and Economic Committee for Fisheries (STECF). For stocks that are shared or jointly managed with non-EU member States, the TACs are agreed with those non-EU member States. EU member States can exchange quotas with other EU member States. Each member State is responsible for ensuring that the quotas are not over-fished.
The maximum sustainable yield (MSY)	The MSY approach aims at restoring and maintaining fish stocks at levels that allow fishermen to catch a maximum proportion of a fish stock without leading to a long-term depletion and a reduction in overall yield. An effective MSY approach can be implemented using fishery management instruments such as multi-annual plans and TACs. Under the reformed CFP, member States agreed to set the objective of reaching MSY for all stocks by 2020.
Discarding/landing obligation	All commercial species must be landed and counted against quota, except when subject to some exemptions. The obligation applies to all species under TACs in EU waters and for European vessels fishing in the high seas or, in the Mediterranean, for species under minimum landing sizes. The use of landed undersized fish is restricted to non-direct human consumption only.
Regionalization	The reformed CFP has shifted to more decentralized governance by having a decision-making process at national and regional level. In this regard, the member States with a direct management interest may agree to submit joint recommendations for achieving the CFP conservation objectives. The recommendations must be based on scientific advice and be compatible with relevant conservation measures and/or multi-annual plans. The EU member States must consult the relevant Advisory Councils on the joint recommendation before submitting them to the European Commission. If all these conditions are met, the Commission can then adopt a Commission Act to transform these joint recommendations into EU law applicable to all operators.
Fishing effort	The member States are required to adjust their fishing capacities to bring them into line with fishing opportunities. An annual report on the balance between the fishing capacity of their fleet and the fishing opportunities must be submitted. When imbalances are identified, action plans should be incorporated into the report, to be submitted to the Commission by 31 March each year. These reports are made publicly available.
Access to water	As a general rule, registered fishing vessels have equal access to all EU waters and resources managed under the CFP. A fishing licence is required.
Technical measures	Technical measures are a broad set of rules which govern how, where and when fishermen may fish. These may include, <i>inter alia</i> , specifications for the design and use of gears, mesh sizes for nets, and closed areas and seasons. The framework was recently reformed, with the entry into force of the new Technical Measures Regulation (Regulation 2019/1241).

<sup>142</sup> Regulation (EU) No. 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No. 1954/2003 and (EC) No. 1224/2009 and repealing Council Regulations (EC) No. 2371/2002 and (EC) No. 639/2004 and Council Decision 2004/585/EC, Article 23. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R1380&from=EN>. In accordance of with Article 23 (3), the European Commission carried out an evaluation of the implementation of the entry/exist scheme for EU vessels on 25 July 2019. Viewed at: [https://ec.europa.eu/fisheries/sites/fisheries/files/docs/body/swd-2019-312\\_en.pdf](https://ec.europa.eu/fisheries/sites/fisheries/files/docs/body/swd-2019-312_en.pdf).



	Functions
Fisheries control system	The Control Regulation (Council Regulation (EC) No. 1224/2009) provides for control, inspection and enforcement to ensure compliance with the rules of the CFP. The EU CFP control system is supported by the implementation of sustainable management of external fishing fleet (SMEFF) and illegal, unreported, and unregulated (IUU) Regulations. The system is designed to, <i>inter alia</i> , ensure that only the allowed quantities of fish are caught, and illegal fishing is prevented; allow data collection to manage fishing opportunities; and ensure that rules and sanctions are uniformly applied across the EU. The Regulation is currently under revision in order to ensure its compliance with the reformed CFP.

Source: Information compiled by the WTO Secretariat from EU online information; and WTO document WT/TPR/S/357/Rev.1, 13 October 2017.

4.108. Aquaculture is a key component of both the CFP and the Blue Growth strategy.<sup>143</sup> The CFP Regulation (Article 34) sets the objective of the sustainable development of the EU aquaculture sector. As indicated in the Regulation, the European Commission adopted, in 2013, non-binding Strategic Guidelines for the sustainable development of EU aquaculture<sup>144</sup>, setting common priorities and targets to unlock the potential of the sector. As also required by the CFP Regulation, EU member States adopted multi-annual national strategic plans (MNAPs), for the development of sustainable aquaculture on the basis of the Commission Guidelines.<sup>145</sup> The Commission facilitates exchanges of best practices among EU member States regarding the implementation of their MNAPs in the context of the Open Method of Coordination for aquaculture.<sup>146</sup>

4.109. With respect to the Common Organisation of the Markets of Fishery and Aquaculture Products (CMO), which is an integral part of the CFP, there have been no significant changes since the last TPR report<sup>147</sup>, except for an expiry of storage aid (i.e. support for fishery producer organizations to store their products) on 1 January 2019. The CMO regulation<sup>148</sup> helps producers in the sector to guarantee sustainable fisheries and to strengthen the competitiveness of the EU fishery and aquaculture sector through, *inter alia*, production and marketing plans, consumer information requirements, and market intelligence (i.e. EUMOFA for market transparency and efficiency).

#### 4.1.2.4 Market access and import requirements

4.110. Tariffs on fishery products remain high, with an average MFN rate of 11.8% as compared to the overall average of 6.3% in 2019 (Section 3.1.3). All customs duties are expressed as *ad valorem* rates, with a range of 0%-26%. Some fishery products (i.e. 9 tariff codes at the 8-digit level) are subject to seasonal rates (e.g. CN code 03024400 – Mackerel<sup>149</sup>). Despite relatively high tariff protection on an MFN basis, the EU grants preferences (at zero or reduced duties), on a reciprocal or unilateral basis, to major fishery suppliers for extra-EU-28 imports (Table 4.13). For instance, duty-free treatment applies to all fishery imports from EU's major suppliers, such as Ecuador. According to EU statistics, in 2018, more than 50% of EU-28 fishery imports benefitted from FTAs

<sup>143</sup> The Blue Growth Strategy, adopted by the European Commission in 2012, is a long-term strategy to support sustainable growth in the marine and maritime sectors. The following sectors are considered as priority sectors on the basis of their potential for creating new jobs and fostering innovation: aquaculture, coastal tourism, marine biotechnology, ocean energy, and seabed mining with an emphasis on creating new jobs and fostering innovation. European Commission, *Blue Growth*. Viewed at: [https://ec.europa.eu/maritimeaffairs/policy/blue\\_growth\\_en](https://ec.europa.eu/maritimeaffairs/policy/blue_growth_en).

<sup>144</sup> European Commission, *Strategic Guidelines for the sustainable development of EU aquaculture*. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52013DC0229&from=EN>.

<sup>145</sup> European Commission. *Multiannual national plans, Aquaculture*. Viewed at: <https://ec.europa.eu/fisheries/cfp/aquaculture/multiannual-national-plans>.

<sup>146</sup> Article 34 (5) of Regulation (EU) No. 1380/2013 of the European Parliament and the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No. 1954/2003 and (EC) No. 1224/2009 and repealing Council Regulations (EC) No. 2371/2002 and (EC) No. 639/2004 and Council Decision 2004/585/EC. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R1380&from=EN>; and European Commission, *Multiannual national plans, Aquaculture*. Viewed at: [https://ec.europa.eu/fisheries/cfp/aquaculture/multiannual-national-plans\\_en](https://ec.europa.eu/fisheries/cfp/aquaculture/multiannual-national-plans_en).

<sup>147</sup> WTO document WT/TPR/S/357/Rev.1, 13 October 2017.

<sup>148</sup> Regulation (EU) No. 1379/2013 of 11 December 2013 on the common organisation of the markets in fishery and aquaculture products, amending Council Regulations (EC) No. 1184/2006 and (EC) No. 1224/2009 and repealing Council Regulation (EC) No. 104/2000. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R1379&from=EN>.

<sup>149</sup> From 1 January to 14 February and from 16 June to 31 December, the applied MFN rate is 20%; and from 15 February to 15 June, it is duty-free.

and unilateral tariff arrangements (EUR 14 billion in 2018, up from EUR 10 billion in 2015).<sup>150</sup> Furthermore, the EU's trade policy instruments for fishery products include WTO tariff quotas and autonomous tariff quotas (ATQs)<sup>151</sup> (Section 3.1.3.3). ATQs apply to certain fish and fish products, to increase the supply of raw materials which are insufficiently produced to meet the demand in the EU for the processing industry.

4.111. Imports of fishery products and shellfish (bivalve molluscs) into the EU are, in principle, subject to the EU food law, which forms the basis for EU import rules (Section 3.3.3). As a general rule, fishery products are imported into the EU from only approved countries<sup>152</sup> and from approved establishments (e.g. processing plants).<sup>153</sup> Imports must be accompanied by sanitary documentations (e.g. a health certificate issued by the competent authority of the non-EU country that confirms that fishery products meet the standards for export to the EU).<sup>154</sup> Also, catch certificates validated by flag States are required for most fishery products from non-EU countries, proving that fishery products from non-EU countries come from legal sources (i.e. not from illegal fishing).<sup>155</sup> In May 2019, the European Commission launched CATCH (an IT system), aiming to digitalize the currently paper-based EU catch certification scheme.<sup>156</sup> Moreover, the EU sets various requirements for a wide range of issues, including traceability and labelling, hygiene-related regulations, and packaging and storage.

**Table 4.13 Average applied tariffs for major species by selected tariff regimes, 2019**

	MFN	Chile	Peru	Iceland	Norway	Canada	GSP	GSP+
Alaska pollock	10.9	0.0	0.0	2.2	2.5	0.0	7.1	0.0
Anchovy	16.7	0.0	0.0	5.0	5.0	0.0	13.2	0.0
Cod	12.2	0.0	0.0	0.7	1.1	0.4	8.0	0.0
Cuttlefish	7.6	0.0	0.0	2.3	2.3	1.6	2.7	0.0
Fish oil	3.6	0.0	0.0	0.0	3.6	0.0	2.5	0.0
Fishmeal	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Hake	12.7	3.1	0.0	3.0	3.5	0.0	8.6	0.0
Herring	14.9	0.0	0.0	9.0	11.6	0.0	11.4	0.0
Lobster <i>Homarus spp</i>	9.4	0.0	0.0	2.8	2.8	3.4	3.3	0.0
Mackerel	18.8	0.0	0.0	15.4	16.1	0.0	13.3	0.0
Octopus	11.0	0.0	0.0	1.8	3.3	4.5	3.9	0.0
Salmon	5.1	1.6	0.0	5.1	5.1	0.0	2.2	0.0
Sardine	16.8	0.0	0.0	5.0	5.0	0.0	13.3	0.0
Scallop	10.4	0.0	0.0	3.0	4.2	3.6	3.6	0.0
Shrimp, miscellaneous	16.0	0.0	0.0	6.0	9.8	6.2	5.6	0.6
Shrimp, warmwater	12.0	0.0	0.0	12.0	12.0	0.0	4.2	3.6
Squid	6.6	0.0	0.0	2.0	2.0	1.5	2.9	0.0

<sup>150</sup> Eurostat, *International trade in goods*. Viewed at: <https://ec.europa.eu/eurostat/web/international-trade-in-goods/data/database>.

<sup>151</sup> Council Regulation (EU) 2018/1977 of 11 December 2018 opening and providing for the management of autonomous Union tariff quotas for certain fishery products for the period 2019–20. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R1977&from=EN>; and Commission Implementing Regulation (EU) 2018/1602 of 11 October 2018 amending Annex I to Council Regulation (EEC) No. 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R1602&from=EN>.

<sup>152</sup> Commission Decision 2006/766/EC of 6 November 2006 establishing the lists of third countries and territories from which imports of bivalve molluscs, echinoderms, tunicates, marine gastropods and fishery products are permitted. Viewed at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:320:0053:0057:EN:PDF>.

<sup>153</sup> European Commission, *Non-EU Countries Authorised Establishments*. Viewed at: [https://ec.europa.eu/food/safety/international\\_affairs/trade/non-eu-countries\\_en](https://ec.europa.eu/food/safety/international_affairs/trade/non-eu-countries_en).

<sup>154</sup> European Commission, *EU import conditions for seafood and other fishery products*. Viewed at: [https://ec.europa.eu/food/sites/food/files/safety/docs/ia\\_trade\\_import-cond-fish\\_en.pdf](https://ec.europa.eu/food/sites/food/files/safety/docs/ia_trade_import-cond-fish_en.pdf).

<sup>155</sup> Council Regulation (EC) No. 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations (EEC) No. 2847/93, (EC) No. 1936/2001 and (EC) No. 601/2004 and repealing Regulations (EC) No. 1093/94 and (EC) No. 1447/1999. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008R1005&from=EN>; and Commission Regulation (EC) No. 1010/2009 of 22 October 2009 laying down detailed rules for the implementation of Council Regulation (EC) No. 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing. Viewed at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:280:0005:0041:EN:PDF>.

<sup>156</sup> European Commission *CATCH - Information Note*. Viewed at: [https://ec.europa.eu/fisheries/sites/fisheries/files/docs/body/catch-it-system\\_en.pdf](https://ec.europa.eu/fisheries/sites/fisheries/files/docs/body/catch-it-system_en.pdf).

	MFN	Chile	Peru	Iceland	Norway	Canada	GSP	GSP+
Tuna, miscellaneous	15.6	5.3	1.0	4.2	4.7	3.3	12.9	0.0
Tuna, skipjack	16.6	8.8	0.0	5.0	5.0	6.4	14.1	0.0
Tuna, yellowfin	16.6	8.8	0.0	5.0	5.0	6.4	14.1	0.0

Note: Calculations for averages are based on the 8-digit tariff line level, excluding in-quota rates. Duty-free treatment applies to all fishery imports from Ecuador, Morocco and Everything But Arms (EBA) beneficiaries.

Source: WTO Secretariat calculations based on the WTO Integrated Data Base (IDB) database and Eurostat.

#### 4.1.2.5 External policy

4.112. While nearly 80% of all EU catches take place in EU waters, the remaining catches come from the international high seas and waters of non-EU countries.<sup>157</sup> EU fishing activities outside EU waters are based on the same principles as fishing within the EU. In December 2017, the EU introduced a new regulation on the sustainable management of external fishing fleets (SMEFF Regulation), which provides a new system of issuing and managing authorizations for EU vessels fishing outside EU waters, in order to improve monitoring and transparency of EU vessels.<sup>158</sup> All EU vessels outside EU waters under the management of Regional Fisheries Management Organizations (RFMOs) and bilateral fisheries agreements, and in high seas not under RFMOs, must be authorized by a flag member State.

4.113. The EU is party to several international agreements on fisheries, and has engaged in joint management of fisheries resources with non-EU countries. EU fishing in high seas is regulated through two types of RFMOs, in which the EU has actively continued to participate: for highly-migratory fish stocks (6 tuna RFMOs) and for other fish stocks (11 non-tuna RFMOs).<sup>159</sup> Also, the EU is an active participant in multilateral negotiations on the law of the sea and the international fisheries law under the United Nations Conventions on the Law of the Sea (UNCLOS), and other international agreements and conventions under the FAO.

4.114. The EU continues to cooperate with international partners to fight illegal, unreported, and unregulated (IUU) fishing worldwide, pursuant to the EU regulation on IUU.<sup>160</sup> During the review period, the EU signed an agreement on ocean partnerships with China (on 16 July 2018)<sup>161</sup> and Canada (on 18 July 2019)<sup>162</sup> for better international governance of the oceans, including the fight against IUU fisheries and the conservation and sustainable use of marine resources in the high seas. Besides IUU fishing, on 3 October 2018, the EU and nine other countries signed an Agreement to Prevent Unregulated Commercial Fishing on the High Seas in the Central Arctic Ocean.<sup>163</sup> The Agreement prohibits commercial fishing in the high seas of the Central Arctic Ocean for at least 16 years. As part of the Agreement, there will be a joint scientific research and monitoring programme.<sup>164</sup>

<sup>157</sup> Publications Office of the European Union, *EU sustainable fisheries partnership agreements*. Viewed at: <https://publications.europa.eu/en/publication-detail/-/publication/c8b5d962-0d38-11e7-8a35-01aa75ed71a1/language-en/format-PDF/source-37907030>.

<sup>158</sup> Regulation (EU) 2017/2403 of 12 December 2017 on the sustainable management of external fishing fleets, and repealing Council Regulation (EC) No. 1006/2008. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R2403&from=EN>.

<sup>159</sup> European Commission, *Regional fisheries management organisations (RFMOs)*. Viewed at: <https://ec.europa.eu/fisheries/cfp/international/rfmo>.

<sup>160</sup> Council Regulation (EC) No. 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations (EEC) No. 2847/93, (EC) No. 1936/2001 and (EC) No. 601/2004 and repealing Regulations (EC) No. 1093/94 and (EC) No. 1447/1999. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008R1005&from=EN>.

<sup>161</sup> European Commission, *EU and China sign landmark partnership on oceans*. Viewed at: [https://ec.europa.eu/maritimeaffairs/content/eu-and-china-sign-landmark-partnership-oceans\\_en](https://ec.europa.eu/maritimeaffairs/content/eu-and-china-sign-landmark-partnership-oceans_en).

<sup>162</sup> European Commission, *EU and Canada conclude ocean partnership agreement*. Viewed at: [https://ec.europa.eu/fisheries/press/eu-and-canada-conclude-ocean-partnership-agreement\\_en](https://ec.europa.eu/fisheries/press/eu-and-canada-conclude-ocean-partnership-agreement_en).

<sup>163</sup> European Commission, *EU and Arctic partners enter historic agreement to prevent unregulated fishing in high seas – Frequently Asked Questions*. Viewed at: [https://ec.europa.eu/fisheries/eu-and-arctic-partners-enter-historic-agreement-prevent-unregulated-fishing-high-seas-%E2%80%93-frequently\\_en](https://ec.europa.eu/fisheries/eu-and-arctic-partners-enter-historic-agreement-prevent-unregulated-fishing-high-seas-%E2%80%93-frequently_en).

<sup>164</sup> European Commission, *EU and Arctic partners enter historic agreement to prevent unregulated fishing in high seas – Frequently Asked Questions*. Viewed at: [https://ec.europa.eu/fisheries/eu-and-arctic-partners-enter-historic-agreement-prevent-unregulated-fishing-high-seas-%E2%80%93-frequently\\_en](https://ec.europa.eu/fisheries/eu-and-arctic-partners-enter-historic-agreement-prevent-unregulated-fishing-high-seas-%E2%80%93-frequently_en).

4.115. Regarding arrangements with non-EU countries, the EU has two types of fishing agreements with Norway, Iceland, the Faroe Islands under Northern Agreements; and the Sustainable Fisheries Partnership Agreements (SFPAs), in which the EU provides financial and technical support in exchange for fishing rights, mainly with developing countries. Each SFPA protocol specifies fishing opportunities, amounts and methods of payments, and sectoral support.

4.116. SFPAs are restricted to agreed target species under tuna agreements and multi-species agreements. As at October 2019, 12 SFPAs were in force between the EU and the partner countries (Table 4.14). In exchange for access rights to the Exclusive Economic Zone (EEZ), the EU provides these partners with a financial contribution for sectoral support for, *inter alia*, small-scale fisheries, science and research, institutional capacities, and reinforcement of monitoring and control capacities. SFPAs contribute to fighting and eradicating IUU by providing these partners with various tools such as capacity building and monitoring and control of surveillance actions by the Vessel Monitoring System (VMS).<sup>165</sup> There are also seven dormant agreements, such as with Gabon, Kiribati and Madagascar which adopted a fisheries partnership agreement without having a protocol in force. EU vessels are not allowed to fish under the regime of the dormant agreements.

**Table 4.14 List of fisheries agreements**

Country	Expiration date
<b>Tuna: EU vessels are allowed to catch migrating tuna stocks off the shores of Africa and through the Indian Ocean</b>	
Cabo Verde	5 years (20.05.2019-19.05.2024)
Cook Islands	4 years (14.10.2016-13.10.2020)
Côte d'Ivoire	6 years (1.8.2018-31.7.2024)
The Gambia	6 years (31.07.2019-30.07.2025)
Liberia	5 years (9.12.2015-8.12.2020)
Mauritius	4 years (08.12.2017-07.12.2021)
Seychelles	6 years (18.1.2014-17.1.2020)
Senegal	5 years (20.11.2014-19.11.2019) On 19 July 2019, the EU and Senegal negotiators paraphed a new implementing protocol to the existing sustainable fisheries partnership agreement <sup>166</sup>
<b>Multi-species agreements: EU vessels are allowed to catch a wide range of fish stocks in the partner country's EEZs</b>	
Greenland	5 years (1.1.2016-31.12.2020)
Guinea-Bissau	5 years (15.6.2019-14.06.2024)
Mauritania	4 years (16.11.2015-15.11.2019)
Morocco	4 years (18.07.2019-17.07.2023)
<b>To be activated shortly</b>	
São Tomé and Príncipe	Protocol expired on 22.05.2018 On 17 April 2019, the EU and São Tomé and Príncipe negotiators paraphed a new implementing protocol to the existing sustainable fisheries partnership agreement
<b>Dormant agreements</b>	
Equatorial Guinea	Protocol expired on 30.06.2001
Gabon	Protocol expired on 23.07.2016
Kiribati	Protocol expired on 15.09.2015
Madagascar	Protocol expired on 31.12.2018
Micronesia	Protocol expired on 24.02.2010
Mozambique	Protocol expired on 31.01.2015
Solomon Islands	Protocol expired on 8.10.2012

Source: European Commission, *Bilateral agreements with countries outside the EU*. Viewed at: [https://ec.europa.eu/fisheries/cfp/international/agreements\\_en](https://ec.europa.eu/fisheries/cfp/international/agreements_en); and information provided by the authorities.

#### 4.1.2.6 Structural support

4.117. The European Maritime and Fisheries Fund (EMFF) serves as a financial tool in support of the CFP (Section 3.3.1.1). During the period 2014-20, the Fund amounts to EUR 6.4 billion, of which

<sup>165</sup> Publications Office of the European Union, *EU sustainable fisheries partnership agreements*. Viewed at: <https://publications.europa.eu/en/publication-detail/-/publication/c8b5d962-0d38-11e7-8a35-01aa75ed71a1/language-en/format-PDF/source-37907030>.

<sup>166</sup> European Commission, *EU signs sustainable fishing partnership agreement protocol with Senegal*. Viewed at: [https://ec.europa.eu/fisheries/press/eu-concludes-sustainable-fishing-partnership-agreement-protocol-senegal\\_en](https://ec.europa.eu/fisheries/press/eu-concludes-sustainable-fishing-partnership-agreement-protocol-senegal_en).

89% is managed by the member States.<sup>167</sup> Each member State is allocated a share of the total budget, based on a number of criteria related to the size of its fishing industry. Spain is the largest recipient of the funding (20.0% of the total EMFF), followed by France (10.2%), and Italy (9.3%).<sup>168</sup> The member States can decide which measures covered by the EMFF to implement, based on their own operational programmes.<sup>169</sup> A number of projects have been funded by the EMFF in order to meet requirements under the CFP. For example, member States spent EUR 40 million (of the total amount of EUR 89 million committed) of EMFF support on the implementation of the landing obligations (e.g. support for landing, storing, processing and marketing of those catches).<sup>170</sup>

4.118. On 2 May 2018, the European Commission proposed a new EMFF budget (EUR 6.14 billion) for 2021-27.<sup>171</sup> The proposed EMFF budget will focus on four priorities: (i) fostering sustainable fisheries and the conservation of marine biological resources; (ii) contributing to food security in the EU through sustainable and competitive aquaculture and markets; (iii) enabling the growth of a sustainable blue economy and fostering prosperous coastal communities; and (iv) strengthening international ocean governance and enabling safe, secure, clean and sustainably-managed seas and oceans.<sup>172</sup> The new proposed EMFF budget aims at simplifying the delivery of the Fund and providing greater flexibility to member States regarding their strategic priorities, instead of "pre-defined" measures; aligning with the other EU structural and investment funds; broadening support for coastal communities; and support for international commitments for better international ocean governance at bilateral, regional and multilateral levels.<sup>173</sup>

4.119. In addition to the EMFF, the member States may provide state aid to the fisheries and aquaculture sector, pursuant to the guidelines on state aid<sup>174</sup> (Section 3.3.1.2). State aid is, in principle, not compatible with the internal market (Article 107(1) of the TFEU), except for some cases such as *de minimis* aid and certain types of subsidies covered by the Fishery and Aquaculture Block Exemption Regulation. *De minimis* state aid cannot exceed EUR 30,000 per beneficiary over three years, and cannot exceed 2.5% of the annual turnover on fisheries output per member State.<sup>175</sup> In accordance with Article 2 of the Regulation, certain types of subsidies may be provided to SMEs for projects reflecting the objectives of the EMFF, with eligible costs that do not exceed EUR 2 million or if the amount of aid does not exceed EUR 1 million per beneficiary per year.<sup>176</sup> If none of these two specific cases is applicable, each member State must notify any state trading scheme to the Commission, declaring that it complies with the TFEU before it can be implemented.<sup>177</sup>

<sup>167</sup> European Commission, *European Maritime and Fisheries Fund (EMFF)*. Viewed at: [https://ec.europa.eu/fisheries/cfp/emff\\_en](https://ec.europa.eu/fisheries/cfp/emff_en). The EMFF covers six priorities: sustainable fisheries, sustainable aquaculture, implementing the CFP, marketing and processing, employment and territorial cohesion, and integrated maritime policy.

<sup>168</sup> European Union, *Facts and figures on the common fisheries policy – 2018 Edition*, p. 48. Viewed at: [https://ec.europa.eu/fisheries/sites/fisheries/files/docs/body/pcp\\_en.pdf](https://ec.europa.eu/fisheries/sites/fisheries/files/docs/body/pcp_en.pdf).

<sup>169</sup> European Commission, *EMFF country files Operational Programmes 2014–2020*. Viewed at: <https://ec.europa.eu/fisheries/cfp/emff/country-files>.

<sup>170</sup> European Commission, *Communication on the State of Play of the Common Fisheries Policy and Consultation on the Fishing Opportunities for 2020*, pp. 4-5. Viewed at: <https://ec.europa.eu/transparency/regdoc/rep/1/2019/EN/COM-2019-274-F1-EN-MAIN-PART-1.PDF>.

<sup>171</sup> European Commission, *Questions and answers on the new European Maritime and Fisheries Fund (EMFF) 2021-2027*. Viewed at: [https://ec.europa.eu/fisheries/press/questions-and-answers-new-european-maritime-and-fisheries-fund-emff-2021-2027\\_en](https://ec.europa.eu/fisheries/press/questions-and-answers-new-european-maritime-and-fisheries-fund-emff-2021-2027_en).

<sup>172</sup> European Commission, *EU Budget for the future*, June 2018. Viewed at: [https://ec.europa.eu/commission/sites/beta-political/files/budget-may2018-maritime-fisheries-fund\\_en.pdf](https://ec.europa.eu/commission/sites/beta-political/files/budget-may2018-maritime-fisheries-fund_en.pdf).

<sup>173</sup> European Commission, *EU Budget for the future*. Viewed at: [https://ec.europa.eu/commission/sites/beta-political/files/budget-may2018-maritime-fisheries-fund\\_en.pdf](https://ec.europa.eu/commission/sites/beta-political/files/budget-may2018-maritime-fisheries-fund_en.pdf).

<sup>174</sup> European Commission, *Guidelines for the examination of State aid to the fishery and aquaculture sector*. Viewed at: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015XC0702\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015XC0702(01)&from=EN).

<sup>175</sup> Commission Regulation (EU) 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid in the fishery and aquaculture sector, Article 3. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0717&from=EN>.

<sup>176</sup> Commission Regulation (EU) No. 1388/2014 of 16 December 2014 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R1388&from=FR>.

<sup>177</sup> Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (codification), Article 3. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015R1589&from=EN>; and Commission Regulation (EC) No. 794/2004 of 21 April 2004 implementing Council Regulation (EC) No. 659/1999 laying

Moreover, tax exemptions from indirect taxes (e.g. excise duties) for energy products used for water navigation (including fishing) in the territorial waters of EU member States are granted in accordance with Article 14(1)(c) of the Council Directive 2003/96/EC.<sup>178</sup> For example, fuel tax exemption for inland fisheries and commercial marine fishing in Estonia was notified to the WTO during the review period.<sup>179</sup>

4.120. According to the OECD, total government financial transfers to the marine capture fisheries sector in the EU were EUR 440 million in 2017, of which: nearly 60% was for general service support, such as management of resources, R&D, and support to fishing communities. However, data were not available for all EU member States.<sup>180</sup>

4.121. The EU budget for maritime affairs and fisheries was EUR 927 million in payments in 2018. Around 84.7% of this amount was for the EMFF, 10.5% for compulsory contributions to RFMOs, other international organizations, and SFPAs, and 4.8% for administrative expenditure.<sup>181</sup>

## 4.2 Energy

4.122. The EU imported 55.1% of its energy in 2017, making it the world's largest energy importer<sup>182</sup>, with an annual energy-import bill averaging EUR 300 billion over the last five years. Some EU member States depend on one or two external suppliers for their entire gas imports, and therefore remain vulnerable to supply shocks.<sup>183</sup> It has been estimated that every additional 1% increase in energy savings cuts gas imports by 2.6%. Some 75% of the EU's housing stock is energy inefficient, and 94% of transport relies on oil products, of which around 90% is imported. Collectively, the EU spends some EUR 120 billion per year, directly or indirectly, on energy subsidies, often not justified.<sup>184</sup>

4.123. Production of primary energy in the EU-28 has been decreasing over the last few years, partly due to the exhaustion of natural resources and/or producers considering their exploitation uneconomical.<sup>185</sup> According to the latest available figures, in 2017, it reached 758.2 million tonnes of oil equivalent (toe) (Table 4.15), i.e. 5.6% of worldwide production, and 14.7% lower than a decade earlier (862.9 million toe in 2007). In 2017, production of primary energy was dominated by France, with a 17.4% share of the EU-28, followed by the United Kingdom (15.6%) and Germany (15.3%).<sup>186</sup>

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down detailed rules for the application of Article 93 of the EC Treaty, Article 2. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32004R0794&from=EN>.

<sup>178</sup> Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity. Viewed at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:283:0051:0070:EN:PDF>.

<sup>179</sup> WTO document G/SCM/N/343/EU/Add.8, 13 August 2019.

<sup>180</sup> OECD Stat, *Fisheries Support Estimate*. Viewed at: [https://stats.oecd.org/Index.aspx?datasetcode=FISH\\_FSE](https://stats.oecd.org/Index.aspx?datasetcode=FISH_FSE). Data were available for 16 countries: Belgium, Denmark, Estonia, France, Germany, Greece, Ireland, Italy, Latvia, Lithuania, the Netherlands, Portugal, Slovenia, Spain, Sweden, and the United Kingdom.

<sup>181</sup> European Union Budgets. *European Commission Documents, Draft General Budget of the European Union for the financial year 2020, Volume 3, Section III, Commission*. Viewed at: <https://eur-lex.europa.eu/budget/data/DB/2020/en/SEC03.pdf>. Figures are based on the following budget chapters: 1101, 1103 (110301 and 110302), and 1106.

<sup>182</sup> Eurostat, *Energy production and imports: Statistics Explained*. Viewed at: <https://ec.europa.eu/eurostat/statistics-explained/pdfscache/1216.pdf>.

<sup>183</sup> European Commission, Fourth Report on the State of the Energy Union. Viewed at: [https://ec.europa.eu/commission/publications/4th-state-energy-union\\_en](https://ec.europa.eu/commission/publications/4th-state-energy-union_en).

<sup>184</sup> European Commission, A Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy. Viewed at: [https://eur-lex.europa.eu/resource.html?uri=cellar:1bd46c90-bdd4-11e4-bbe1-01aa75ed71a1.0001.03/DOC\\_1&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:1bd46c90-bdd4-11e4-bbe1-01aa75ed71a1.0001.03/DOC_1&format=PDF).

<sup>185</sup> Primary energy production takes place when natural resources are exploited (e.g. coal mines, crude oil fields, or hydro power plants). Transformation of energy from one form to another, such as electricity or heat generation in thermal power plants, is not considered as primary energy production.

<sup>186</sup> Compared with a decade earlier, some of the main changes were falls of 41.7 and 32.8 percentage points, respectively, in the shares of Denmark and the United Kingdom, and increases of 17.8 and 13.5 percentage points in the shares of Italy and Spain. Eurostat, *Energy production and imports: Statistics Explained*. Viewed at: <https://ec.europa.eu/eurostat/statistics-explained/pdfscache/1216.pdf>.

**Table 4.15 Energy production, 2017**

	Total production of energy	Share of total production (%)					
		Nuclear energy	Solid fossil fuels	Natural gas	Crude oil	Renewable energy	Other
<b>EU-28</b>	<b>758.2</b>	<b>27.8</b>	<b>16.4</b>	<b>13.6</b>	<b>8.8</b>	<b>29.9</b>	<b>3.5</b>
Belgium	14.9	74.0	0.0	0.0	0.0	21.6	4.4
Bulgaria	11.7	33.8	48.6	0.6	0.2	16.6	0.3
Czech Republic	27.3	25.7	55.5	0.7	0.4	16.3	1.5
Denmark	15.9	0.0	0.0	27.4	43.6	26.5	2.4
Germany	115.8	17.0	34.1	5.2	1.9	36.8	5.0
Estonia	5.8	0.0	0.0	0.0	0.0	27.0	73.0
Ireland	4.9	0.0	0.0	58.6	0.0	23.5	17.9
Greece	7.5	0.0	60.9	0.1	1.9	37.1	0.0
Spain	34.2	44.2	3.3	0.1	0.4	51.3	0.8
France	132.2	78.6	0.0	0.0	0.6	19.6	1.2
Croatia	4.2	0.0	0.0	29.2	16.7	52.1	1.9
Italy	36.7	0.0	0.0	12.4	11.3	72.4	4.0
Cyprus	0.1	0.0	0.0	0.0	0.0	97.5	2.5
Latvia	2.6	0.0	0.0	0.0	0.0	99.7	0.3
Lithuania	1.8	0.0	0.0	0.0	3.2	94.4	2.3
Luxembourg	0.2	0.0	0.0	0.0	0.0	80.8	19.2
Hungary	11.1	36.6	11.5	12.7	6.4	28.6	4.2
Malta	0.0	0.0	0.0	0.0	0.0	100.0	0.0
Netherlands	41.7	1.9	0.0	79.5	2.3	13.4	2.8
Austria	12.3	0.0	0.0	8.5	5.7	79.6	6.2
Poland	64.0	0.0	77.4	5.5	1.6	14.2	1.4
Portugal	5.2	0.0	0.0	0.0	0.0	97.1	2.9
Romania	25.5	11.4	17.5	33.5	13.8	22.9	0.9
Slovenia	3.5	42.3	26.6	0.2	0.0	29.4	1.5
Slovak Republic	6.4	62.6	7.0	1.8	0.1	25.4	3.1
Finland	18.1	29.8	0.0	0.0	0.0	64.5	5.6
Sweden	36.6	44.7	0.0	0.0	0.0	53.0	2.3
United Kingdom	118.1	12.8	1.6	30.5	37.8	13.2	4.2

Source: Eurostat, *Energy production and imports: Statistics Explained*. Viewed at: <https://ec.europa.eu/eurostat/statistics-explained/pdfscache/1216.pdf>.

4.124. Primary energy production in the EU-28 was led by renewable energy (29.9% of the total in 2017), followed by nuclear energy (27.8%), solid fossil fuels (largely coal), natural gas, crude oil, and other (Table 4.15). The significance of nuclear energy was particularly high in France (78.6% of the national production of primary energy) and Belgium (74.0%), while Germany announced plans to close its nuclear reactors by 2022. Germany will also close down all 84 of its coal plants by 2038, and will need to get 65%-80% of its power from renewables.<sup>187</sup> Several other EU member States introduced or confirmed objectives and timelines to phase out coal for electricity generation. France intends to do so by 2022, Italy and Ireland by 2025, and Denmark, Finland, the Netherlands, Portugal and Spain by 2030.<sup>188</sup> In 2007-17, the production of renewables in the EU-28 increased by 65.6%, exceeding that of all the other energy types.<sup>189</sup> By contrast, the production levels for the other sources fell over the same period: natural gas (-39.4%), crude oil (-38.9%), solid fuels (-30.5%), and nuclear energy (-12.8%).<sup>190</sup>

4.125. All EU member States are net importers of energy, with imports of primary energy exceeding exports by around 948 million toe in 2017 (Table 4.16). The largest net importers of primary energy

<sup>187</sup> Germany is the world's sixth largest greenhouse gas polluter, mainly due to coal; Germany gets almost a third of its electricity from coal. NY Times. *Germany lays out a path to quit coal by 2038*. Viewed at: <https://www.nytimes.com/2019/01/26/world/europe/germany-quit-coal-2038.html>.

<sup>188</sup> European Commission, *United in delivering the Energy Union and Climate Action - Setting the foundations for a successful clean energy transition*. Viewed at: [https://ec.europa.eu/energy/sites/ener/files/documents/recommendation\\_en.pdf](https://ec.europa.eu/energy/sites/ener/files/documents/recommendation_en.pdf); and relevant Commission Recommendations of 18 June 2019 on the draft integrated National Energy and Climate Plans covering the period 2021-30.

<sup>189</sup> Almost 80% of renewable energy in the EU-28 is biomass and waste, followed by hydro power, wind, solar energy, and geothermal energy. Eurostat, *Energy production and imports: Statistics Explained*. Viewed at: <https://ec.europa.eu/eurostat/statistics-explained/pdfscache/1216.pdf>.

<sup>190</sup> Eurostat, *Energy production and imports: Statistics Explained*. Viewed at: <https://ec.europa.eu/eurostat/statistics-explained/pdfscache/1216.pdf>.

are generally the most populous EU member States, except Poland where some indigenous reserves of coal remain. Relative to population size, the largest net importers are Luxembourg, Malta and Belgium.<sup>191</sup>

**Table 4.16 Net imports of energy, 2007-17**

	Million toe						Toe per inhabitant					
	2007	2009	2011	2013	2015	2017	2007	2009	2011	2013	2015	2017
<b>EU-28</b>	<b>989</b>	<b>939</b>	<b>953</b>	<b>916</b>	<b>906</b>	<b>948</b>	<b>2.0</b>	<b>1.9</b>	<b>1.9</b>	<b>1.8</b>	<b>1.8</b>	<b>1.8</b>
Belgium	51	48	48	49	50	48	4.8	4.5	4.4	4.3	4.4	4.2
Bulgaria	10	8	7	7	7	7	1.4	1.1	1.0	0.9	1.0	1.1
Czech Republic	12	12	13	12	13	16	1.1	1.1	1.2	1.1	1.3	1.5
Denmark	-5	-4	-1	2	2	2	-1.0	-0.7	-0.2	0.4	0.4	0.4
Germany	200	198	199	207	198	207	2.4	2.4	2.5	2.6	2.4	2.5
Estonia	2	1	1	1	1	0	1.2	0.9	0.6	0.7	0.4	0.2
Ireland	14	13	13	12	13	10	3.2	2.9	2.7	2.7	2.7	2.1
Greece	24	22	19	16	18	19	2.2	2.0	1.8	1.5	1.7	1.7
Spain	124	111	105	90	95	102	2.7	2.4	2.3	1.9	2.1	2.2
France	138	134	131	129	120	125	2.2	2.1	2.0	1.9	1.8	1.9
Croatia	5	4	5	4	4	5	1.2	1.0	1.1	1.0	1.0	1.2
Italy	158	141	141	123	121	125	2.7	2.4	2.4	2.0	2.0	2.1
Cyprus	3	3	3	2	2	3	3.8	3.6	3.1	2.7	2.9	3.1
Latvia	3	3	3	3	2	2	1.4	1.4	1.3	1.3	1.2	1.1
Lithuania	6	4	6	5	5	6	1.8	1.4	2.0	1.8	1.9	2.0
Luxembourg	4	4	4	4	4	4	9.3	8.5	8.5	7.7	7.0	6.9
Hungary	17	15	13	12	14	17	1.7	1.5	1.3	1.2	1.4	1.7
Malta	2	2	2	2	2	3	4.4	4.9	5.5	5.0	5.0	6.4
Netherlands	37	32	28	22	43	47	2.3	2.0	1.7	1.3	2.5	2.7
Austria	23	21	24	21	20	22	2.8	2.5	2.8	2.5	2.3	2.5
Poland	25	30	35	26	29	40	0.7	0.8	0.9	0.7	0.8	1.1
Portugal	22	21	19	17	18	20	2.1	2.0	1.8	1.6	1.8	1.9
Romania	12	7	8	6	5	8	0.6	0.3	0.4	0.3	0.3	0.4
Slovenia	4	3	4	3	3	3	1.9	1.7	2.0	1.8	1.5	1.4
Slovak Republic	12	11	11	10	10	11	2.3	2.1	2.1	1.9	1.8	2.1
Finland	20	19	19	17	16	15	3.8	3.5	3.6	3.1	2.9	2.7
Sweden	19	18	19	17	15	14	2.1	1.9	2.0	1.8	1.5	1.4
United Kingdom	46	57	74	96	73	66	0.7	0.9	1.2	1.5	1.1	1.0

Source: Eurostat, *Energy production and imports: Statistics Explained*. Viewed at: <https://ec.europa.eu/eurostat/statistics-explained/pdfscache/1216.pdf>.

4.126. The origin of EU energy imports changed somewhat in recent years, although the Russian Federation remains the main supplier of crude oil (30.3% of total imports in 2017), natural gas (38.7%), and hard coal (38.9%). The security of the EU's primary energy supplies may be threatened if a high proportion of imports are concentrated among relatively few partners. In 2017, 74.6% of the EU's imports of natural gas came from the Russian Federation, Norway and Algeria; 72.7% of the hard coal imports originated from the Russian Federation, Colombia and the United States; while the Russian Federation, Norway and Iraq accounted for 49.9% of the EU's imports of crude oil.<sup>192</sup>

4.127. More than half of the EU's energy needs are covered by imports. Indeed, dependency on energy imports increased from about 44.0% of gross available energy in 1990 to 55.1% in 2017. The highest dependency rate is for crude oil (86.7% in 2017), followed by natural gas (74.3%), and solid fossil fuels (43.9%). In 2017, the lowest dependency rates were recorded for Estonia, Denmark, Romania and Sweden, driven by a combination of energy-efficiency gains and/or a switch to renewable resources. Malta, Cyprus and Luxembourg were almost entirely dependent on primary energy imports, with dependency rates of over 95.0%.<sup>193</sup>

4.128. Imports of electricity from outside the EU are duty free.

4.129. SOEs continue to play an important role in the EU's energy sector (Section 3.3.5).

4.130. The EU enjoys shared legislative powers with its member States in energy-related matters. The division of power in energy matters and a move towards a common energy policy are contained

<sup>191</sup> Eurostat, *Energy Production and imports: Statistics Explained*.

<sup>192</sup> Eurostat, *Energy Production and imports: Statistics Explained*.

<sup>193</sup> Eurostat, *Energy Production and imports: Statistics Explained*.



in Article 194 of the Energy Title (Title XXI) in the TFEU. Each member State maintains its right to "determine the conditions for exploiting its energy resources, its choice between different energy sources and the general structure of its energy supply".<sup>194</sup> Other legal provisions of the TFEU on energy include: Articles 114 (internal energy market); 122 (security of supply); 170-172 (energy networks); and 216-218 (external energy policy). In addition, Protocol 37 clarifies the financial consequences resulting from the expiry of the European Coal and Steel Community (ECSC) Treaty in 2002; while the Treaty establishing the European Atomic Energy Community (Euratom Treaty) serves as the legal basis for most EU actions in the field of nuclear energy.<sup>195</sup>

4.131. On 3 March 2010, the Energy 2020 strategy on climate change and energy was proposed by the European Commission, with the following interrelated and mutually supportive targets (also known as the "20-20-20" targets)<sup>196</sup>: 20% reduction in greenhouse gas (GHG) emissions compared with 1990 levels; 20% share of renewable energy in gross final energy consumption; and 20% cut in energy consumption compared to a 2020 business-as-usual projection. In October 2014, the European Council agreed the 2030 Climate and Energy Policy Framework (see below).<sup>197</sup> The Energy Union Package 2015 set out to give EU consumers secure, sustainable, competitive and affordable energy by overhauling energy and climate policies.<sup>198</sup> Under the Package, there are five mutually-reinforcing and interrelated objectives of the EU's energy policy: improving security of energy supply; completing the internal energy market; boosting energy efficiency; decarbonizing the economy and becoming the world leader in renewable energy; and promoting research, innovation and competitiveness (see below).

4.132. In 2018 and 2019, the EU adopted a new comprehensive legislative framework for energy and climate policies. The European Parliament and Council agreed on a revision of the EU's climate legislation, including the Emissions Trading System Directive<sup>199</sup>, both for stationary installations and for aviation, the Effort Sharing Regulation<sup>200</sup>, and the Regulation on Land Use, Land Use Change and Forestry.<sup>201</sup> They also agreed on the eight legislative proposals in the "Clean Energy for All Europeans" package (all of which have entered into force)<sup>202</sup>, and on the ten mobility proposals following the Low-Emission Mobility Strategy.<sup>203</sup> This framework is expected to put the EU on a good trajectory to a climate-neutral economy by 2050 (see below).

4.133. The 2030 Climate and Energy Policy Framework and the updated legislative framework set out quantified objectives for 2030, namely: to reduce GHG emissions domestically by at least 40% compared to 1990 levels; to reach a share of at least 32% in renewable energy; and to increase energy efficiency by at least 32.5% at EU level. The electricity interconnections target set to improve security of supply by stepping up to 15% in each member State by 2030. A legal framework on the

<sup>194</sup> Art. 194(2), TFEU.

<sup>195</sup> European Parliament. *Energy Policy: General Principles*. Viewed at: [http://www.europarl.europa.eu/ftu/pdf/en/FTU\\_2.4.7.pdf](http://www.europarl.europa.eu/ftu/pdf/en/FTU_2.4.7.pdf).

<sup>196</sup> European Commission, Energy 2020: A Strategy for competitive, sustainable and secure energy. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=legisum:en0024>.

<sup>197</sup> European Commission, A policy framework for climate and energy in the period from 2020 to 2030. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014DC0015&from=EN>.

<sup>198</sup> European Commission, A Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy. Viewed at: [https://eur-lex.europa.eu/resource.html?uri=cellar:1bd46c90-bdd4-11e4-bbe1-01aa75ed71a1.0001.03/DOC\\_1&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:1bd46c90-bdd4-11e4-bbe1-01aa75ed71a1.0001.03/DOC_1&format=PDF).

<sup>199</sup> Directive (EU) 2018/410 of the European Parliament and of the Council of 14 March 2018 amending Directive 2003/87/EC to enhance cost-effective emission reductions and low-carbon investments, and Decision (EU) 2015/1814. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018L0410&from=EN>.

<sup>200</sup> Regulation (EU) 2018/842 of the European Parliament and of the Council of 30 May 2018 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement and amending Regulation (EU) No. 525/2013. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R0842&from=EN>.

<sup>201</sup> Regulation (EU) 2018/841 of the European Parliament and of the Council of 30 May 2018 on the inclusion of greenhouse gas emissions and removals from land use, land use change and forestry in the 2030 climate and energy framework, and amending Regulation (EU) No. 525/2013 and Decision No. 529/2013/EU. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R0841&from=EN>.

<sup>202</sup> European Commission, Clean Energy for All Europeans. Viewed at: [https://eur-lex.europa.eu/resource.html?uri=cellar:fa6ea15b-b7b0-11e6-9e3c-01aa75ed71a1.0001.02/DOC\\_1&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:fa6ea15b-b7b0-11e6-9e3c-01aa75ed71a1.0001.02/DOC_1&format=PDF).

<sup>203</sup> European Commission, A European Strategy for Low-Emission Mobility. Viewed at: [https://eur-lex.europa.eu/resource.html?uri=cellar:e44d3c21-531e-11e6-89bd-01aa75ed71a1.0002.02/DOC\\_1&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:e44d3c21-531e-11e6-89bd-01aa75ed71a1.0002.02/DOC_1&format=PDF).

governance of the energy union was put in place, in order to ensure that the 2030 targets are met, individually and collectively.<sup>204</sup> It relies, among others, on a requirement for all member States to establish National Energy and Climate Plans for the period 2021-30. Draft Plans have been submitted and assessed by the European Commission, with final Plans to be provided by end-2019. Binding targets for 2030 were also set to reduce carbon emissions from cars by 37.5% compared to 2021 levels; from vans by 31.0% compared to 2021 levels; and from lorries by 30.0% compared to 2019 levels.<sup>205</sup>

### **Improving security of energy supply**

4.134. Diversification of energy sources, suppliers and routes, and more efficient energy consumption are crucial for ensuring secure and resilient energy supplies. The EU took several measures in this regard during the last few years. Member States, for example, are required to maintain a minimum of oil stocks, corresponding to 90 days of average daily net imports or 61 days of average daily inland consumption, whichever is greater.<sup>206</sup>

4.135. New rules on security of gas supply and electricity risk preparedness were adopted to organize operational cross-border regional cooperation, to prevent and manage the risk of gas disruptions, electricity shortages or black-outs.<sup>207</sup> Progress was also made in improving the design of electricity markets, including a more integrated set of rules.<sup>208</sup> According to the Commission, these rules improve efficiency through increased price convergence and cross-border exchanges. Recent investments in smart infrastructure also prepared the grid for the changing energy system.<sup>209</sup>

4.136. In the Commission's view, progress was also made in the gas market, notably with the revision of the Gas Directive, according to which gas pipelines entering or leaving the European internal gas market must now comply with EU rules. In addition, the Commission can now ensure that member States' agreements with countries outside the EU comply with EU law before they are concluded. These measures are expected to increase the predictability of the single market for investors.<sup>210</sup>

4.137. Efforts were also made to ensure the diversification of gas supply, and end dependency on a single supplier in certain member States. As a result, all member States but one have access to two independent sources of gas and, if all ongoing projects are implemented on schedule, all member States except for Malta and Cyprus will have access to three sources of gas by 2022, and 23 member States will have access to the global liquefied natural gas (LNG) market.<sup>211</sup>

4.138. The transition towards a more secure and sustainable energy system will require major investments in generation, networks and energy efficiency, estimated at some EUR 200 billion annually in the next decade. The private sector is expected to bear the brunt of the costs. The

<sup>204</sup> Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action, amending Regulations (EC) No. 663/2009 and (EC) No. 715/2009 of the European Parliament and of the Council, Directives 94/22/EC, 98/70/EC, 2009/31/EC, 2009/73/EC, 2010/31/EU, 2012/27/EU and 2013/30/EU of the European Parliament and of the Council, Council Directives 2009/119/EC and (EU) 2015/652 and repealing Regulation (EU) No. 525/2013 of the European Parliament and of the Council. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R1999&from=EN>.

<sup>205</sup> European Commission, Fourth Report on the State of the Energy Union. Viewed at: [https://ec.europa.eu/commission/publications/4th-state-energy-union\\_en](https://ec.europa.eu/commission/publications/4th-state-energy-union_en).

<sup>206</sup> Council Directive 2009/119/EC of 14 September 2009 imposing an obligation on Member States to maintain minimum stocks of crude oil and/or petroleum products. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009L0119&from=EN>.

<sup>207</sup> Regulation (EU) 2017/1938 of the European Parliament and of the Council of 25 October 2017 concerning measures to safeguard the security of gas supply and repealing Regulation (EU) No. 994/2010, Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R1938&from=EN>.

Proposal for a Regulation of the European Parliament and of the Council on risk-preparedness in the electricity sector and repealing Directive 2005/89/EC. Viewed at: [https://eur-lex.europa.eu/resource.html?uri=cellar:1d8d2670-b7b2-11e6-9e3c-01aa75ed71a1.0001.02/DOC\\_1&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:1d8d2670-b7b2-11e6-9e3c-01aa75ed71a1.0001.02/DOC_1&format=PDF).

<sup>208</sup> European Commission. *Markets and consumers*. Viewed at: <https://ec.europa.eu/energy/en/topics/markets-and-consumers>.

<sup>209</sup> European Commission, Fourth Report on the State of the Energy Union.

<sup>210</sup> European Commission, Fourth Report on the State of the Energy Union.

<sup>211</sup> European Commission, Fourth Report on the State of the Energy Union.

European Investment Bank, the Connecting Europe Facility and the European Structural and Investment Funds already participate. Moreover, the European Fund for Strategic Investments will provide additional support, facilitating access to finance for projects of European significance, such as in energy networks, renewable energy and energy efficiency.

### **Completing the internal energy market**

4.139. A key driver of energy security is the completion of the EU internal energy market, which is crucial to providing EU citizens with a supply of secure, sustainable, competitive and affordable energy. The third energy package is one of the main legislative instruments in this regard, further liberalizing the gas and electricity markets. The package entered into force on 3 September 2009 and refers to measures in five main areas: unbundling (separation of the operation of electricity and gas transmission networks from the supply and generation activities); facilitating cross-border energy trade, and assisting National Regulatory Authorities (NRAs) through the establishment of the Agency for the Cooperation of Energy Regulators (ACER); promoting cross-border collaboration and investment through the establishment of the European Networks of Transmission System Operators for Electricity and Gas (ENTSO-E/G); greater transparency and improved record keeping; and access to storage and LNG facilities.<sup>212</sup>

4.140. On 5 June 2019, the EU published Regulation (EU) No. 2019/943 on the internal market for electricity and Directive (EU) No. 2019/944 on common rules for the internal market for electricity. Regulation (EU) No. 2019/943 "sets the basis for an efficient achievement of the objectives of the Energy Union and in particular the Climate and Energy Policy Framework for 2030 by enabling market signals to be delivered for increased efficiency, higher share of renewable energy sources, security of supply, flexibility, sustainability, decarbonization and innovation". It aims at providing the fundamental principles of the future common electricity market, describes how a fair cross-border exchange in electricity should be conducted, and sets the basic rules to encourage free price formation and more flexible generation and demand.<sup>213</sup>

4.141. Directive (EU) No. 2019/944 "establishes common rules for the generation, transmission, distribution, energy storage and supply of electricity, together with consumer protection provisions, with a view to creating a truly integrated competitive, consumer-centred, flexible, fair and transparent electricity market in the EU". The provisions also aim to ensure, *inter alia*, that electricity consumers are free to purchase power from the supplier of their choice and can also have more than one electricity supply contract at the same time, provided that the required connections and metering points are established. In addition, consumers should be free to buy and trade electricity services independently from their electricity supply contracts.<sup>214</sup>

4.142. According to the Commission, energy in the EU is now traded more freely (although still not sufficiently freely) across borders, building on the Electricity and Gas Market Directives<sup>215</sup>, as well as antitrust enforcement.<sup>216</sup> As concerns electricity, the measurable decrease in wholesale electricity prices by 6.4% between 2010 and 2017 contributed to a decrease in the price of energy for

<sup>212</sup> Other internal energy market instruments include: Regulation on Guidelines for Trans-European Energy Infrastructure (Regulation (EU) 347/2013); Regulation on Wholesale Energy Market Integrity and Transparency (Regulation (EU) 1227/2011); Electricity Directive (COM(2016) 864); Electricity Regulation (COM(2016) 861); and Risk-Preparedness Regulation (COM(2016) 862).

<sup>213</sup> Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (recast). Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R0943&from=EN>.

<sup>214</sup> Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU (recast). Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L0944&qid=1573829683251&from=EN>.

<sup>215</sup> Directive 2009/72/EC of the European parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009L0072&from=EN>. Directive 2009/73/EC of the European parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009L0073&from=EN>.

<sup>216</sup> Antitrust decisions gave customers in Central and Eastern Europe an effective tool to make sure they have access to more competitive gas prices, most recently in the following decisions: AT.39816 Gazprom commitment decision, AT.40461 DE-DK Interconnectors commitment decision, and AT.39849 BEH Gas prohibition decision.

households and industry by 6% and 30%, respectively. However, the increase in network charges, taxes and levies led to an average increase in final consumer prices of 19.3% for households and 8.7% for industrial consumers across the EU over the same period. Energy-related taxes and levies represent up to 40% of the retail energy price for households.<sup>217</sup>

4.143. The EU still faces challenges to the completion of its internal energy market. For example, in the view of the Commission, the digitization of the power infrastructure will require improved cybersecurity and protection of the critical infrastructure. Moreover, while investments made have enabled sector integration, the Commission considers that more needs to be done to bring together the power generation and end-use sectors.<sup>218</sup> According to the Commission, this is necessary to integrate the rising share of renewable energy; heating and cooling; and electric vehicles in the energy system. This will be a key area of attention for the future, as demand for electrical vehicles will vary across regions and will depend on factors such as the development of alternative fuel infrastructure.<sup>219</sup>

### **Boosting energy efficiency**

4.144. The current energy-efficiency framework consists of several directives, the revision of which is either ongoing or planned. The Energy Efficiency Directive No. 2012/27/EU, as amended by Directive (EU) No. 2019/944, requires member States to set indicative national energy-efficiency targets. As already indicated, the EU aims to achieve at least a 20% improvement in energy efficiency by 2020, and at least 32.5% by 2030.

4.145. In the view of the Commission, there is a need to further intensify efforts to reach the 2020 energy-efficiency target. Indeed, following a gradual decrease between 2007 and 2014, energy consumption started to increase in recent years, and is now slightly above the linear trajectory for the 2020 targets. This is due to colder years 2015 and 2016, but also increased economic activity and low oil prices.<sup>220</sup> While the 2020 target is still within reach, continued increase in energy consumption could put it at risk. As a result, the Commission established a Task Force with member States to mobilize efforts and fully exploit energy-efficiency potentials. In the transport sector, energy consumption and emissions decreased between 2007 and 2013, but are now roughly back at 2005 levels. The positive impact of efficiency policies was outweighed by increased transport activity, and low capacity utilization in road-freight transport.<sup>221</sup>

4.146. The Energy Efficiency Directive also requires member States to assess and notify the Commission of the potential for high-efficiency cogeneration and district heating and cooling on their territory, and to conduct a cost-benefit analysis based on climate conditions, economic feasibility and technical suitability (with some exemptions). Member States are free to make these minimum requirements more stringent as they strive to save energy. The Directive also introduces a binding set of measures to help member States achieve this target, and sets legally-binding rules for end-users and energy suppliers.

4.147. Further energy-efficiency standards for products and buildings were set, with the Ecodesign Directive (No. 2009/125/EC), the Energy Efficiency Labelling Directive (No. 2010/30/EU) and the Energy Performance of Buildings Directive (No. 2010/31/EU). The application of minimum requirements to the energy performance of new buildings and new building units, establishes, for instance, that, by 31 December 2020, all new buildings must be nearly zero-energy.

4.148. In the framework of the Energy Union Package, the Commission launched the EU Strategy on Heating and Cooling.<sup>222</sup> It includes plans to boost the energy efficiency of buildings, improve

<sup>217</sup> European Commission, Fourth Report on the State of the Energy Union.

<sup>218</sup> Since the end of 2019, close to EUR 400 million in Connecting Europe Facility (CEF) grants were made available to over 50 projects to deploy alternative fuels, mobilizing total investments exceeding EUR 3 billion. The aim is to make available an additional EUR 350 million through the CEF blending facility in 2019. European Commission, Fourth Report on the State of the Energy Union.

<sup>219</sup> European Commission, Fourth Report on the State of the Energy Union.

<sup>220</sup> Energy intensity in industry continued to improve by as much as 22% between 2005 and 2017, and energy savings have helped offset parts of the impact of these increases. But they have been insufficient to maintain total consumption on a downward trend.

<sup>221</sup> European Commission, Fourth Report on the State of the Energy Union.

<sup>222</sup> European Commission, An EU Strategy on Heating and Cooling. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016DC0051&from=en>.

linkages between electricity systems and district heating systems, which will greatly increase the use of renewable energy, and encourage reuse of waste heat and cold generated by industry. Legislative provisions for this Strategy are included in the Clean Energy for all Europeans package.

4.149. The Commission invited the European Standardization Organizations (ESOs) to contribute to the efforts to make Europe more climate-resilient (Section 3.3.2.4).

### ***Decarbonizing the economy and becoming the world leader in renewable energy***

4.150. The EU is committed to becoming the world leader in renewable energy, and the global hub for developing the next generation of technically advanced and competitive renewable energies. The Renewable Energy Directive established that a mandatory 20% share of EU energy consumption must come from renewables by 2020.<sup>223</sup> In addition, all member States are required to obtain 10% of their transport fuels from renewables by that year. The Directive also specifies national renewable energy targets for each country, considering its starting point and overall potential for renewables. These targets range from a low of 10% in Malta to a high of 49% in Sweden.

4.151. The 2030 Climate and Energy Policy Framework points to a renewable energy share of at least 30% by 2030. In December 2018, under Directive (EU) No. 2018/2001 of 11 December 2018 on the promotion of the use of energy from renewable sources<sup>224</sup>, the EU established an increased EU-wide target of at least 32% by 2030, building on the national target for renewable energy of 2020.<sup>225</sup> Since 2014, the share of renewable energy in the EU energy mix has increased, reaching 17.5% in 2017.<sup>226</sup> According to the European Commission, while the EU is on track to meet its 2020 targets for renewable energy, member States should step up their efforts to both deploy renewables and reduce energy consumption to ensure that 2030 targets are met.<sup>227</sup>

4.152. According to the Commission, member States may also use statistical transfers, as provided for in the Renewable Energy Directive, either to ensure that they achieve the target when there is a deficit or to sell their surplus. The Commission adopted a revised Renewable Energy Directive to: further deploying renewables in the electricity sector; mainstream renewables in the heating and cooling sector; decarbonize and diversify the transport sector (with a renewables target for 2030 of at least 14% of total energy consumption in transport); empower and inform customers; strengthen the EU sustainability criteria for bioenergy; and make sure the EU-level binding target is achieved on time and in a cost-effective way.<sup>228</sup>

<sup>223</sup> Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009L0028&from=EN>.

<sup>224</sup> Directive (EU) 2018/2001 of the European parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (recast). Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018L2001&from=EN>.

<sup>225</sup> EU countries set out how they plan to meet these targets, and the general roadmap for their renewable energy policy, in national renewable energy action plans. Progress towards the national targets is measured every two years, when countries publish national renewable energy progress reports in line with the governance regulation.

<sup>226</sup> Eurostat, *Renewable energy statistics*. Viewed at: [https://ec.europa.eu/eurostat/statistics-explained/index.php/Renewable\\_energy\\_statistics](https://ec.europa.eu/eurostat/statistics-explained/index.php/Renewable_energy_statistics).

<sup>227</sup> European Commission, Fourth Report on the State of the Energy Union.

<sup>228</sup> Proposal for a Directive of the European Parliament and of the Council on the promotion of the use of energy from renewable sources (recast). Viewed at: [https://eur-lex.europa.eu/resource.html?uri=cellar:151772eb-b7e9-11e6-9e3c-01aa75ed71a1.0001.02/DOC\\_1&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:151772eb-b7e9-11e6-9e3c-01aa75ed71a1.0001.02/DOC_1&format=PDF).

4.153. The EU currently has two targets for biofuels, namely to source 10% of transport fuels from renewables by 2020<sup>229</sup>, and to oblige fuel providers to reduce the GHG intensity of their fuels by 6% by 2020.<sup>230</sup> The Commission proposed to scrap these two targets after 2020.<sup>231</sup>

4.154. European renewable energy businesses have a combined annual turnover of over EUR 130 billion, and employ more than 1 million people. EU companies have a share of around 40% of all patents for renewable technologies. A key challenge is to retain Europe's leading role in global investment in renewable energy.<sup>232</sup>

4.155. The full implementation of the circular economy approach is also critical for decarbonizing the EU's economy, notably in energy-intensive sectors such as steel, cement and glass, while keeping or increasing its competitiveness. Reuse and recycling of raw materials lead to lower emissions, and reduce dependency on raw material supplies. In December 2018, the Commission launched the Circular Plastics Alliance, consisting of key industry stakeholders, covering the full plastics value chain, as part of its continued efforts to reduce plastics littering, increase the share of recycled plastics, and stimulate market innovation.<sup>233</sup>

### **Promoting research, innovation and competitiveness**

4.156. The Horizon 2020 (H2020) programme runs from 2014 to 2020 and is the main EU tool for promoting energy research. Funds amounting to EUR 5,9 billion have been earmarked to support the development of clean, secure, efficient and sustainable energy. It includes EUR 1,6 billion for the Euratom programme in 2014-18.<sup>234</sup> Horizon Europe, an ambitious EUR 100 billion research and innovation programme, will replace H2020 as from 2021 and will also have a major climate and energy component.<sup>235</sup>

4.157. The European Strategic Energy Technology Plan (SET-Plan), adopted by the Commission on 22 November 2007, is aimed at accelerating the market introduction and take-up of low-carbon and efficient energy technologies. The projected budget for the SET-Plan was estimated at up to EUR 71.5 billion.<sup>236</sup>

4.158. According to the Commission, public investment (national and EU) in the Energy Union's research and innovation priorities was relatively stable throughout 2014-17, averaging some EUR 5.3 billion a year. With national funding of EUR 4.1 billion on average per year, the H2020 research programme and cohesion policy funds were essential in keeping research and innovation investment steady over the last four years. The Commission aims to invest almost EUR 2 billion in 2020 in clean energy research and innovation to meet its commitment to double its public research and innovation investment in this area since 2015 as part of its membership of Mission Innovation. However, the private sector remains the main provider of such investment, accounting for more

<sup>229</sup> Directive 2009/28/EC of the European parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009L0028&from=EN>.

<sup>230</sup> Directive 2009/30/EC of the European Parliament and of the Council of 23 April 2009 amending Directive 98/70/EC as regards the specification of petrol, diesel and gas-oil and introducing a mechanism to monitor and reduce greenhouse gas emissions and amending Council Directive 1999/32/EC as regards the specification of fuel used by inland waterway vessels and repealing Directive 93/12/EEC. Viewed at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:140:0088:0113:EN:PDF>.

<sup>231</sup> European Parliament. *Renewable energy*. Viewed at: <http://www.europarl.europa.eu/factsheets/en/sheet/70/renewable-energy>.

<sup>232</sup> European Commission, A Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy. Viewed at: [https://eur-lex.europa.eu/resource.html?uri=cellar:1bd46c90-bdd4-11e4-bbe1-01aa75ed71a1\\_0001\\_03/DOC\\_1&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:1bd46c90-bdd4-11e4-bbe1-01aa75ed71a1_0001_03/DOC_1&format=PDF).

<sup>233</sup> European Commission, Fourth Report on the State of the Energy Union.

<sup>234</sup> Other sources of funding for research, innovation and competitiveness include the Modernisation Fund, the Innovation Fund and the European Strategic Investment Fund. Also, the next multi-annual financial framework (MFF) is expected to have a climate mainstreaming objective.

<sup>235</sup> European Commission, *Horizon Europe - the next research and innovation framework programme*. Viewed at: [https://ec.europa.eu/info/horizon-europe-next-research-and-innovation-framework-programme\\_en](https://ec.europa.eu/info/horizon-europe-next-research-and-innovation-framework-programme_en).

<sup>236</sup> Strategic Energy Technologies Information System (SETIS). *What is the SET-Plan?* Viewed at: <https://setis.ec.europa.eu/about-setis/set-plan-governance>.

than 75% of EU investments in clean energy research and innovation, having increased annual spending from about EUR 10 billion to over EUR 16 billion within a decade.<sup>237</sup>

### **The EU's vision for a climate-neutral economy by 2050**

4.159. In November 2018, the Commission published its strategic long-term vision for a prosperous, modern, competitive and climate-neutral economy by 2050 as its contribution to the EU's long-term low GHG emission development strategy. The strategy should be adopted and communicated by 2020 to the United Nations Framework Convention on Climate Change, in accordance with the Paris Agreement. In parallel, each member State must also prepare its national long-term strategy.<sup>238</sup>

4.160. The Commission presented this vision not only to keep the global increase in temperature well below 2°C compared to pre-industrial levels, but also to pursue efforts to limit this increase to 1.5°C by achieving net-zero GHG emissions by 2050. To achieve this, the EU must make progress on seven strategic building blocks (energy efficiency; the deployment of renewables and increased electrification; clean, safe, and connected mobility; competitive industry and circular economy; infrastructure and interconnections; bio-economy and natural carbon sinks; and tackling remaining emissions with carbon capture and storage). These building blocks build on the five dimensions of the Energy Union. They also set the direction of travel for EU climate and energy policy to achieve the temperature objectives in the Paris Agreement.<sup>239</sup>

4.161. Achieving the benefits of the 2030 Climate and Energy Policy Framework will require an estimated EUR 180 billion in additional annual investment between 2020 and 2030 (compared to the 2016 reference scenario). Reaching climate-neutrality will require additional investments in the range of EUR 142-199 billion a year between 2030 and 2050 (compared to a baseline with existing measures requiring already close to EUR 400 billion in investment each year).<sup>240</sup>

## **4.3 Manufacturing**

4.162. The EU is a world leader in manufacturing<sup>241</sup>, notably in the automotive, mechanical engineering, chemicals, pharmaceuticals, and fashion industries. About 17% of total value added in the EU-28 comes from the manufacturing sector. The aim is to reach a 20% share of GDP for manufacturing by 2020. It is estimated that one job in manufacturing creates up to 2.5 other jobs across the value chain.<sup>242</sup> The sector also accounts for some three quarters of the EU-28's merchandise exports (Section 1.3.1). Moreover, about 80% of private-sector R&D expenditure is spent in manufacturing, and the sector is closely inter-linked, both upstream and downstream, with services. Therefore, competitiveness in manufacturing influences competitiveness in services, and vice-versa.

4.163. The manufacturing sector comprises some 2.1 million enterprises, most of which are SMEs that operate mainly at national level.<sup>243</sup> It employs around 30.7 million people, and generates around EUR 2,000 billion of value added (Table 4.17). According to the latest available figures, in 2016, Germany was the leading contributor to the EU-28's total manufacturing value added, with a 29.8% share, followed by Italy (11.8%), France (11.2%), the United Kingdom (10.6%), and Spain (5.5%).

<sup>237</sup> Public funding will continue to play a key role in coordinating research and steering private investment to priorities compatible with the EU's long-term strategic vision. Strong policies and predictable price signals are necessary conditions for promoting innovation in the clean-energy ecosystem, which will ultimately boost research investment in clean energy technologies. European Commission, Fourth Report on the State of the Energy Union.

<sup>238</sup> European Commission, A Clean Planet for all A European strategic long-term vision for a prosperous, modern, competitive and climate neutral economy. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52018DC0773&from=EN>.

<sup>239</sup> European Commission, Fourth Report on the State of the Energy Union.

<sup>240</sup> European Commission, Fourth Report on the State of the Energy Union.

<sup>241</sup> The manufacturing sector is composed of 24 subsectors in the NACE Rev.2 Section C. NACE is the acronym for "*Nomenclature statistique des activités économique dans la Communauté Européenne*". Industry is composed of manufacturing, mining and quarrying, and utilities.

<sup>242</sup> European Commission, Industrial Policy Strategy: A holistic strategy and a strong partnership in a new industrial age. Viewed at: [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_17\\_3185](https://ec.europa.eu/commission/presscorner/detail/en/IP_17_3185).

<sup>243</sup> European Parliament. *General Principles of EU Industrial Policy*. Viewed at: [http://www.europarl.europa.eu/ftu/pdf/en/FTU\\_2.4.1.pdf](http://www.europarl.europa.eu/ftu/pdf/en/FTU_2.4.1.pdf).

**Table 4.17 Manufacturing main indicators, 2016**

	Number of enterprises	Number of people employed	Turnover (EUR million)	Value added	Personnel costs	Apparent labour productivity	Average personnel costs	Wage-adjusted labour productivity (EUR '000 per head)	Gross operating rate (%)	Investment rate (%)
	('000)			(EUR million)		(EUR '000 per head)				
<b>EU-28</b>	<b>2,120.6</b>	<b>30,472.5</b>	<b>7,418,941.6</b>	<b>1,912,370.9</b>	<b>1,154,963.3</b>	<b>63.0</b>	<b>40.1</b>	<b>156.0</b>	<b>10.2</b>	<b>13.6</b>
Belgium	34.1	494.6	246,308.0	55,191.8	29,245.2	111.6	63.5	175.7	10.5	17.7
Bulgaria	31.3	549.0	29,457.0	7,135.1	3,286.2	13.0	6.2	208.1	13.1	25.3
Czech Rep.	175.4	1,293.7	160,973.3	37,469.3	19,290.7	29.0	17.0	170.6	11.3	20.1
Denmark	15.2	305.4	111,412.6	33,722.4	19,439.0	110.4	64.9	170.2	12.8	11.0
Germany	201.8	7,361.0	2,095,634.2	569,863.5	397,179.8	77.4	55.2	140.3	8.2	11.3
Estonia	7.3	108.9	11,881.5	2,862.7	1,847.2	26.3	17.3	152.3	8.5	20.7
Ireland	15.6	213.1	215,788.6	86,628.5	10,969.5	406.5	53.2	763.7	35.1	1.8
Greece	61.9	311.4	46,793.0	10,425.7	5,796.0	33.5	22.8	146.8	9.9	12.4
Spain	167.0	1,854.9	466,087.9	105,309.8	64,215.9	56.8	36.7	154.6	8.8	15.2
France	216.0	2,905.6	909,055.4	213,731.6	154,682.6	73.6	55.0	133.8	6.5	14.5
Croatia	19.5	264.2	20,021.8	5,767.6	3,371.8	21.8	13.3	164.3	11.9	17.6
Italy	387.9	3,662.3	889,271.7	224,944.7	135,864.1	61.4	42.8	143.6	10.0	13.1
Cyprus	5.0	29.7	3,044.2	962.8	566.8	32.4	20.2	160.1	13.0	10.2
Latvia	11.1	119.5	7,686.1	2,156.3	1,197.2	18.0	10.4	172.9	12.5	19.8
Lithuania	20.0	214.6	18,114.5	4,213.0	2,328.8	19.6	11.3	173.6	10.4	19.4
Luxembourg	0.8	33.6	13,232.8	3,118.2	1,914.6	92.8	57.3	162.0	9.1	12.9
Hungary	50.0	739.1	102,005.2	21,785.1	10,263.3	29.5	14.4	204.5	11.3	26.8
Malta	2.2	22.6	2,451.8	707.0	392.6	31.3	18.5	169.3	12.8	24.1
Netherlands	65.2	686.2	322,255.0	67,208.2	37,287.1	97.9	57.9	169.1	9.3	11.8
Austria	25.0	629.1	181,005.4	54,390.3	34,843.3	86.5	57.2	151.3	10.8	12.3
Poland	196.1	2,584.4	288,672.3	64,219.7	30,435.2	24.8	12.8	193.7	11.7	22.8
Portugal	67.0	686.7	82,103.9	20,136.0	11,594.7	29.3	17.7	165.4	10.4	22.7
Romania	48.3	1,209.8	75,169.5	16,943.8	10,125.8	14.0	8.5	165.5	9.1	33.8
Slovenia	19.1	197.0	26,387.8	7,651.9	4,623.7	38.8	24.9	155.7	11.5	18.5
Slovak Rep.	68.4	478.9	72,080.5	12,901.4	7,121.1	26.9	16.9	159.7	8.0	27.6
Finland	20.3	332.3	121,792.4	26,983.5	16,641.1	81.2	51.9	156.4	8.5	12.1
Sweden	53.8	595.3	197,908.3	53,528.4	34,274.8	89.9	64.0	140.6	10.3	14.0
United Kingdom	135.4	2,589.7	702,346.8	202,362.3	106,165.1	78.1	41.6	188.0	13.7	14.5

Source: Eurostat, *Manufacturing statistics – NACE Rev. 2*. Viewed at: [https://ec.europa.eu/eurostat/statistics-explained/index.php/Manufacturing\\_statistics\\_-\\_NACE\\_Rev.\\_2](https://ec.europa.eu/eurostat/statistics-explained/index.php/Manufacturing_statistics_-_NACE_Rev._2).

4.164. On average, manufacturing value added in the EU-28 grew 23.0% in real terms between 2009 and 2016.<sup>244</sup> This was mainly due to the growth of manufacturing of motor vehicles, trailers and semi-trailers<sup>245</sup>, the single largest EU-28 subsector in terms of value added, with an 11.0% share in 2016, followed by machinery and equipment (10.8%), and food products (10.1%). The manufacture of food products was the biggest employer, with a 14.0% share in 2016.<sup>246</sup>

4.165. The sector's apparent labour productivity (value added per person employed) was EUR 63,000 per person in 2016, while the average personnel costs amounted to EUR 40,100 per employee. Among the EU member States, the highest apparent labour productivity in 2016 was recorded in Ireland (EUR 406,500 per person employed), while the lowest was in Bulgaria (EUR 13,000) (Table 4.17).

4.166. Average personnel costs ranged from over EUR 50,000 per employee in Austria, Belgium, Denmark, Finland, France, Germany, Ireland, the Netherlands, Luxembourg, and Sweden, to below EUR 10,000 per employee in Bulgaria and Romania. Combining these two indicators gives the wage-adjusted labour productivity ratio, which is a measure of labour productivity that takes account the very different levels of pay and social charges between member States and activities. The highest such ratio was recorded in Ireland (763.7%) and the lowest was in France (133.8%). An analysis of the EU-28's gross operating rate (share of operating surplus in turnover) gives an idea of the

<sup>244</sup> European Commission, *Investing in a smart, innovative and sustainable Industry A renewed EU Industrial Policy Strategy*. Viewed at: <https://ec.europa.eu/transparency/reqdoc/rep/1/2017/EN/COM-2017-479-F1-EN-MAIN-PART-1.PDF>.

<sup>245</sup> The Slovak Republic stood out with the manufacturing of motor vehicles, trailers and semi-trailers and other transport equipment which represented 43% of the country's total value of sold production, followed by the Czech Republic (33%) and Hungary (29%). Eurostat, *Industrial production statistics*. Viewed at: [https://ec.europa.eu/eurostat/statistics-explained/index.php/Industrial\\_production\\_statistics](https://ec.europa.eu/eurostat/statistics-explained/index.php/Industrial_production_statistics).

<sup>246</sup> Eurostat, *Manufacturing statistics – NACE Rev. 2*. Viewed at: [https://ec.europa.eu/eurostat/statistics-explained/index.php/Manufacturing\\_statistics\\_-\\_NACE\\_Rev.\\_2](https://ec.europa.eu/eurostat/statistics-explained/index.php/Manufacturing_statistics_-_NACE_Rev._2).



operating profit before depreciation charges. Ireland had the highest such ratio (35.1%) while France recorded the lowest (6.5%) (Table 4.17).

4.167. Manufacturing subsectors are very diverse, combining activities with relatively low apparent labour productivity and average personnel costs, such as wearing apparel, leather products, furniture, wood and products of wood and cork, and textiles, with other activities that have considerably higher values for the same indicators, such as coke and refined petroleum products, tobacco manufacturing, basic pharmaceutical products and pharmaceutical preparations, and chemicals. Basic pharmaceutical products and pharmaceutical preparations was the most profitable of the manufacturing activities, with a 22.0% gross operating rate in 2016, while the least profitable was coke and refined petroleum products (5.1%), explained, in part, by the capital-intensive nature and high turnover of this transformation activity.<sup>247</sup>

4.168. In 2016, some 58.6% of the sector's value added was generated by 16,100 large enterprises (employing 250 or more people), and these employed 42.4% of the manufacturing workforce. The contribution of large enterprises was concentrated in the manufacture of coke and refined petroleum products, of motor vehicles, trailers and semi-trailers, of tobacco products, and of other transport equipment. Among the EU member States the relative importance of large enterprises was greatest in Ireland (85.6%).

4.169. The contribution of medium-sized enterprises (employing 50 to 249 persons) to value added in 2016 was highest in the textiles, rubber and plastic products, fabricated metal products and machinery, and paper and paper products subsectors. Medium-sized enterprises made a considerable contribution to manufacturing value added in Latvia, with 43.7% of the total value added. In none of the manufacturing subsectors did small enterprises (employing 10 to 49 people) or micro enterprises (employing fewer than 10 people) contribute the largest share of value added among the four size classes.<sup>248</sup>

4.170. Several policies, programmes and initiatives, covering a wide variety of fields, contribute to EU industrial policy. Examples of initiatives with a budget envelope include<sup>249</sup>: the ESIF (six funds worth EUR 450 billion in 2014-20) (Section 3.3.1.1); Horizon 2020 (EUR 77 billion in 2014-20); the CEF (EUR 30.4 billion in 2014-20)<sup>250</sup>; and the programme for the COSME (over EUR 2 billion until 2020). In addition, the Investment Plan for Europe and the EFSI aim to mobilize at least EUR 408.4 billion in private and public investment by 2020. Two recurring priorities across these programmes and initiatives are SMEs and innovation.<sup>251</sup>

4.171. Under Article 173 of the TFEU, industrial policy aims at: speeding up the adjustment of industry to structural changes; encouraging an environment favourable to initiative and to the development of enterprises, particularly SMEs; encouraging an environment favourable to cooperation between undertakings; and fostering better exploitation of the industrial potential of policies of innovation, research and technological development.

4.172. In March 2010, the Europe 2020 (Section 1.2.5) strategy was launched to enhance the competitiveness of the EU and to create more growth and jobs. It put forward seven flagship initiatives, four of which are especially relevant to making manufacturing more competitive:

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<sup>247</sup> Eurostat, Manufacturing Statistics – NACE Rev.2.

<sup>248</sup> Eurostat, Manufacturing Statistics – NACE Rev.2.

<sup>249</sup> European Commission, Industrial Policy Strategy: Making Europe's industry stronger. Key initiatives. Viewed at: [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_17\\_3185](https://ec.europa.eu/commission/presscorner/detail/en/IP_17_3185).

<sup>250</sup> The CEF is a fund for pan-European infrastructure investment in transport, energy and digital projects which aim at greater connectivity between EU member States. It operates through grants, financial guarantees and project bonds.

<sup>251</sup> European Commission, *Investment Plan results*. Viewed at: [https://ec.europa.eu/commission/priorities/jobs-growth-and-investment/investment-plan-europe-juncker-plan/investment-plan-results\\_en](https://ec.europa.eu/commission/priorities/jobs-growth-and-investment/investment-plan-europe-juncker-plan/investment-plan-results_en).

"Innovation Union"<sup>252</sup>; "A digital agenda for Europe"<sup>253</sup>; "An industrial policy for the globalisation era"<sup>254</sup>; and "New Skills for New Jobs".<sup>255</sup>

4.173. On 14 October 2011, the "Industrial Policy: Reinforcing competitiveness" was adopted.<sup>256</sup> It calls for deep structural reforms and coherent and coordinated policies across member States to enhance economic and industrial competitiveness and foster long-term sustainable growth. It also points out several key areas in which greater effort is needed: structural change in the economy; the innovativeness of industries; sustainability and resource efficiency; the business environment; the single market; and SMEs.<sup>257</sup>

4.174. On 10 October 2012, "A Stronger European Industry for Growth and Economic Recovery — Industrial Policy Communication Update" was launched.<sup>258</sup> It aims at supporting investment in innovation, with a focus on six priority areas (advanced manufacturing technologies for clean production; key enabling technologies; bio-based products; sustainable industrial and construction policy and raw materials; clean vehicles and vessels; and smart grids). This communication also highlighted the need for better market conditions, access to finance and capital, and human capital and skills, as means of promoting industrial competitiveness.

4.175. In January 2014, the policy "For a European Industrial Renaissance" was launched.<sup>259</sup> It focuses on reversing industrial decline and reaching the target of 20% of GDP for manufacturing activities by 2020. According to the Commission, to attract new investments and create a better business environment, the EU needs more coherent policies in the field of the internal market, including infrastructure such as energy, transport and information networks, as well as for goods and services. The importance of improved cooperation in the areas of good quality public administration, trade, research and raw materials is also mentioned.<sup>260</sup>

4.176. This policy was complemented in 2016 by "Digitising European Industry: Reaping the full benefits of a Digital Single Market", which focuses on digital transformation and addresses related challenges such as funding, ICT standardization, big data and skills.<sup>261</sup> Moreover, the Start-up and Scale-up Initiative, launched in 2016, aims to give Europe's many innovative entrepreneurs every opportunity to build world-leading companies.<sup>262</sup>

4.177. In September 2017, a renewed EU Industrial Policy Strategy, "Investing in a smart, innovative and sustainable industry", was outlined to bring together all existing and new horizontal and sector-specific initiatives into a comprehensive strategy. Some of its main elements include<sup>263</sup>:

- a package to reinforce the industry's **cybersecurity**. It includes the creation of a European Cybersecurity Research and Competence Centre to support the development of technology

<sup>252</sup> European Commission, *Europe 2020 Flagship Initiative Innovation Union*. Viewed at: [https://ec.europa.eu/research/innovation-union/pdf/innovation-union-communication\\_en.pdf](https://ec.europa.eu/research/innovation-union/pdf/innovation-union-communication_en.pdf).

<sup>253</sup> European Commission, *A Digital Agenda for Europe*. Viewed at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0245:FIN:EN:PDF>.

<sup>254</sup> European Commission, *An Integrated Industrial Policy for the Globalisation Era Putting Competitiveness and Sustainability at Centre Stage*. Viewed at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0614:FIN:EN:PDF>.

<sup>255</sup> European Commission, *New Skills for New Jobs Anticipating and matching labour market and skills needs*. Viewed at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0868:FIN:EN:PDF>.

<sup>256</sup> European Commission, *Industrial Policy: Reinforcing competitiveness*. Viewed at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0642:FIN:EN:PDF>.

<sup>257</sup> European Parliament, *General Principles of EU Industrial Policy*. Viewed at: [http://www.europarl.europa.eu/ftu/pdf/en/FTU\\_2.4.1.pdf](http://www.europarl.europa.eu/ftu/pdf/en/FTU_2.4.1.pdf).

<sup>258</sup> European Commission, *A Stronger European Industry for Growth and Economic Recovery*. Viewed at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0582:FIN:EN:PDF>.

<sup>259</sup> European Commission, *For a European Industrial Renaissance*. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014DC0014&from=EN>.

<sup>260</sup> European Parliament, *General Principles of EU Industrial Policy*.

<sup>261</sup> European Commission, *Digitising European Industry - Reaping the full benefits of a Digital Single Market*. Viewed at: <https://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-180-EN-F1-1.PDF>.

<sup>262</sup> European Commission, *Europe's next leaders: the Start-up and Scale-up Initiative*. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016DC0733&from=EN>.

<sup>263</sup> European Commission, *State of the Union 2017 - Industrial Policy Strategy: Investing smart innovative and sustainable industry*. Viewed at: [https://ec.europa.eu/growth/content/state-union-2017-%E2%80%93-industrial-policy-strategy-investing-smart-innovative-and-sustainable\\_en](https://ec.europa.eu/growth/content/state-union-2017-%E2%80%93-industrial-policy-strategy-investing-smart-innovative-and-sustainable_en).

and industrial capabilities in cybersecurity, as well as an EU-wide certification scheme for products and services, recognized in all member States (Section 4.4.5.1.1);

- a proposal for a regulation on the **free flow of non-personal data** that will enable data to circulate freely across borders, helping to modernize industry and create a truly common European data space (Section 4.4.3.1);
- a new series of actions on circular economy, including a strategy on **plastics** and measures to improve the production of **renewable biological resources** and their conversion into bio-based products and bio-energy;
- a set of initiatives to modernize the intellectual property (IP) framework, including a report on the functioning of the Directive on the enforcement of intellectual property rights (IPRs) and a communication on a balanced, clear and predictable European licensing framework for **standard essential patents** (Section 3.3.7);
- an initiative to improve the functioning of **public procurement** in the EU, including a voluntary mechanism to provide clarity and guidance to authorities planning large infrastructure projects (Section 3.3.6);
- extension of the **skills agenda** to new key industry sectors, such as construction, steel, paper, green technologies and renewable energies, manufacturing and maritime shipping;
- a strategy on **sustainable finance** to better orient private capital flows to more sustainable investments (Section 4.4.1.2.3.4);
- initiatives for a balanced and progressive trade policy and a European framework for the screening of FDI that may pose a threat to security or public order (Section 2.4.2.1);
- a revised list of **critical raw materials** where the Commission will continue to help ensure the secure, sustainable and affordable supply for the EU manufacturing industry; and
- new proposals for **clean, competitive and connected mobility**, including tightened CO<sub>2</sub> emissions standards for cars and vans, an Alternative Fuels Infrastructure Action Plan to support the deployment of charging infrastructure, and foster autonomous driving (see below).

4.178. The European Council adopted Conclusions on 22 March 2019 inviting the Commission to "present, by the end of 2019, a long-term vision for the EU's industrial future, with concrete measures to implement it. It should address the challenges European industry faces, touching upon all relevant policy areas".

4.179. Additionally, following up on previous Council Conclusions, on 27 May 2019, the Competitiveness Council adopted "An EU Industrial Policy Strategy: Vision 2030"<sup>264</sup>, reiterating the Council's call for a comprehensive and long-term EU industrial policy strategy with a clear vision for 2030 and stressing the importance of mobilizing all EU policies to strengthen the competitiveness of EU industry. Weakness in the manufacturing sector has contributed to the slowdown of GDP growth since the second half of 2018 (Section 1.1).

4.180. Under its renewed Industrial Policy Strategy, the EU also aims to increase the exploitation of key enabling technologies (KETs), and to reverse the decline in KETs-related manufacturing and patents being exploited outside the EU, as this will stimulate growth and jobs. Currently, there is a group of six KETs<sup>265</sup>: materials and nanotechnology; photonics and micro- and nano-electronics; life

<sup>264</sup> Council of the European Union, *An EU Industrial Policy Strategy: a Vision for 2030*. Viewed at: <https://www.consilium.europa.eu/media/39507/st09706-en19.pdf>.

<sup>265</sup> European Commission, *Re-Finding Industry*. Report from the High-Level Strategy Group on Industrial Technologies. Viewed at: [https://ec.europa.eu/research/industrial\\_technologies/pdf/re\\_finding\\_industry\\_022018.pdf](https://ec.europa.eu/research/industrial_technologies/pdf/re_finding_industry_022018.pdf).

sciences technologies; AI; digital security; and connectivity. The Strategy is complemented by sector-specific measures, such as those in the automotive industry.<sup>266</sup>

4.181. On the basis of ISIC (Revision 2), MFN customs tariffs on manufactured imports average 6.2%, with rates ranging up to 162.9% on certain food products. Some non-*ad valorem* tariffs (i.e. compound, mixed, or other) apply to manufacturing products and, therefore, it is often difficult to determine the duty rate and calculate the real tariff impact in such cases (Section 3.1.3.2).

### Automotive

4.182. The EU is the second-largest automotive production region in the world (in volume), and the industry represents the largest private investor in R&D in the EU. The automotive industry provides jobs for some 12 million people (3 million in manufacturing, 4.3 million in maintenance and 4.8 million in transport, i.e. about 11% of the EU's manufacturing employment) and accounts for 4% of GDP. It also has an important multiplier effect on the economy, being key for upstream industries (e.g. steel, chemicals and textiles), as well as downstream ones (e.g. ICT, repair, and mobility services).<sup>267</sup>

4.183. Traditionally, the EU-28 has enjoyed a trade surplus in cars (EUR 81.5 billion in 2018, with EUR 127.7 billion in exports, or 7% of total merchandise exports, and EUR 46.2 billion in imports). In 2018, the United States was the main export destination for the EU's cars (29% of the total), followed by China (17%) and Japan (7%). Japan was the main origin of imports, with a 22% share, followed by Turkey (19%) and the Republic of Korea (15%). Germany is the EU's largest exporter of cars (55.0% of the total in 2018), followed by the United Kingdom (17.3%). For most member States, imports of cars made up less than 3% of their total import of goods. Only three countries had higher shares: Slovenia (15.2%), Belgium (7.4%), and Germany (3.5%) (Table 4.18).<sup>268</sup>

**Table 4.18 Trade in cars, 2018**

	Extra-EU trade (EUR million)			Share in EU trade (%)		Share in total trade (%)	
	Export	Import	Balance	Export	Import	Export	Import
<b>EU-28</b>	<b>127,745</b>	<b>46,212</b>	<b>81,533</b>	<b>100.0</b>	<b>100.0</b>	<b>6.5</b>	<b>2.3</b>
Belgium	2,550	10,074	-7,523	2.0	21.8	2.4	7.4
Bulgaria	46	140	-95	0.0	0.3	0.5	1.2
Czech Rep.	3,086	271	2,815	2.4	0.6	11.5	0.7
Denmark	98	220	-122	0.1	0.5	0.3	0.8
Germany	70,251	12,965	57,286	55.0	28.1	13.0	3.5
Estonia	5	42	-37	0.0	0.1	0.1	1.1
Ireland	4	196	-192	0.0	0.4	0.0	0.6
Greece	4	171	-167	0.0	0.4	0.0	0.6
Spain	4,284	3,807	477	3.4	8.2	4.3	2.8
France	3,241	4,327	-1,086	2.5	9.4	1.6	2.5
Croatia	29	36	-7	0.0	0.1	0.6	0.7
Italy	6,845	4,260	2,585	5.4	9.2	0.1	2.4
Cyprus	3	92	-88	0.0	0.2	0.1	2.4
Latvia	10	10	0	0.0	0.0	0.2	0.2
Lithuania	88	135	-47	0.1	0.3	0.8	1.4
Luxembourg	7	10	-3	0.0	0.0	0.3	0.4
Hungary	1,070	188	882	0.8	0.4	5.5	0.7
Malta	1	33	-32	0.0	0.1	0.1	2.2
Netherlands	540	1,087	-547	0.4	2.4	0.3	0.4
Austria	1,676	306	1,371	1.3	0.7	3.7	0.8
Poland	695	418	277	0.5	0.9	1.6	0.6

<sup>266</sup> European Commission, Industrial Policy Strategy: Making Europe's industry stronger. Key initiatives.

<sup>267</sup> With motor vehicle production of around 16 million units (18.1 million units in 2006), the EU-28 share in world production went from 27% in 2006 to 25% in 2017, largely due to increased production in other countries. European Commission (2017), *GEAR 2030 Strategy 2015-2017: Comparative analysis of the competitive position of the EU automotive industry and the impact of the introduction of autonomous vehicles*, Brussels.

<sup>268</sup> Cars dominate trade in motor vehicles and related products, with a 64% and 52% share of total EU export and imports in 2017, respectively. The value of extra-EU exports of cars increased by an annual average of 5.6% between 2012 and 2017, while imports grew at an average of 5.4% per year. Eurostat, *International trade in cars*. Viewed at: [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=International\\_trade\\_in\\_cars&oldid=396479](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=International_trade_in_cars&oldid=396479).

	Extra-EU trade (EUR million)			Share in EU trade (%)		Share in total trade (%)	
	Export	Import	Balance	Export	Import	Export	Import
Portugal	237	263	-26	0.2	0.6	1.7	1.4
Romania	668	251	417	0.5	0.5	4.3	1.2
Slovenia	510	1,782	-1,272	0.4	3.9	5.7	15.2
Slovak Rep.	5,164	37	5,127	4.0	0.1	45.2	0.2
Finland	246	241	5	0.2	0.5	0.9	1.2
Sweden	4,266	685	3,581	3.3	1.5	7.5	1.6
United Kingdom	22,120	4,166	17,954	17.3	9.0	10.2	1.5

Source: Eurostat, *International trade in cars*. Viewed at: [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=International\\_trade\\_in\\_cars&oldid=396479](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=International_trade_in_cars&oldid=396479).

4.184. Since some 80% of the growth in the automotive sector is expected to come from outside the EU, cost leadership and a continued lead in new technology areas will become more important if the EU is to maintain and grow its future market share. One key contributor to competitiveness in the future will be the evolution of the regulatory environment, both within and outside the EU. The strict regulation in the EU ensures that the automotive industry continues to develop sustainable, high-quality, technologically-advanced products, while being in a strong position of regulatory leadership from the point of view of both protecting the internal market and maximizing opportunities to access external markets.<sup>269</sup>

4.185. The EU's work towards a clean, sustainable and competitive automotive industry encompasses a wide range of policy areas and initiatives: ensuring that emissions legislation is respected, introducing more robust and accurate emissions tests, proposing a full overhaul of the type approval system, promoting a shift to zero-emissions vehicles, and fostering connected mobility solutions, equipment and vehicles and a modern infrastructure to support them.<sup>270</sup>

4.186. The EU automotive industry is trying to maintain its competitiveness on the global stage in the face of strong competition from manufacturers in both developed and emerging economies and given the demands from society with respect to mobility and transport. Issues which are likely to affect the industry going forward include<sup>271</sup>:

- changes in car ownership levels, both an increase in car ownership in emerging markets as purchasing power increases and a potential decrease in developed markets as mobility as a service and car-sharing schemes take an increasing market share;
- strengthening regulations on both safety and environmental impact from all major markets, with emerging markets rapidly catching up to the EU industry's leading position in these fields;
- a significant shift towards electro mobility, as nations across the world move towards reducing their environmental impact (e.g. GHG) and as cities aim to tackle increasing air pollution levels;
- the rising connectivity of vehicles and the advent of autonomous driving. This has wide-ranging implications for the automotive industry, from potentially significantly reduced vehicle sales and ownership levels to new business models, but perhaps most importantly the gradual merging of the automotive, ICT and telecommunications industries;
- the introduction of a large number of innovative, low-cost, small vehicles (e.g. e-scooters), providing mobility solutions in urban areas, particularly in emerging markets, as these become more crowded and polluted with the global urbanization of the population; and

<sup>269</sup> European Commission, *GEAR Strategy 2015-2017; Comparative analysis of the competitive position of the EU automotive industry and the impact of the introduction of autonomous vehicles*. Viewed at: [https://ec.europa.eu/growth/content/final-report-gear-2030-strategy-2015-2017\\_en](https://ec.europa.eu/growth/content/final-report-gear-2030-strategy-2015-2017_en).

<sup>270</sup> European Commission, *Industrial Policy Strategy: Making Europe's industry stronger*. Key initiatives.

<sup>271</sup> European Commission, *GEAR Strategy 2015-2017; Comparative analysis of the competitive position of the EU automotive industry and the impact of the introduction of autonomous vehicles*.

- concern that some of the differentiators that European vehicle manufactures have enjoyed, such as leading performance on comfort, environmental impact and safety, are declining as other manufacturers (particularly from emerging markets) gain ground in these areas.

4.187. Tariff protection for motor vehicles (HS 87) in the EU averages 6.7%, ranging up to 22%.

### Chemicals

4.188. Until recently, the EU was the world's leading chemicals producer, having gradually lost its top spot to Asian countries, notably China. The EU share of world chemicals sales went down from 30.9% in 2004 to around 15.6% currently.<sup>272</sup> Nonetheless, the EU-28 still is the world's largest exporter of chemical products (EUR 355.8 billion in 2018), with the highest trade surplus (EUR 152.2 billion in 2018). The United States, Switzerland and China, together, account for around 40% and 60% of the EU-28's total exports and imports of chemicals, respectively.<sup>273</sup>

4.189. The EU-28's chemicals gross value added and gross output (turnover) amount to around EUR 120 billion and EUR 500 billion, respectively. The chemical industry is capital intensive but still employs 1.2 million persons (4% of manufacturing workers) and, with total sold production of EUR 674 billion in 2017, is one of the biggest industrial sectors in the EU, and an important source of direct and indirect employment in many regions. It accounts for over 7% of manufacturing output, comprising some 27,000 enterprises, 96% of which are SMEs. Moreover, its activities directly affect downstream chemicals users, with the largest industrial customers being the rubber and plastics, construction, and automotive sectors.<sup>274</sup>

4.190. The largest product group in chemicals is medical and pharmaceutical products, with about a quarter of the EU-28's total sold production in 2017. Similarly, medical and pharmaceutical products contributed 46% and 41% to the EU-28's total chemical exports and imports, respectively.<sup>275</sup>

4.191. Germany, the largest chemicals producer in Europe, together with France, Italy, and the United Kingdom, produce about 60% of the EU-28's chemicals output. In 2018, Ireland had the highest trade surplus in chemicals and related products of any EU member State (EUR 65.5 billion, up from EUR 35.8 billion in 2008), followed by Germany, the Netherlands, and Belgium. Poland had the highest trade deficit in chemicals and related products (EUR 10.8 billion in 2018), followed by Spain and Romania (Table 4.19).

**Table 4.19 Trade in chemicals and related products (SITC 5), 2008 and 2018**

(EUR million)

	Exports		Imports		Trade balance	
	2008	2018	2008	2018	2008	2018
<b>EU-28</b>	<b>197,607.6</b>	<b>355,848.3</b>	<b>124,287.2</b>	<b>203,622.3</b>	<b>73,320.5</b>	<b>152,226.0</b>
Belgium	90,221.5	121,125.3	71,531.8	96,654.1	18,689.7	24,471.2
Bulgaria	1,209.4	2,840.1	2,195.3	4,500.6	-985.9	-1,660.5
Czech Republic	5,978.1	10,519.3	9,921.7	17,223.8	-3,943.5	-6,704.4
Denmark	10,226.8	19,763.9	8,205.9	10,654.5	2,020.9	9,109.5
Germany	140,848.7	216,674.2	102,619.3	158,631.2	38,229.4	58,042.9
Estonia	535.4	918.1	1,149.8	1,847.7	-614.4	-929.6
Ireland	44,095.3	85,698.3	8,276.2	20,182.8	35,819.2	65,515.5
Greece	2,421.8	3,500.3	8,638.2	7,996.5	-6,216.3	-4,496.1
Spain	24,662.7	39,361.8	34,146.9	47,527.6	-9,484.2	-8,165.8
France	73,431.2	91,722.2	61,872.4	75,390.8	11,558.8	16,331.4
Croatia	944.8	1,845.5	2,203.4	3,334.6	-1,258.6	-1,489.0
Italy	37,085.4	60,812.2	47,481.8	67,193.2	-10,396.4	-6,381.0

<sup>272</sup> European Commission, Impacts of REACH and corresponding legislation governing the conditions for marketing and use of chemicals in different countries/regions on international competitiveness of EU industry. Viewed at: <https://op.europa.eu/en/publication-detail/-/publication/67415a33-aafe-11e6-aab7-01aa75ed71a1>.

<sup>273</sup> Eurostat. *Production and international trade in chemicals*. Viewed at: [https://ec.europa.eu/eurostat/statistics-explained/index.php/Production\\_and\\_international\\_trade\\_in\\_chemicals](https://ec.europa.eu/eurostat/statistics-explained/index.php/Production_and_international_trade_in_chemicals).

<sup>274</sup> CEFIC. *Estimations by CEFIC for 2017 - Facts & Figures of the European chemical industry*. Viewed at: [https://cefic.org/app/uploads/2018/12/Cefic\\_Facts\\_And\\_Figures\\_2018\\_Industrial\\_BROCHURE\\_TRADE.pdf](https://cefic.org/app/uploads/2018/12/Cefic_Facts_And_Figures_2018_Industrial_BROCHURE_TRADE.pdf).

<sup>275</sup> Eurostat. *Production and international trade in chemicals*.

	Exports		Imports		Trade balance	
	2008	2018	2008	2018	2008	2018
Cyprus	188.3	388.5	637.9	755.7	-449.6	-367.1
Latvia	631.6	1,235.4	1,302.2	1,978.0	-670.6	-742.6
Lithuania	2,199.4	4,266.6	2,433.9	4,603.6	-234.6	-337.0
Luxembourg	817.4	1,670.8	1,713.6	2,486.4	-896.2	-815.6
Hungary	6,122.0	12,959.3	7,296.6	13,016.4	-1,170.6	-57.1
Malta	220.8	357.0	347.2	537.3	-126.4	-180.3
Netherlands	60,456.7	104,975.0	44,698.3	69,428.0	15,758.4	35,547.0
Austria	13,116.3	20,256.8	13,653.0	21,555.5	-536.7	-1,298.6
Poland	9,105.2	19,928.6	18,512.5	30,708.0	-9,407.2	-10,779.4
Portugal	2,971.0	4,985.8	6,952.1	10,230.3	-3,981.1	-5,244.5
Romania	2,059.6	2,872.7	6,212.5	10,432.4	-4,152.9	-7,559.7
Slovenia	3,119.8	5,581.6	2,794.3	5,086.2	325.5	495.4
Slovak Republic	2,280.7	3,427.7	4,279.7	6,558.1	-1,999.1	-3,130.4
Finland	4,009.3	6,119.4	6,126.9	7,586.1	-2,117.6	-1,466.7
Sweden	13,651.5	16,837.2	12,810.0	15,579.7	841.5	1,257.5
United Kingdom	54,880.7	62,046.5	48,584.5	65,945.0	6,296.2	-3,898.5

Source: Eurostat, *International trade of chemicals and related products (SITC 5)*, by reporting country.  
Viewed at: <https://ec.europa.eu/eurostat/databrowser/view/tet00008/default/table?lang=en>.

4.192. The EU's horizontal and principal regulation concerning chemicals is the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH). In addition, there is the Classification, Labelling and Packaging of Substances and Mixtures (CLP), and vertical regulations for specific families of products, such as fertilizers, pesticides and biocides, detergents, explosives, pyrotechnic articles, drug precursors, pharmaceuticals, cosmetics, and food contact materials, or for specific areas, such as the workplace (workers' legislation framework and related directives on chemicals), industry (Industrial Emissions Directive) and air (Ambient Air Quality Directive).

4.193. REACH entered into force on 1 June 2007 and its provisions were phased in over 11 years. It aims at ensuring a high level of protection of human health and the environment from the risks that can be posed by chemicals, promoting alternative methods to assess the hazards of substances, the free circulation of substances on the internal market, and the enhancement of competitiveness and innovation in the EU chemical industry. It gives greater responsibility to the industry to manage the risks from chemicals and to provide safety information on the substances, and calls for the progressive substitution of the most hazardous chemicals when suitable alternatives exist. By providing knowledge about the hazardous properties of chemicals and appropriate safety information, REACH aims to enhance the communication and implementation of conditions of safe use in the supply chains and the substitution of hazardous substances by less dangerous ones. In addition, through different types of measures on substances of very high concern, REACH seeks to reduce the risks to human health and the environment at the EU level.<sup>276</sup>

4.194. The European Chemical Agency (ECHA), established under REACH and operational since June 2008, is tasked to, *inter alia*, ensure the consistent application of REACH, and to manage the database of all registered chemicals. Key elements of REACH include increasing the threshold for registering new substances from 10 kg to 1 tonne, and the maximum time-limit for exemption from registration for R&D from 6 to 15 years. EU manufacturers and importers are required to gather information on the properties of their chemical substances, and to register the information in a central database run by the ECHA in Helsinki. The direct costs of REACH to the chemicals industry of testing and registering were estimated at EUR 2.3 billion for the first two registration deadlines.<sup>277</sup>

4.195. According to the 2018 REACH Review, more information on the properties and uses of chemicals is now available and is being used for the assessment and management of risks, indicating that REACH is progressively improving the protection of human health and the environment in the EU. The Review found that benefits are starting to materialize, with an estimated scale in the order of EUR 100 billion over 25-30 years. The Review further identified a number of shortcomings and room for improvement in relation to the high level of non-compliance of registration dossiers, the insufficient flow of information along the supply chain, the need to simplify the overall authorization

<sup>276</sup> European Commission, *Commission General Report on the operation of REACH and review of certain elements*. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52018DC0116&from=EN>.

<sup>277</sup> European Commission, *Extended Impact Assessment of REACH*. Viewed at: [http://ec.europa.eu/environment/chemicals/reach/pdf/background/impact\\_on\\_environment\\_report.pdf](http://ec.europa.eu/environment/chemicals/reach/pdf/background/impact_on_environment_report.pdf).

process, and the need to ensure a level playing field between EU and non-EU companies through effective restrictions and enforcement.<sup>278</sup> Following the Review, and in cooperation with member States and the ECHA, the Commission proposed a number of actions intended to improve implementation and reduce burdens in relation to e.g. compliance of registration dossiers, the extended Safety Data Sheets, and the process to apply for authorization and restriction – without incurring reductions in the level of protection of human health and the environment.<sup>279</sup>

4.196. When REACH was adopted, attention was paid to ensure that domestic and foreign businesses manufacturing or importing chemicals into the EU were treated equally. However, third countries have repeatedly raised concerns in the WTO TBT Committee that REACH would create barriers to trade and benefit the chemicals industry in the EU over foreign competitors.<sup>280</sup> According to the Commission, however, there is no evidence that this is the case.

4.197. MFN tariffs on inorganic chemicals (HS 28) and organic chemicals (HS 29) average 4.2% and 4.5%, respectively, with rates ranging up to 5.5% and 39.2%, respectively.

4.198. Some of the EU's applied anti-dumping duties and countervailing measures are on chemical products (Section 3.1.6.1).

### Steel

4.199. The EU's steel industry is world-leading in certain steel product segments, and represents 1.3% of GDP. Closely integrated with the manufacturing and construction industries, steel is the backbone for development, growth and employment in the EU. It is the most versatile industrial material in the world. It is 100% recyclable, and therefore is a fundamental part of the circular economy. As a basic engineering material, it is also an essential factor in the development and deployment of innovative, CO<sub>2</sub>-mitigating technologies, improving resource efficiency, and fostering sustainable development.<sup>281</sup>

4.200. Gross Value Added (GVA) of the EU steel industry reached EUR 148 billion in 2018, if direct, indirect and induced effects are factored in. The GVA per worker is around 11% above the average for the overall EU economy, and some 7% higher than that of the wider EU manufacturing sector.<sup>282</sup> The EU steel sector's total value of turnover (sales) amounted to EUR 123 billion in 2017, six times the industry's direct GVA, and larger than comparable manufacturing industries. Due to substantial capital requirements, large companies tend to dominate the industry. Counting direct, indirect and induced employment, the EU industry supports nearly some 2.6 million jobs.<sup>283</sup>

4.201. In 2018, the EU produced around 167 million tonnes of steel (down from 169 million tonnes in 2014), led by Germany, with a 25.3% share, Italy (14.6%), France (9.2%), and Spain (8.5%) (Table 4.20). The EU is a net importer of steel, with imports of 29.3 million tonnes in 2018 and exports of 20.6 million tonnes in 2018. Excluding semi-finished goods, import levels reached a record high in 2018, with EU's exports continuing the decline that began in 2014.<sup>284</sup>

<sup>278</sup> European Commission, Commission General Report on the operation of REACH and review of certain elements.

<sup>279</sup> European Commission, Commission General Report on the operation of REACH and review of certain elements.

<sup>280</sup> European Commission, Impacts of REACH and corresponding legislation governing the conditions for marketing and use of chemicals in different countries/regions on international competitiveness of EU industry.

<sup>281</sup> European Steel Association, European Steel in Figures 2018, covering 2008-17. Viewed at: <http://www.eurofer.org/News%26Events/PublicationsLinksList/201806-SteelFigures.pdf>.

<sup>282</sup> In part, this reflects the capital-intensive nature of the industry, which spends EUR 3.9 billion per year on new machinery and building work. European Steel Association, European Steel in Figures 2018, covering 2008-17.

<sup>283</sup> The multiplier effect of the 327,710 direct jobs in the steel industry is 7.7 times. European Steel Association, European Steel in Figures 2018, covering 2008-17.

<sup>284</sup> European Steel Association, European Steel in Figures 2019, covering 2009-18. Viewed at: <http://www.eurofer.org/News%26Events/News/20190703%20European%20Steel%20in%20Figures%202019.html>.



**Table 4.20 Crude steel production, 2014-18**

Country	2014	2015	2016	2017	2018	2018 (% share)
Austria	7,876	7,687	7,438	8,135	6,885	4.1
Belgium	7,331	7,257	7,687	7,842	7,980	4.8
Bulgaria	612	543	527	652	666	0.4
Croatia	167	122	0	0	136	0.1
Czech Rep.	5,360	5,262	5,305	4,686	4,938	3.0
Finland	3,807	3,988	4,101	4,003	4,146	2.5
France	16,143	14,984	14,413	15,506	15,385	9.2
Germany	42,943	42,676	42,080	43,910	42,435	25.3
Greece	1,022	910	1,158	1,359	1,467	0.9
Hungary	1,131	1,674	1,279	1,901	1,989	1.2
Italy	23,714	22,018	23,373	24,068	24,532	14.6
Luxembourg	2,193	2,127	2,175	2,172	2,228	1.3
Netherlands	6,964	6,995	6,917	6,781	6,813	4.1
Poland	8,541	9,198	8,940	10,289	10,167	6.1
Romania	3,158	3,352	3,276	3,361	3,550	2.1
Slovak Rep.	4,705	4,562	4,808	4,980	4,947	3.0
Slovenia	641	625	644	673	692	0.4
Spain	14,187	14,846	13,631	14,434	14,299	8.5
Sweden	4,514	4,348	4,595	4,692	4,632	2.8
United Kingdom	12,061	10,853	7,635	7,492	7,268	4.3
Others	2,053	2,015	1,998	2,056	2,215	1.3
<b>EU 28</b>	<b>169,126</b>	<b>166,042</b>	<b>161,982</b>	<b>168,992</b>	<b>167,370</b>	<b>100.0</b>

Source: The European Steel Association, *European Steel information in figures, 2019 "Covering 2009-18"*.  
Viewed at: <https://aceroplatea.es/docs/EUROFERSteelFigures2019.pdf>.

4.202. According to the Commission, the EU's competitive position on the global steel market deteriorated in recent years, mainly due to excess production of steel in third countries that has depressed prices and given rise to an unprecedented wave of unfair trading practices distorting the global playing field. As a result, in 2016, the Commission presented its communication "Steel: Preserving sustainable jobs and growth in Europe", with the following actions<sup>285</sup>:

- defence against unfair trade practices (Section 3.1.6.1);
- tackling the causes of global overcapacity: in addition to measures aiming to address global overcapacity, the EU is tackling the underlying causes of the problem at bilateral and multilateral levels. This is being done with the EU's main partners (China, Japan, India, the Russian Federation, Turkey and the United States) as well as in relevant international forums;
- investing in future solutions and technologies for a more competitive industry: encouraging more private and public investment in innovation, research and new technologies. Various funds are available, such as the EUR 315 billion EFSI (which has already supported the modernization of a steel factory), the ESIF, and Horizon 2020;
- modernizing the steel industry by investing in people: investing in people and their skills in close cooperation with member States and social partners. The European Globalisation Adjustment Fund and the ESF are available to support workers and their local communities, to mitigate adverse social consequences in the context of relocation; and
- focussing policies in areas like competition, energy, emissions trading and the circular economy: state aid rules provide ample opportunities for member States to support cross-border technology, research and innovation, and renewable energy schemes.

4.203. MFN tariffs on iron and steel (HS 72) and articles of iron and steel (HS 73) are relatively low, averaging 0.2% and 1.7%, respectively, with rates ranging up to 7% and 3.7%, respectively.

<sup>285</sup> European Commission, *Steel: Preserving sustainable jobs and growth in Europe*. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016DC0155&from=EN>.

4.204. The EU applies tariff rate quotas, some of which provide autonomous access below MFN rates for steel products (Section 3.1.3.3). Anti-dumping duties and safeguard measures are applied on some steel products, including recently-introduced surveillance of imports of certain aluminium products (Sections 3.1.6.1 and 3.1.6.2).

## 4.4 Services

### 4.4.1 Financial Services

#### 4.4.1.1 Recent performance

4.205. The EU financial services sector accounted for some 4.9% of GDP in 2017, and employed around 1.5% of the active population. The EU remained a net exporter of financial services during the review period. The sector plays a central role in the Union's economic performance, including business financing. In the Commission's view, financial services should contribute to an environment that protects consumers, promotes market integrity, and supports investment, growth and jobs.<sup>286</sup> An ambitious reform package is underway within the EU to operationalize this vision, through the establishment of common financial rules for EU countries (Section 4.4.1.2).

4.206. During the review period, the banking sector benefited from the positive macroeconomic developments in most European countries (Section 1). Banks' solvency ratios performed well, as Common Equity Tier 1 (CET1) ratios increased by 14.3% in 2017 and 14.5% in 2018. Asset quality improved further, in a context where the average non-performing loan (NPL) ratio of EU banks decreased significantly (Section 4.4.1.2.1). However, profitability remained low on average, and has not yet reached sustainable levels.<sup>287</sup>

4.207. The insurance market continued to be challenged by the prolonged low interest rate environment.<sup>288</sup> Increased political uncertainty in 2018 and growing trade tensions further exacerbated the existing challenges. Total Gross Written Premiums (GWPs) grew in 2018 but remained stable as a percentage of GDP. The sum of GWP for both the life and non-life insurance sectors grew by 4.2% on an annual basis, and amounted to around EUR 1.3 trillion at the end of 2018. Overall GWP as a percentage of GDP remained stable, around 9%, for the total European insurance market, while total assets as a share of GDP slightly decreased from 74% to 70%.

4.208. Based on estimates from the European Insurance and Occupational Pensions Authority, the profitability of insurers remains under pressure in the current low-yield environment, and deteriorated further in 2018. Despite lower profitability, the solvency position of life insurers slightly improved in 2018 due to a slight increase in the interest rates used for discounting liabilities. However, the non-life insurers' solvency capital requirement (SCR) ratio slightly decreased from 220% in 2017 to 204% in 2018. Although the solvency position of EU insurers significantly differs across EU countries, it remains above 100% for all countries.

4.209. Regarding the securities market, in 2017, market capitalization grew by 11.3% compared with 2016, reaching an all-time high of EUR 1.8 trillion (76.9% of GDP for the EU-28), largely driven by, *inter alia*, global recovery in GDP growth, accommodative monetary policies in major markets, and low levels of inflation and volatility.<sup>289</sup>

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<sup>286</sup> European Commission, *Financial services policy*. Viewed at: [https://ec.europa.eu/info/business-economy-euro/banking-and-finance/financial-reforms-and-their-progress/financial-services-policy\\_en](https://ec.europa.eu/info/business-economy-euro/banking-and-finance/financial-reforms-and-their-progress/financial-services-policy_en).

<sup>287</sup> European Banking Authority (EBA), *EBA sees further improvements in EU banks resilience but highlights challenges connected to profitability, funding and operational risk*. Viewed at: <https://eba.europa.eu/-/eba-sees-further-improvements-in-eu-banks-resilience-but-highlights-challenges-connected-to-profitability-funding-and-operational-risk?doAsGroupId=10180>.

<sup>288</sup> European Insurance and Occupational Pensions Authority, *The European Insurance Sector*. Viewed at: [https://eiopa.europa.eu/Publications/Reports/Chapter2\\_%20FSR\\_June2019.pdf](https://eiopa.europa.eu/Publications/Reports/Chapter2_%20FSR_June2019.pdf).

<sup>289</sup> European Capital Markets Institute, *Recent Developments in European Capital Markets: Key Findings from the 2018 ECMI Statistical Package*, p.1. Viewed at: <https://www.ceps.eu/ceps-publications/recent-developments-european-capital-markets-key-findings-2018-ecmi-statistical-package>.

#### 4.4.1.2 Regulatory developments

4.210. This subsection reviews developments regarding four key aspects of EU regulation in the financial services sector: regulatory reform aimed at reducing risk and enhancing the resilience of the banking sector; the Banking Union; the Capital Markets Union Action Plan; and determining the equivalence of third-country regulatory regimes.

##### 4.4.1.2.1 Measures aimed at reducing risk and enhancing the resilience of the banking sector

4.211. As part of its efforts to reduce risk in the banking sector, the EU adopted amendments to core elements of the Single Rulebook, and took steps to tackle issues relating to non-performing loans (NPLs).

4.212. Following the financial crisis, the EU developed rules designed to create a safer financial sector for the Single Market that apply to all financial actors in the EU-28. These rules, collectively known as the Single Rulebook<sup>290</sup>, include, in particular, stronger prudential requirements for banks, improved protection for depositors, and rules for managing failed banks.<sup>291</sup> The key legal acts that constitute the Single Rulebook are the Capital Requirements Regulation<sup>292</sup> and Capital Requirements Directive IV<sup>293</sup>; the amended Directive on Deposit Guarantee Schemes<sup>294</sup>; and the Bank Recovery and Resolution Directive.<sup>295</sup>

4.213. In May 2019, the EU adopted a "banking reform package", based on a Commission proposal of November 2016, which consists of amendments to the Capital Requirements Regulation and Directive and the Bank Recovery Resolution Directive to implement some outstanding issues that are essential to make the financial system more resilient and stable, and which had been finalized by the Basel Committee on Banking Supervision and the Financial Stability Board.<sup>296</sup> The package also included proposed amendments to the regulation establishing the Single Resolution Mechanism (SRM)<sup>297</sup>, one of the pillars of the Banking Union.

<sup>290</sup> European Banking Authority, *The Single Rulebook*. Viewed at: <https://eba.europa.eu/regulation-and-policy/single-rulebook>.

<sup>291</sup> EU regulatory reforms in the financial sector are, to a large extent, based on international standards agreed by regulatory bodies, such as the G20, the Financial Stability Board, the Basel Committee on Banking Supervision, the International Organization of Securities Commissions, the International Association of Insurance Supervisors, the Financial Action Task Force, and the OECD. European Commission, *International Relations*. Viewed at: [https://ec.europa.eu/info/business-economy-euro/banking-and-finance/international-relations\\_en](https://ec.europa.eu/info/business-economy-euro/banking-and-finance/international-relations_en).

<sup>292</sup> Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No. 648/2012. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0575&from=EN>.

<sup>293</sup> Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0036&from=EN>.

<sup>294</sup> Directive 2014/49 of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0049&from=EN>.

<sup>295</sup> 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. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0059&from=EN>.

<sup>296</sup> European Commission, *Adoption of the banking package: revised rules on capital requirements (CRR/CRD V) and resolution (BRRD/SRM)*. Viewed at: [https://europa.eu/rapid/press-release\\_MEMO-19-2129\\_en.htm](https://europa.eu/rapid/press-release_MEMO-19-2129_en.htm).

<sup>297</sup> Regulation (EU) No. 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No. 1093/2010. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0806&from=EN>.

4.214. The changes made by the amended Capital Requirements Regulation<sup>298</sup> (CRR II) and the Capital Requirements Directive<sup>299</sup> (CRD V) include, *inter alia*: (i) the introduction of a binding leverage ratio requirement for all institutions subject to CRR II, which is set at 3% of Tier 1 capital, and an additional leverage ratio applicable to global, systematically-important institutions (G-SIIs); (ii) a net stable funding ratio requirement to ensure that exposures are matched with stable funding sources; (iii) a new market risk framework for reporting purposes; (iv) a requirement for third-country institutions having significant activities in the EU to have an EU intermediate parent undertaking; (v) revised rules on capital requirements for counterparty credit risk and for exposures to central counterparties; (vi) an updated macro-prudential toolkit; (vii) measures aimed at reducing the administrative burden related to reporting and disclosure for small non-complex banks, as well as simplified market risk and liquidity rules for those banks; (viii) a new total loss-absorbing capacity requirement for G-SIIs; and (ix) an enhanced Minimum Requirement for own funds and Eligible Liabilities (MREL) subordination rules for G-SIIs.<sup>300</sup> CRR II applies from 28 June 2021, subject to certain exceptions. In principle, member States are required to adopt and publish the measures necessary to comply with CRD V by 28 December 2020.

4.215. The Bank Recovery and Resolution Directive<sup>301</sup> (BRRD II) amends the BRRD (Directive 2014/59/EU) regarding the loss-absorbing and recapitalization capacity of credit institutions and investment firms. BRRD II includes: amendments to the requirement for contractual recognition of bail-in; new early-intervention powers for regulators; a requirement for contractual recognition of resolution stay powers; and amendments to the MREL calculation. Member States have until 28 December 2020 to implement BRRD II.

4.216. The Single Resolution Mechanism Regulation<sup>302</sup> (SRMR II) amends the SRMR on the loss-absorbing and recapitalization capacity of institutions and entities. It deals with, *inter alia*, the institution-specific add-on for G-SIIs, and the general requirements applicable to banks established in the Banking Union.

4.217. The EU also took steps with respect to NPLs. It attaches great importance to risk reduction on them, with a view to boosting banks' profitability and ability to lend and, ultimately, boost economic growth. The level of NPLs has been on a decreasing trend in recent years, both at the EU level and in individual members.<sup>303</sup> (Chart 4.3 and Chart 4.4). In April 2019, the EU adopted a Regulation amending Regulation (EU) No. 575/2013 as regards minimum loss coverage for non-performing exposures.<sup>304</sup> The Regulation provides for a statutory prudential backstop against any excessive future build-up of NPLs without sufficient loss coverage on banks' balance sheets.

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<sup>298</sup> Regulation (EU) 2019/876 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No. 575/2013 as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterpart credit risk, market risk, exposures to central parties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements, and regulation (EU) No. 648/2012. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R0876&from=EN>.

<sup>299</sup> Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L0878&from=EN>.

<sup>300</sup> European Commission, *Adoption of the banking package: revised rules on capital requirements (CRR II/CRD V) and resolution (BRRD/SRM)*. Viewed at: [https://europa.eu/rapid/press-release\\_MEMO-19-2129\\_en.htm](https://europa.eu/rapid/press-release_MEMO-19-2129_en.htm).

<sup>301</sup> Directive (EU) 2019/879 of the European Parliament and of the Council of 20 May 2019 amending Directive 2014/59/EU as regards the loss-absorbing and recapitalisation capacity of credit institutions and investment firms and Directive 98/26/EC. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L0879&from=EN>.

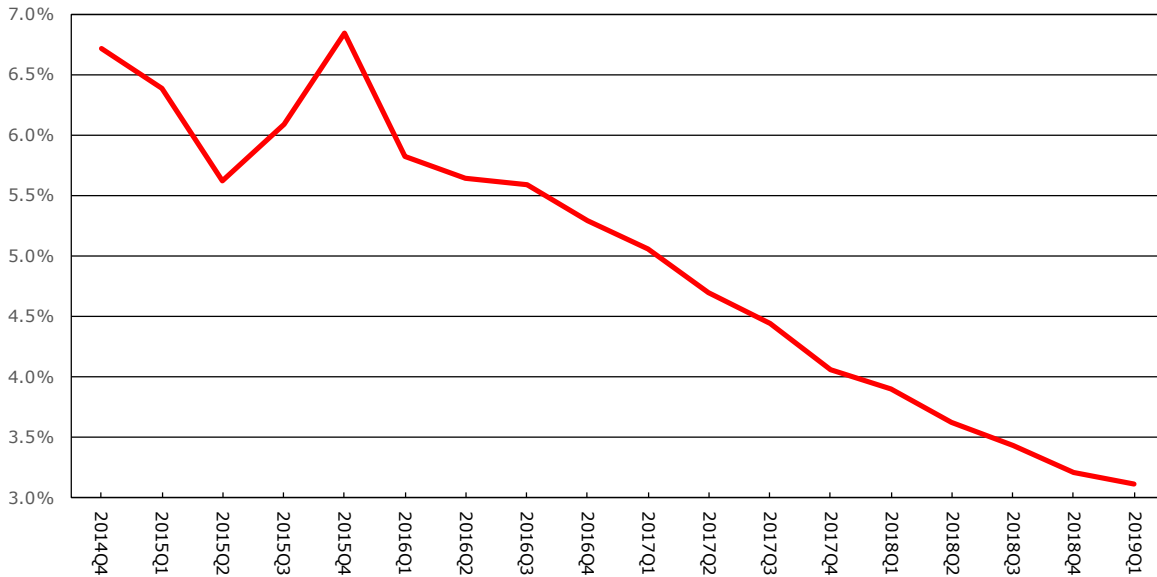
<sup>302</sup> Regulation (EU) 2019/877 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No. 806/2014 as regards the loss-absorbing and recapitalisation capacity of credit institutions and investment firms. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R0877&from=EN>.

<sup>303</sup> European Commission, *Fourth Progress Report on the reduction of non-performing loans and further risk reduction in the Banking Union*. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52019DC0278&from=EN>.

<sup>304</sup> Regulation (EU) 2019/630 of the European Parliament and of the Council of 17 April 2019 amending Regulation (EU) No. 575/2013 as regards minimum loss coverage for non-performing exposures. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R0630&from=EN>.

**Chart 4.3 Total gross NPLs and advances**

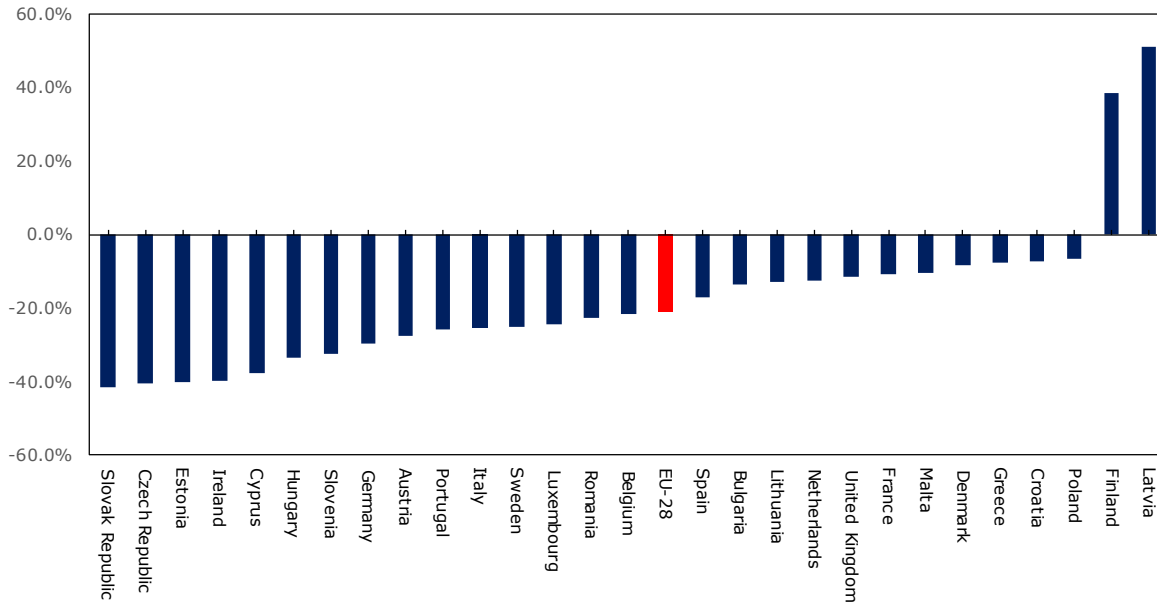
(% of total gross loans and advances, end of quarter values)



Source: European Central Bank database. Viewed at: <https://sdw.ecb.europa.eu>.

**Chart 4.4 Total gross NPLs and advances**

(% change between 2017 and 2018)



Note: Data on the Slovak Republic for two periods are not available.

Source: European Central Bank database. Viewed at: <https://sdw.ecb.europa.eu>.

**4.4.1.2.2 Banking Union**

4.218. The Banking Union is an essential complement to the Economic and Monetary Union (EMU) and the internal market, which aligns responsibility for supervision, resolution and a single resolution fund at EU level. It obliges banks across the euro area to abide by the same rules. While the Single

Rulebook applies to all EU countries, the Banking Union applies to countries in the euro area. EU non-euro area countries can also join.<sup>305</sup>

4.219. The Banking Union has three pillars, of which two are operational. The first is the common supervision of banks through the Single Supervisory Mechanism (SSM), which was brought into operation in 2014. It was placed within the European Central Bank (ECB) and is responsible for the direct supervision of the largest and most significant banking groups. As at 1 July 2019, 114 banks were under SSM supervision. National supervisors continue to oversee all other banks, under the ultimate responsibility of the ECB. The criteria for determining whether banks are considered significant relate to their size, economic importance, cross-border activities and the need for direct public supports.

4.220. The second pillar is a procedure for the orderly winding-up of banks, the Single Resolution Mechanism (SRM). It has been fully operational since January 2016, and has already addressed its first cases. On 7 June 2017, the Single Resolution Board (SRB), the central resolution authority within the Banking Union, adopted its first resolution decision in the case of Banco Popular. On 23 June 2017, it decided not to take resolution action in relation to Banca Popolare di Vicenza and Veneto Banca and, on 24 February 2018, it reached the same decision concerning ABLV Bank AS and its subsidiary ABLV Bank Luxembourg S.A. In addition, on 15 August 2019, following the ECB's assessment of AS PNB Banka as failing or likely to fail, the SRB decided that resolution action was not necessary.<sup>306</sup>

4.221. A Single Resolution Fund (SRF) was established under the SRM. The SRF is expected to ensure a uniform administrative practice in the financing of resolutions, and to avoid distortion to competition in the internal market due to divergent national practices. The SRF replaces the resolution financing arrangements of the participating EU member States in the Single Resolution Mechanism Regulation for banks incorporated in their territories. It is financed by banks' contributions raised at the national level and pooled at the EU level. As at July 2019, the total amount in the SRF was about EUR 33 billion. The target size of the SRF is intended to be at least 1% of covered deposits by end-2023, which is expected to be about EUR 60 billion.<sup>307</sup>

4.222. A third pillar was proposed, in the form of a European Deposit Insurance Scheme (EDIS). However, it has not yet been established. The key objective of the EDIS is to protect covered deposits, i.e. up to EUR 100,000 against the consequences of insolvency of a credit institution. The relevant legislative proposal envisages the establishment of an EDIS in three successive stages: a reinsurance scheme for participating national Deposit Guarantee Schemes (DGSs) for a first period of three years, a co-insurance scheme for participating national DGSs for a second period of four years, and full insurance for participating national DGSs in the final stage.

#### 4.4.1.2.3 Capital Markets Union (CMU)

4.223. The CMU Action Plan, adopted in September 2015, aims to develop deeper and more integrated capital markets across the EU.<sup>308</sup> The CMU is a key pillar of the Investment Plan for Europe, announced by the Commission in November 2014 (Section 1). The CMU is expected to ensure greater diversification in the funding of the economy, and reduce the costs of raising capital, particularly for SMEs. It is set to offer alternative sources of finance, in order to promote financial stability by increasing market liquidity and improving the allocation of risk among investors. The CMU is regarded as necessary to complement the Banking Union and to strengthen the EMU and the international role of the euro. It is also expected to contribute to the development of the single

<sup>305</sup> European Commission, *What is the banking union*. Viewed at: [https://ec.europa.eu/info/business-economy-euro/banking-and-finance/banking-union/what-banking-union\\_en#arulebookforallfinancialactorsintheeu](https://ec.europa.eu/info/business-economy-euro/banking-and-finance/banking-union/what-banking-union_en#arulebookforallfinancialactorsintheeu).

<sup>306</sup> Single Resolution Board, *AS PNB Banka: SRB Decides No Resolution Required*. Viewed at: <https://srb.europa.eu/en/node/814>.

<sup>307</sup> Single Resolution Board, *SRF grows to EUR 33 billion after latest round of transfers*. Viewed at: <https://srb.europa.eu/en/node/804>.

<sup>308</sup> European Commission, *Action Plan on Building a Capital Markets Union*. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015DC0468&from=EN>. In June 2017, the Commission published a monitoring report on progress in the implementation of the CMU, and introduced new measures, such as FinTech, to update and strengthen the original Action Plan. European Commission, *Mid-term Review of the Capital Markets Action Plan*. Viewed at: [https://ec.europa.eu/info/sites/info/files/communication-cmu-mid-term-review-june2017\\_en.pdf](https://ec.europa.eu/info/sites/info/files/communication-cmu-mid-term-review-june2017_en.pdf).

market, to enhance the EU's attractiveness as a foreign investment destination, to help reorient private capital flows towards more sustainable investments, and to help reap the benefits of financial technology while safeguarding consumer protection.<sup>309</sup>

4.224. The Commission presented 13 core CMU legislative proposals and three complementary proposals related to sustainable finance, and considers that it, thereby, has delivered all legislative proposals set out in the CMU Action Plan and in the 2017 mid-term review to put in place the key building blocks of the CMU.<sup>310</sup>

4.225. The Commission's legislative proposals pertain to four categories of measures: (i) measures to make the most of the single market through new European products, labels and passports; (ii) measures to support businesses and investors through clearer and simpler rules; (iii) measures to establish more efficient supervision of EU capital markets; and (iv) measures on sustainable finance.

#### **4.4.1.2.3.1 Measures to make the most of the Single Market through new European products, labels and passports**

4.226. Four of the six core CMU legislative measures proposed by the Commission to introduce new EU-wide rules for products, labels and passports were adopted during the review period. Of the remaining two proposals, one was the subject of political agreement between the Parliament and the Council, and the other is still under negotiation.

4.227. A regulation on European venture capital and social entrepreneurship funds was adopted in October 2017 and applied from 1 March 2018.<sup>311</sup> The Regulation is intended to improve the regulations on European venture capital (EuVECA) funds and European social entrepreneurship funds (EuSEF) that came into force in July 2013.<sup>312</sup> Firstly, it extends the range of managers eligible to market and manage EuVECA and EuSEF funds. Secondly, it broadens the definition of companies that can benefit from EuVECA investments (the qualifying portfolio undertakings). Thirdly, it harmonizes the initial capital and own funds requirements, with a view to simplifying registration processes throughout EU member States.

4.228. The Securitization Regulation was adopted in December 2017 and was applied on 1 January 2019.<sup>313</sup> It sets transparency and other requirements for EU-regulated issuers (originators, sponsors, original lenders, and securitization special-purpose entities) as well as due-diligence requirements for EU institutional investors for their securitization investments. The Regulation introduces a ban on "resecuritization" (no securitization of securitizations is allowed), and brings the European regulation of securitization transactions under a unified legislative framework, marking the end of a sectoral and fragmented regulatory landscape. It establishes three key obligations: (i) it requires due diligence and assessments that institutional investors need to run prior to, or when holding, a securitization position; (ii) it makes it an obligation for the originator, sponsor or original lender to retain at least 5% of material net economic interest; and (iii) it requires originators, sponsors and securitization special-purpose entities to provide certain information to

<sup>309</sup> European Commission, *Capital Markets Union: progress on building a Single Market for capital for a strong Economic and Monetary Union*, pp. 1-2. Viewed at: [https://ec.europa.eu/finance/docs/policy/190315-cmu-staff-working-document\\_en.pdf](https://ec.europa.eu/finance/docs/policy/190315-cmu-staff-working-document_en.pdf).

<sup>310</sup> European Commission, *Capital Markets Union: progress on building a Single Market for capital for a strong Economic and Monetary Union*, p. 3. In addition to the legislative proposals, the Commission also took a number of non-legislative measures to implement the CMU Action Plan.

<sup>311</sup> Regulation (EU) 2017/1991 of the European Parliament and of the Council of 25 October 2017 amending Regulation (EU) No. 345/2013 on European venture capital funds and Regulation (EU) No. 346/2013 on European social entrepreneurship funds. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017R1991>.

<sup>312</sup> According to the EuVECA and EuSEF Regulations, the European Securities and Markets Authority (ESMA) is in charge of maintaining and keeping registers of the EuVECA and the EuSEF. As at 20 September 2019, the registers counted 275 EuVECA funds and 11 EuSEF funds. ESMA, EuVECA and EuSEF registers. Viewed at: [https://registers.esma.europa.eu/publication/searchRegister?core=esma\\_registers\\_euveca](https://registers.esma.europa.eu/publication/searchRegister?core=esma_registers_euveca); and [https://registers.esma.europa.eu/publication/searchRegister?core=esma\\_registers\\_eusef](https://registers.esma.europa.eu/publication/searchRegister?core=esma_registers_eusef).

<sup>313</sup> 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. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R2402&from=en>.

investors, competent authorities and, where requested, to potential investors. Such information includes the underlying exposure, the essential documentation used in the transaction (excluding legal opinions), and the final offering document or prospectus used or a transaction summary. The Regulation enables certain securitization products to be designated as Simple, Transparent and Standardized (STS) if they meet specific eligibility criteria relating to simplicity, transparency and standardization.

4.229. The Securitization Regulation was accompanied by amendments to the Capital Requirements Regulation applicable to credit institutions and investment firms in respect of securitization, and to accommodate the proposed common rules and the new STS framework in the overall prudential framework.<sup>314</sup> The framework provides a new hierarchy of risk calculation methods and lower capital requirements for positions in transactions qualifying as STS securitizations.

4.230. The Regulation on a pan-European Personal Pension Product was adopted on 20 June 2019.<sup>315</sup> It seeks to expand the market for personal pensions, through the creation of a pan-European pension product (PEPP), the features of which will be the same throughout the EU and can be offered by a wide range of providers, such as insurance companies, banks, occupational pension funds, investment firms, and asset managers. The Regulation ensures standardization of the core product features, such as: transparency requirements, investment rules, switching right, and type of investment options. PEPP providers will be able to sell the product anywhere in the EU with one single registration.

4.231. On 20 June 2019, the EU adopted a regulation and a directive establishing a harmonized framework for the cross-border distribution of collective investment funds, with a view to reducing regulatory barriers that hinder cross-border distribution of funds within the EU, and to enhance fund managers' ability to fully benefit from the internal market.<sup>316</sup> These measures aim to, *inter alia*, improve transparency by aligning national marketing requirements and regulatory fees; and introduce consistency in the way regulatory fees are determined. The new rules provide, notably, for a harmonized definition of pre-marketing, create a central database on cross-border marketing, modify the rules applicable to marketing communication requirements, and specify new requirements regarding facilities available to investors.

4.232. Political agreement was reached between the European Parliament and the Council on a Commission proposal for common rules on covered bonds. Such harmonized rules are expected to develop covered bonds as a stable and cost-effective source of funding for EU banks.

4.233. A Commission proposal for a regulation on crowdfunding is still being negotiated. The proposal aims to allow platforms to apply for an EU passport based on a single set of rules.

#### **4.4.1.2.3.2 Measures to support businesses and investors through clearer and simpler rules**

4.234. The Commission proposed five core CMU legislative measures aimed at providing simpler, clearer and more proportionate rules for entrepreneurs, businesses and financial institutions. Two of

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<sup>314</sup> Regulation (EU) 2017/2401 of the European Parliament and of the Council of 12 December 2017 amending Regulation (EU) No. 575/2013 on prudential requirements for credit institutions and investment firms. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R2401&from=EN>.

<sup>315</sup> Regulation (EU) 2019/1238 of the European Parliament and of the Council of 20 June 2019 on a pan-European Personal Pension Product (PEPP). Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R1238&from=EN>. The Regulation has entered into force but is not yet applicable. It shall apply 12 months after the date of the adoption of certain delegated acts.

<sup>316</sup> Regulation (EU) 2019/1156 of the European Parliament and of the Council of 20 June 2019 on facilitating cross-border distribution of collective investment undertakings and amending Regulations (EU) No. 345/2013, (EU) No. 346/2013 and (EU) No. 1286/2014. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R1156&from=EN>. The Regulation applied from 1 August 2019, except that certain provisions will apply from 2 August 2021. 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. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L1160&from=EN>. Member States have until 2 August 2021 to comply with this Directive.



the measures were adopted, and political agreement was reached on two of the other proposals. One proposed measure is still being negotiated.

4.235. On 20 July 2017, the Prospectus Regulation came into force.<sup>317</sup> It replaced the EU Prospectus Directive<sup>318</sup>, and lays down requirements for the drawing up, approval and distribution of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market situated or operating within an EU member State. Except for some specific provisions that applied from 20 July 2017 or from 21 July 2018, the Regulation applied since 21 July 2019, when the Directive was repealed. The new Regulation provides for, *inter alia*, a universal registration document; a simplified prospectus for secondary issuances; an EU growth prospectus to facilitate access to capital markets for small and medium-sized companies; new rules on risk factors; and new harmonized rules on the scrutiny and approval of the prospectus, to drive supervisory convergence throughout the EU.

4.236. A directive on preventive restructuring frameworks, second chance, and measures to increase the efficiency of restructuring, insolvency and discharge procedures was adopted in June 2019.<sup>319</sup> It focuses on three core elements: (i) common principles on early restructuring tools; (ii) rules to allow entrepreneurs to benefit from a second chance through discharge of debt; and (iii) targeted measures to increase the efficiency of insolvency, restructuring and discharge procedures.

4.237. Political agreement was reached on a Commission proposal regulation on more proportionate and risk-sensitive rules for investment firms, in February 2019. The proposal includes: (i) new and simpler prudential rules for non-systemic investment firms, without compromising financial stability; and (ii) amended rules to ensure that large and systemic financial institutions which carry out bank-like activities and pose similar risks as banks are regulated and supervised like banks.

4.238. New rules that will facilitate financing through capital markets for small businesses were agreed by co-legislators in March 2019. They aim to ensure that smaller businesses in the EU have access to diversified sources of financing at each stage of their development. They are expected to make it cheaper and simpler for SMEs to access public markets through the "SME Growth Markets", a new category of trading venue dedicated to small issuers.

4.239. A Commission proposal for a regulation on the law applicable to the third-party effects of assignments of claims is under negotiation. It aims to reduce existing legal uncertainty through the adoption of a harmonized framework on conflict of laws rules, i.e. by determining which country's law applies to the third-party effects of assignments of claims in cross-border transactions.

#### **4.4.1.2.3.3 Measures to establish more efficient supervision of capital markets**

4.240. In March 2019, the European Parliament and EU member States reached political agreement on reforms of the European System of Financial Supervision (ESFS)<sup>320</sup>, based on two proposals made

<sup>317</sup> 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. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R1129&from=EN>.

<sup>318</sup> Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003L0071&from=EN>.

<sup>319</sup> Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 (Directive on restructuring and insolvency). Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L1023&from=EN>.

<sup>320</sup> The ESFS was introduced in 2010. It consists of, on the one hand, the three European Supervisory Agencies (ESAs), which are responsible for the supervision of the micro-level risk: the EBA, the EIOPA, and the ESMA; and, on the other, the European Systemic Risk Board (ESRB), which oversees the financial system as a whole and coordinates EU policies for financial stability. European Commission, *European system of financial supervision*. Viewed at: [https://ec.europa.eu/info/business-economy-euro/banking-and-finance/financial-supervision-and-risk-management/european-system-financial-supervision\\_en](https://ec.europa.eu/info/business-economy-euro/banking-and-finance/financial-supervision-and-risk-management/european-system-financial-supervision_en).

by the Commission in September 2017 and September 2018.<sup>321</sup> Key aspects of these reforms include<sup>322</sup>: (i) an enhanced role for the EBA to ensure that all relevant authorities effectively and consistently incorporate risks of money laundering and terrorist financing into their supervisory strategies and practices; (ii) new and improved instruments for the three European supervisory agencies (ESAs) to foster convergence in the way the European financial sector is supervised; (iii) more integrated supervision of capital markets at the EU level, through the extension of the European Securities and Markets Authority's (ESMA) direct supervision to certain sectors that are highly integrated, have important cross-border activities, and which are, in most cases, regulated by directly applicable EU law. The ESMA will also play a more prominent coordinating role in market abuse cases; (iv) a strengthening of the roles of the ESAs with respect to consumer protection; (v) inclusion of provisions on sustainable finance, requiring the ESAs to integrate environmental, social and governance criteria into their work; (vi) a requirement that the ESAs take into account financial technological innovation in their activities; (vii) changes in the governance of the ESAs, designed to allow decisions to be taken quickly while integrating the knowledge and experience of national supervisors; (viii) an increase in the resources of the ESAs, to provide them with the financial means for their new tasks; and (ix) changes to the governance of the European Systemic Risk Board (ESRB).<sup>323</sup>

4.241. Political agreement was also reached, in March 2019, on amendments to the European Market Infrastructure Regulation<sup>324</sup> (EMIR), to provide for more robust supervision of central counterparties, established in EU and non-EU countries, offering or planning to offer services to EU clearing members and their clients, as well as to EU trading venues.<sup>325</sup> While the legal texts reflecting the changes agreed to in the EMIR, agreed in March 2019 (EMIR 2.2), had not yet been published at the time of writing, another set of amendments to EMIR (EMIR Refit) was adopted in May 2019 and, with some exceptions, became applicable on 17 June 2019.<sup>326</sup>

#### 4.4.1.2.3.4 Measures on sustainable finance

4.242. Three CMU legislative proposals of the Commission pertain to measures that seek to promote environmentally sustainable activities, through, *inter alia*, resource-efficient and circular economy approaches.

4.243. In March 2019, political agreement was reached between the European Parliament and EU member States on the Commission's proposal for a regulation on disclosures relating to sustainable investment and sustainability risks. The aim of this proposal is to introduce mandatory

<sup>321</sup> European Commission, *Reinforcing integrated supervision to strengthen Capital Markets Union and financial integration in a changing environment*. Viewed at: [https://ec.europa.eu/finance/docs/law/170920-communication-esas\\_en.pdf](https://ec.europa.eu/finance/docs/law/170920-communication-esas_en.pdf); and European Commission, *Communication on Strengthening the Union framework for prudential and anti-money laundering supervision*. Viewed at: [https://ec.europa.eu/info/publications/180912-esas-review-money-laundering\\_en](https://ec.europa.eu/info/publications/180912-esas-review-money-laundering_en).

<sup>322</sup> At the time of writing, these new rules had not yet been published.

<sup>323</sup> European Commission, *Capital Markets Union: Creating a stronger and more integrated European financial supervisory architecture, including on anti-money laundering*. Viewed at: [https://europa.eu/rapid/press-release\\_MEMO-19-1928\\_en.htm](https://europa.eu/rapid/press-release_MEMO-19-1928_en.htm).

<sup>324</sup> Regulation (EU) No. 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012R0648&from=EN>.

<sup>325</sup> European Commission, *Capital Markets Union: agreement on more robust supervision of central counterparties*. Viewed at: [https://europa.eu/rapid/press-release\\_IP-19-1657\\_en.htm](https://europa.eu/rapid/press-release_IP-19-1657_en.htm). The objectives of the EMIR are to increase transparency in the OTC derivatives market, and to make it safer by reducing counterparty credit risk and operational risk. WTO document WT/TPR/S/317/Rev.1, 21 October 2015, para. 4.130.

<sup>326</sup> Regulation (EU) 2019/834 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No. 648/2012 as regards the clearing obligation, the suspension of the clearing obligation, the reporting requirements, the risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty, the registration and supervision of trade repositories and the requirements for trade repositories. Viewed at: <https://eur-lex.europa.eu/eli/reg/2019/834/oj>. This Regulation amends Regulation (EU) No. 648/2012, by widening the definition of Financial Counterparty to include all financial counterparties that are systematically important for the financial system. These include alternative investment firms and central securities depositories. It exempts smaller financial counterparties and non-financial counterparties (those with small trading activities) from certain clearing and reporting obligations. The Commission would also have the power to suspend the clearing obligations for specific types of derivatives in exceptional situations.

disclosure, in order to allow investors to benefit from lower search costs in finding financial products and services corresponding to their sustainability preferences.

4.244. Political agreement was also reached, in February 2019, on a proposal for a regulation on low-carbon and positive-carbon impact. It creates new market standards which will reflect companies' carbon footprint, and give investors clearer information on how their investments contribute to fighting climate change.

4.245. Finally, negotiations are ongoing on a proposal by the Commission for a regulation on the unified EU classification system. This proposed regulation aims to provide investors with a common language to identify what economic activities can be considered environmentally sustainable. It will also be a basis for standards and labels for sustainable financial products.

#### **4.4.1.2.3.5 Other measures pertaining to the CMU**

4.246. The Regulation on money market funds (MMFs) was adopted in June 2017 and became applicable on 21 July 2018.<sup>327</sup> It lays down uniform rules for the operation of all MMFs that are established, managed, or marketed in the EU. It aims to make them more resilient to financial market difficulties, reduce the risk of runs, and limit cross-border contagion. Under the Regulation, MMFs that are managed or marketed in the EU must obtain specific authorization, and the use of the designation "money market fund" is reserved for funds authorized under the MMF Regulation.

4.247. The Regulation introduces, *inter alia*, enhanced liquidity requirements for all MMFs, and tighter rules on portfolio diversification. The new liquidity requirements were introduced to ensure there is sufficient liquidity to meet investors' redemption requirements.

4.248. The MMF Regulation establishes a set of requirements on portfolio diversification, in order to limit risk-taking by the MMFs. MMFs may, therefore, not invest a certain share of their assets (specified in the Regulation) in money market instruments, securitizations, and asset-backed commercial papers issued by the same body, and in deposits made with the same credit institution. In addition, there is a certain limit on the cash amount in reverse repurchase agreements, and the share of assets in units or shares of other MMFs. The Regulation also sets exceptions to the portfolio diversification rules, notably for employee savings schemes.

4.249. Any "direct or indirect support offered to an MMF by a third party, including a sponsor of the MMF, that is intended for or in effect would result in guaranteeing the liquidity of the MMF or stabilizing net asset value per unit or share of the MMF" is prohibited under the Regulation. The Regulation provides a non-exhaustive list of items that constitute external support.

4.250. The Regulation for cheaper cross-border payments in euro and fairer currency conversions across the entire EU was adopted in March 2019.<sup>328</sup> It amends certain provisions of Regulation (EU) No. 924/2009, which provides for harmonized charges for cross-border payments and domestic payments in the euro currency only. The amended Regulation extends the scope to domestic payments in the currency of EU member States that are not part of the euro area. Furthermore, it creates more transparency for consumers regarding currency conversion services and resulting charges. Its provisions regarding EU-wide harmonization of charges will apply from end-2019; and those regarding conversion services from mid-2020.

#### **4.4.1.2.4 Third-country equivalence and international cooperation**

4.251. The Commission continued to work on, *inter alia*, ways to strengthen partnerships with financial authorities in third countries, and reinvigorate the EU-wide financial market. Regarding international financial cooperation, in July 2019, the Commission issued a communication setting out its overall approach to equivalence in the area of financial services. Prior to this date,

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<sup>327</sup> Regulation (EU) 2017/1131 of the European Parliament and of the Council of 14 June 2017 on money market funds. Viewed at: <https://eur-lex.europa.eu/eli/reg/2017/1131/oj>. This Regulation is relevant to both the CMU and the single market.

<sup>328</sup> Regulation (EU) 2019/518 of the European Parliament and of the Council of 19 March 2019 amending Regulation (EC) No. 924/2009 as regards certain charges on cross-border payments in the Union and currency conversion charges. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R0518&from=EN>.

equivalences were granted under similar procedures. However, the communication confirms the EU's overall approach, and makes some improvements to the procedures. For instance, it makes assessments more transparent, through public feedback periods before adoption of decisions.

4.252. The equivalence policy serves as a reference in assessing to what extent third countries' regulatory regimes achieve the same outcomes as the EU's own rules, and how the Commission grants equivalence to them on this basis. It also describes how the Commission and the ESAs monitor the situation in those non-EU countries after equivalence decisions have been taken.

4.253. Since January 2018, the Commission has adopted equivalence decisions in the areas of the EMIR on margin requirements (Japan), the Capital Requirements Regulation (Argentina), the Markets in Financial Instruments Regulation on the Derivative Trading Obligation (Singapore), and the EU Benchmarks Regulation (Singapore and Australia). An extension of equivalence in the area of the Markets in Financial Instruments Regulation on the Share Trading Obligation (Switzerland) was renewed in December 2018 and expired on 30 June 2019. Regarding the Credit Rating Agencies Regulation, the Commission extended existing decisions for Hong Kong, China; Japan; Mexico; and the United States, and it repealed those for Argentina, Australia, Brazil, Canada, and Singapore, as those jurisdictions no longer met the standards set by the EU Credit Rating Agencies Regulation after its amendment in 2013.

4.254. The Commission set up a web page on the equivalence decisions currently in force.<sup>329</sup> As at 30 July 2019, the Commission had taken over 280 equivalence decisions for more than 30 countries, across various parts of the financial industry.<sup>330</sup>

#### 4.4.2 Construction services

##### 4.4.2.1 Overview

4.255. The EU has an important construction sector which accounted for a total construction output of EUR 1.7 trillion in 2018, or about 10.7% of GDP.<sup>331</sup> In terms of construction services, a narrower definition of this, it accounted for about 5.5% of GDP in 2018. There were about 3.5 million enterprises, the vast majority of which (98%) were small enterprises, with less than 20 workers.<sup>332</sup> European enterprises had important activities abroad, with the main markets in North America (30%) and Asia/Oceania (25%).<sup>333</sup> According to the world ranking of international construction contractors<sup>334</sup>, EU firms rank high in terms of revenues generated abroad. Of the top ten ranked international firms in 2019, seven were EU firms.<sup>335</sup> Further, about half of total international revenues generated were by European firms although they have generally lost market share in recent years to Asian and emerging economy firms.<sup>336</sup> Thus, the EU is the world's second-largest trader of construction services, in terms of extra-EU trade.<sup>337</sup>

4.256. According to industry statistics, there was small growth of about 2% in the international turnover of European contractors<sup>338</sup>, reaching more than EUR 176 billion in 2017.<sup>339</sup> Of this, about

<sup>329</sup> European Commission, *Recognition of non-EU regulatory frameworks*. Viewed at: [https://ec.europa.eu/info/business-economy-euro/banking-and-finance/international-relations/recognition-non-eu-financial-frameworks-equivalence-decisions\\_en#equivalence-decisions](https://ec.europa.eu/info/business-economy-euro/banking-and-finance/international-relations/recognition-non-eu-financial-frameworks-equivalence-decisions_en#equivalence-decisions).

<sup>330</sup> European Commission, *Equivalence in the area of financial services*. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52019DC0349>.

<sup>331</sup> European Construction Industry Federation (FIEC), *Annual Report 2019*. Viewed at: <http://www.fiec.eu/en/library-619/annual-report-english.aspx>.

<sup>332</sup> FIEC. Viewed at: <http://www.fiec.eu/en/cust/documentrequest.aspx?DocID=43531>; and Eurostat, *Annual detailed enterprise statistics for construction (NACE Rev. 2, F)*. Viewed at: [https://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=sbs\\_na\\_con\\_r2&lang=en](https://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=sbs_na_con_r2&lang=en).

<sup>333</sup> FIEC, *Annual Report 2019*. Viewed at: <http://www.fiec.eu/en/library-619/annual-report-english.aspx>.

<sup>334</sup> Those whose had the most revenues from abroad.

<sup>335</sup> Engineering News-Record (ENR), *ENR's 2019 Top 250 International Contractors*. Viewed at: <https://www.enr.com/toplists/2019-Top-250-International-Contractors-1>.

<sup>336</sup> European International Contractors, *ENR Top 250 Intl contractors*. Viewed at: <https://www.eic-federation.eu/industry/enr-top-250-intl-contractors>.

<sup>337</sup> The EU is the world's largest trader, if both intra- and extra-EU trade are taken into account.

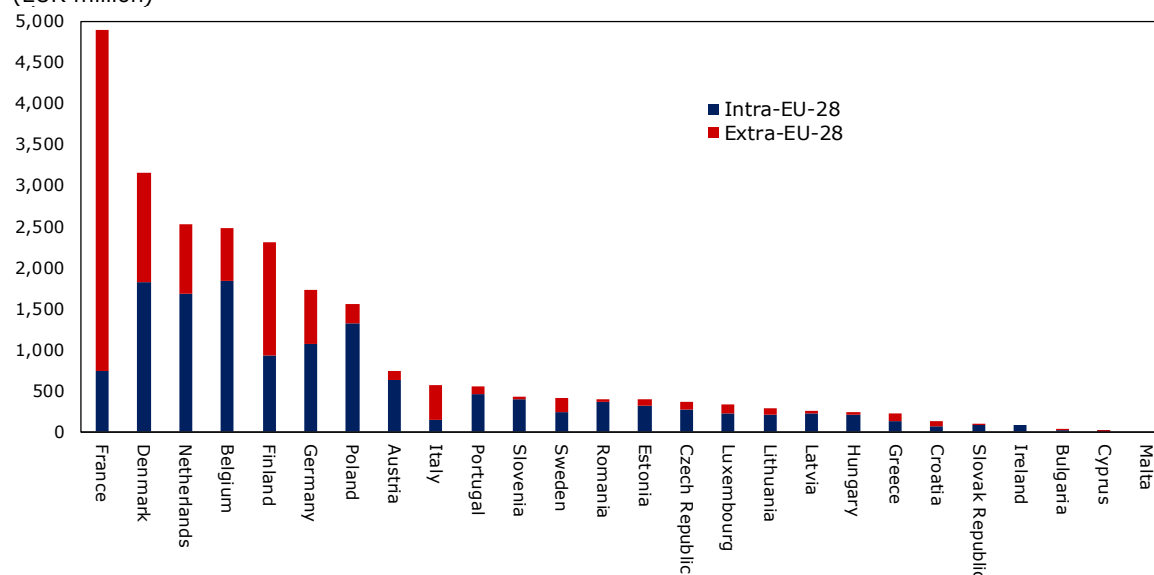
<sup>338</sup> Not all EU member States are included; figures include Turkey.

<sup>339</sup> European International Contractors, *Volume of Turnover 2017*. Viewed at: [https://www.eic-federation.eu/sites/default/files/fields/files/eic\\_2017\\_statistics\\_turnover.pdf](https://www.eic-federation.eu/sites/default/files/fields/files/eic_2017_statistics_turnover.pdf).

43% was generated from within Europe<sup>340</sup> and the remaining 57% from the rest of the world. In terms of world markets, North America is the most significant, with about EUR 30 billion of turnover for European contractors in 2017. Among EU suppliers, France, Germany, and Austria are the most significant in terms of international turnover.<sup>341</sup>

**Chart 4.5 Exports of construction services, construction abroad, 2017**

(EUR million)



Note: No data are available for Spain or the United Kingdom.

Figures are based on the category "SE1 - Services - Construction abroad". It refers to total value of construction abroad by EU contractors; construction or installation projects performed by EU contractors in host economies (e.g. construction work carried out by EU contractors in extra-EU-28 member States).

Source: Eurostat, *Balance of Payments* (bop\_its6\_det). Viewed at: <https://ec.europa.eu/eurostat/web/balance-of-payments/data/database>.

4.257. Services trade statistics for construction services also show a similar trend. Certain member States have strong intra-EU trade in construction services, while others have more significant markets outside the EU (Chart 4.5). France, in particular, followed by Finland and Denmark, have the most significant exports of construction services outside the EU; while France, Denmark, and the Netherlands are the EU's top exporters of construction services overall. The EU maintained a positive trade balance in construction services of about EUR 9 billion over the period, although this slightly narrowed to about EUR 7.5 billion in 2018, mainly due to the slight decline in exports (Table 4.21). The main extra-EU markets for construction services remained unchanged during the period, with the United States, the Russian Federation, and Norway being the top three. In terms of imports, the United States, China, Norway, and the Republic of Korea are the most significant suppliers. Construction services are mainly provided through commercial presence, and cross-border provision is not technically feasible for a wide range of the covered services.

**Table 4.21 Trade in construction services, 2015-18**

(EUR million, unless otherwise indicated)

	Exports (A+C)				Imports (B+D)			
	2015	2016	2017	2018	2015	2016	2017	2018
<b>World</b>	<b>29,608</b>	<b>31,815</b>	<b>29,210</b>	<b>28,927<sup>a</sup></b>	<b>20,527</b>	<b>20,526</b>	<b>20,978</b>	<b>21,456<sup>a</sup></b>
Intra-EU-28	15,674	19,331	16,049	17,300	14,777	15,031	15,257	15,708
% of world	52.9%	60.8%	54.9%	59.8%	72.0%	73.2%	72.7%	73.2%
Extra-EU-28	13,932	12,485	13,160	11,627	5,751	5,495	5,722	5,748
% of world	47.1%	39.2%	45.1%	40.2%	28.0%	26.8%	27.3%	26.8%

<sup>340</sup> Includes EU, non-EU, and the Russian Federation.

<sup>341</sup> European International Contractors, *Volume of Turnover 2017*. Viewed at: [https://www.eic-federation.eu/sites/default/files/fields/files/eic\\_2017\\_statistics\\_turnover.pdf](https://www.eic-federation.eu/sites/default/files/fields/files/eic_2017_statistics_turnover.pdf).

	Exports (A+C)				Imports (B+D)			
	2015	2016	2017	2018	2015	2016	2017	2018
<i>Main extra-EU-28 partners</i>								
United States	1,145	1,150	1,195	1,310	772	612	860	974
Russian Federation	584	639	2,441	1,015	264	105	161	160
Norway	1,112	974	919	..	499	453	283	..
China	470	508	451	322	262	333	779	295
Switzerland	532	470	437	536	359	346	331	433
Korea, Rep. of	312	279	306	..	70	644	818	..
<b>Construction abroad<sup>b</sup></b>								
	<b>A. Total value of construction abroad by EU-28 contractors</b>				<b>B. Expenditure on goods and services by EU-28 contractors in host country</b>			
	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>
<b>World</b>	<b>27,758</b>	<b>29,348</b>	<b>26,889</b>	..	<b>11,821</b>	<b>12,860</b>	<b>12,939</b>	..
Intra-EU-28	14,291	17,431	14,384	..	6,829	8,066	7,895	..
<i>% of world</i>	<i>51.5%</i>	<i>59.4%</i>	<i>53.5%</i>	..	<i>57.8%</i>	<i>62.7%</i>	<i>61.0%</i>	..
Extra-EU-28	13,465	11,919	12,506	..	4,992	4,794	5,041	..
<i>% of world</i>	<i>48.5%</i>	<i>40.6%</i>	<i>46.5%</i>	..	<i>42.2%</i>	<i>37.3%</i>	<i>39.0%</i>	..
<i>Main extra-EU-28 partners</i>								
United States	1,100	1,093	1,099	..	651	503	661	..
Russian Federation	535	616	2,426	..	260	101	148	..
Norway	1,018	896	812	..	339	319	223	..
China	459	503	405	..	234	313	763	..
Switzerland	431	398	402	..	168	158	200	..
Korea, Rep. of	311	263	225	..	59	633	803	..
<b>Construction in the EU-28<sup>c</sup></b>								
	<b>C. Expenditure on goods and services by non-resident (foreign) contractors</b>				<b>D. Total value of construction by non-resident contractors in the EU-28</b>			
	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>
<b>World</b>	<b>1,849</b>	<b>2,469</b>	<b>2,321</b>	..	<b>8,710</b>	<b>7,668</b>	<b>8,039</b>	..
Intra-EU-28	1,382	1,901	1,667	..	7,946	6,964	7,361	..
<i>% of world</i>	<i>74.8%</i>	<i>77.0%</i>	<i>71.8%</i>	..	<i>91.2%</i>	<i>90.8%</i>	<i>91.6%</i>	..
Extra-EU-28	467	567	657	..	761	702	679	..
<i>% of world</i>	<i>25.2%</i>	<i>23.0%</i>	<i>28.3%</i>	..	<i>8.7%</i>	<i>9.2%</i>	<i>8.4%</i>	..
<i>Main extra-EU-28 partners</i>								
United States	44	59	95	..	121	111	203	..
Russian Federation	48	22	15	..	4	3	12	..
Norway	93	78	109	..	160	133	59	..
China	10	6	46	..	28	20	15	..
Switzerland	99	72	35	..	193	187	129	..
Korea, Rep. of	0	16	81	..	10	11	15	..

.. Not available.

a Estimated intra-extra EU-28 data.

b EU SE1 – Services – Construction abroad.

c EU SE2 – Services – Construction in the reporting economy.

Source: Eurostat, Balance of Payments (bop\_its6\_det). Viewed at: <https://ec.europa.eu/eurostat/web/balance-of-payments/data/database>.

#### 4.4.2.2 Legal and policy framework

4.258. The EU's main legislation for construction services is the EU's 2006 Services Directive, which entered into force in late 2009. It provides a framework for creating one single market for certain services<sup>342</sup>, fosters competition and the free movement of persons, and stipulates certain non-discriminatory requirements. The specific elements stipulated in the Directive were to establish

<sup>342</sup> The services covered by the Directive include business services such as management consultancy, certification and testing; facilities management, including office maintenance; advertising; recruitment services; and the services of commercial agents. They also include services provided to both businesses and consumers, such as legal or fiscal advice; real estate services, such as estate agencies; construction, including the services of architects; distributive trades; the organization of trade fairs; car rental; and travel agencies. They also include consumer services, such as tourism, including tour guides; leisure services, sports centres and amusement parks; and certain household support services.

points of single contact and the right to information, and provide for freedom of establishment, and for free movement of services. However, it did not have the aim to further liberalize services *per se*, nor privatize public service entities.

4.259. Since its implementation, there have been a number of developments or follow-ups to monitor or improve the situation of services trade in the single market. The EU's 2015 Single Market Strategy is one of the important elements undertaken to upgrade the single market, and provide more opportunities in many areas, including services. As part of this initiative, the Commission launched a proposal and initiated consultation procedures to reform notifications of new regulatory requirements for services providers; this would, in essence, require that new and changed national regulations were non-discriminatory, justified and proportionate. As a result of the 2016 consultation procedures for the initiative, the feedback indicated that the majority of stake-holders considered the current services notifications system unsatisfactory and, in particular, sought obligations to notify draft legislation, increase transparency, and make clearer the consequences of non-notification.<sup>343</sup>

4.260. In 2016, the EU launched a study under the Services Directive for the construction sector that set out to determine whether member States make full use of the principles of administrative and regulatory simplification under the Directive, including the use of mutual recognition.<sup>344</sup> This, in particular, set out to assess market access conditions and authorization provisions with respect to building permits. As a result of the numerous findings on permanent and temporary obstacles to services trade, the report made a number of recommendations, including on regulatory simplification, administrative simplification, mutual recognition, and on specific points on various articles. It also recommended that simpler document requirements and full electronic procedures be pursued. While some member States, notably the Czech Republic and Denmark, have proceeded to simplify building permits, no major reforms addressing barriers to trade in construction services have been undertaken thus far, with most (administrative) simplification reforms limited to horizontal e-government initiatives. A second follow-up study was conducted in 2018, that further examined the impediments to cross-border market access in construction services, in particular for specific segments of the construction services market commonly referred to as "installation services".<sup>345</sup> For the 14 member States covered by the study, it estimated that the annual administrative costs of construction services formalities imposed on providers establishing or providing services across internal market borders ranged from EUR 35 million to EUR 1.2 billion.

4.261. In addition to the Services Directive, there are several other EU directives or legal provisions that are important to the construction services sector (Table 4.22). In order to improve the free movement of construction products, the EU put in place harmonized rules for the marketing of construction products, through the 2011 Construction Products Regulation (CPR), which entered into force in July 2013. In particular, it puts in place methods and criteria for assessing and expressing the performance of construction products, and the conditions for the use of CE marking. In November 2016, the EU launched a review of the CPR with a view to improving the functioning of the internal market for construction products.<sup>346</sup> The initial feedback from interested parties, in 2017, indicated a preference for no legislative changes while improving implementation of the CPR.<sup>347</sup> The Evaluation of the CPR and the Report on the relevance of the activities developed by the European Organisation of Technical Assessment Bodies was expected to be published in October 2019. A decision on the possible revision of the CPR will be taken by the new Commission.

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<sup>343</sup> European Commission, *Proposal to Reform the Notification Procedure for an Improved Enforcement of the Services Directive*. Viewed at:

<https://ec.europa.eu/docsroom/documents/17562/attachments/1/translations/en/renditions/native>.

<sup>344</sup> Publications Office of the European Union, *Simplification and mutual recognition in the construction sector under the Services Directive*. Viewed at: <https://publications.europa.eu/en/publication-detail/-/publication/3e6f95eb-c658-11e5-a4b5-01aa75ed71a1>.

<sup>345</sup> Publications Office of the European Union, *Study on costs involved in accessing markets cross-border for provision of construction services*. Viewed at: <https://publications.europa.eu/en/publication-detail/-/publication/ac972617-b7cf-11e8-99ee-01aa75ed71a1>.

<sup>346</sup> European Commission, *Review of the CPR*. Viewed at: [https://ec.europa.eu/growth/sectors/construction/product-regulation/review\\_en](https://ec.europa.eu/growth/sectors/construction/product-regulation/review_en).

<sup>347</sup> European Commission, *Review of the Construction Products Regulation – Summary of the Public Feedback to the Inception Impact Assessment*. Viewed at: <https://ec.europa.eu/docsroom/documents/31222>.

4.262. In 2018, the EU amended the 1996 Directive on the posting of workers in the framework of the provision of services.<sup>348</sup> This has a particular impact on the construction services sector, as approximately half of the postings within the internal market are reportedly for construction services.<sup>349</sup> Some of the important changes include a limitation on the maximum time, i.e. 12 months plus a possible 6-month extension, whereafter terms of employment would revert to those of the host member State; application to posted workers of all the mandatory elements of remuneration; and application of the rules of the host member State on workers' accommodation and allowances or reimbursement of expenses.<sup>350</sup>

**Table 4.22 Principal legal instruments for construction services**

Instrument	Reference
Services Directive	Directive 2006/123/EC
Professional Qualifications Directive	Directive 2005/36/EC, as amended
Energy Performance of Buildings Directive	Directive 2010/31/EU, as amended
Energy Efficiency Directive	Directive 2012/27/EU, as amended
Renewable Energy Sources Directive	Directive 2009/28/EC, as amended
Construction Products Regulation	Regulation (EU) No. 305/2011, as amended
Posting of workers in the framework of the provision of services	Directive 96/71/EC, as amended
Enforcement Directive of the Posting of Workers Directive	Directive 2014/67/EU
Article 12 of Regulation (EC) No. 883/2004, on social security aspects of the posting of workers	Decision No. A2 of 12 June 2009 concerning the interpretation of Article 12 of Regulation (EC) No. 883/2004 - (2010/C 106/02)
Late Payments Directive	Directive 2011/7/EU
Occupational Safety and Health Framework Directive	Directive 89/391/EEC, as amended
Directive on the Manual Handling of Loads	Directive 90/269/EEC, as amended
Directive on Temporary or Mobile Construction Sites	Directive 92/57/EEC, as amended
Asbestos Directive	Directive 2009/148/EC, as amended
Work Equipment Directive	Directive 2009/104/EC

Source: Compilation by the WTO Secretariat.

4.263. The EU construction sector is an important contributor to the economy and a creator of jobs; it also plays an important role in sustainability, quality of life, and climate change.<sup>351</sup> However, it faces a number of challenges and structural issues. Some of these include, the shortfall of skilled workers, the sharp decline as a result of the financial crisis, the productivity and resource efficiency of the sector, and the capacity for innovation. Thus, the EU has put forth a number of policy initiatives or strategies in recent years to address some of these issues. As part of its Europe 2020 Strategy, the EU issued a Communication on Strategy for the sustainable competitiveness of the construction sector and its enterprises in 2012.<sup>352</sup> This Strategy focuses on stimulating favourable investment conditions; improving the human-capital basis of the construction sector; improving resource efficiency, environmental performance and business opportunities; strengthening the internal market for construction; and fostering the global competitive position of EU construction enterprises. As part of the last point on the global competitive position, the EU indicated it would seek to secure ambitious market access commitments from partner countries in trade negotiations, regarding access to both commercial and procurement markets.

4.264. One recent development was a proposed Directive and Regulation on a Services E-card.<sup>353</sup> This initiative proposes a harmonized notification form in order to obtain a type of "services

<sup>348</sup> Directive (EU) 2018/957 of the European Parliament and of the Council of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services. Viewed at: [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L\\_.2018.173.01.0016.01.ENG](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2018.173.01.0016.01.ENG).

<sup>349</sup> FIEC. *Annual Report 2019*. Viewed at: <http://www.fiec.eu/en/library-619/annual-report-english.aspx>.

<sup>350</sup> European Commission, *Employment, Social Affairs & Inclusion – Posted workers*. Viewed at: <https://ec.europa.eu/social/main.jsp?catId=471>.

<sup>351</sup> European Commission, *Strategy for the sustainable competitiveness of the construction sector and its enterprises*. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52012DC0433&from=EN>.

<sup>352</sup> European Commission, *Strategy for the sustainable competitiveness of the construction sector and its enterprises*. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52012DC0433&from=EN>.

<sup>353</sup> European Parliament, *Legislative Train Schedule – Deeper and Fairer Internal Market with a Strengthened Industrial Base/Services including Transport*. Viewed at:



passport", securing access to the activity in a host member State, enhancing cooperation between home and host member States, and aiding service providers operating across borders. This fully-electronic harmonized procedure will reduce administrative obstacles, simplifying formalities so that service providers may provide the necessary services abroad more efficiently. Since March 2018, the initiative's legislative process has been put on hold.

4.265. The EU construction industry has been working towards further digitization and promoting the digital transformation of the construction sector through its Construction 4.0 initiative, in order to utilize more efficient processes and eliminate errors and delays.<sup>354</sup> As such, it aims to make the construction sector a priority sector in the Digitising European Industry initiative.<sup>355</sup> In this context, the European Commission launched several initiatives, including the EU Building Information Modelling (BIM) Task Group<sup>356</sup> and the upcoming EU Digital Construction Platform.<sup>357</sup> The EU Directive on Public Procurement also foresees rules for the use of BIM in the tendering of public construction projects. Construction 4.0 notes that digitalization of the construction industry has many aspects, including industrial production, robotics, and digitally-controlled construction sites. According to one source, the construction sector is the least-digitized sector in Europe.<sup>358</sup>

#### 4.4.2.3 Support

4.266. There are a number of programmes that the EU maintains that support, either directly or indirectly, the construction service sector. The Build Up Skills initiative of the European Portal for Energy Efficiency of Buildings and the Energy-Efficient Building European Initiative are two examples of where EU research, work, and funding has been allocated to the construction sector.<sup>359</sup> The EU's development policies promoting public private partnerships and government procurement rules for construction projects also have a positive impact on the sector.

#### 4.4.2.4 Trade commitments, restrictions, and openness

4.267. The EU undertook commitments for construction services in its GATS schedule and also includes construction service commitments in its FTAs. Under the GATS, the EU made partial commitments in all five construction service subsectors, i.e. general construction work for buildings, general construction work for civil engineering, installation and assembly work, building completion and finishing work, and other, with some variations in the scope for some member States.<sup>360</sup> However, due to the enlargement of the EU, some member States retain certain restrictions that were contained in their GATS schedules. Recently, the EU produced a consolidated services schedule that outlines all the varying commitments by member States.<sup>361</sup> In general, mode 1 remains unbound except for two subsectors for most member States, and mode 2 contains no limitations, except it remains unbound for three member States. For modes 3 and 4, the EU is committed, apart from certain specific limitations, and five member States that are unbound for commercial presence. So, whereas the EU takes few GATS commitments for cross-border services, often also technically unfeasible, it is substantially committed for commercial presence and the related presence of natural persons.

4.268. Commitments made with respect to the EU's various FTAs indicate the sector is relatively open, and improved offers have been made to FTA partners. In its FTAs, all recent agreements from

<http://www.europarl.europa.eu/legislative-train/theme-deeper-and-fairer-internal-market-with-a-strengthened-industrial-base-services-including-transport/file-services-e-card>.

<sup>354</sup> FIEC, *Annual Report 2019*. Viewed at: <http://www.fiec.eu/en/library-619/annual-report-english.aspx>.

<sup>355</sup> European Commission, *The Digitising European Industry initiative in a nutshell*. Viewed at: <https://ec.europa.eu/digital-single-market/en/news/digitising-european-industry-initiative-nutshell>.

<sup>356</sup> EUBIM. Viewed at: <http://www.eubim.eu/>.

<sup>357</sup> The European digital platform for construction will address the main challenges related to the uptake of digital tools in support of the digital evolution of the sector. *Horizon 2020 - Digital Platform for Construction in Europe*. Viewed at: <https://cordis.europa.eu/project/rcn/224179/factsheet/fr>.

<sup>358</sup> EURACTIV, *Construction: The least digitised sector in Europe*. Viewed at: <https://www.euractiv.com/section/digital/news/construction-the-least-digitised-sector-in-europe/>.

<sup>359</sup> European Commission, *Build Up – The European Portal for Energy Efficiency in Buildings*. Viewed at: <https://www.buildup.eu/en/>; and *Energy Efficient Buildings, an ECTP Committee for Innovative Built Environment*. Viewed at: <http://e2b.ectp.org/index.php>.

<sup>360</sup> WTO document S/C/W/302, 18 September 2009.

<sup>361</sup> Eur-Lex, *European Union schedule of specific commitments annexed to the General Agreement on Trade in Services (GATS)*. Viewed at: [https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1567072778229&uri=CELEX:52019XC0816\(05\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1567072778229&uri=CELEX:52019XC0816(05)). Also, WTO document, GATS/SC/157.

the last decade cover almost full commitments for commercial presence, and thereby expand the EU's GATS commitments by removing market access limitations and extending the scope to the full range of construction services. For the two recent FTAs with Canada and Japan, applying a negative listing approach, the EU has included no reservations against the market access or national treatment provisions for the five construction service subsectors, apart from an existing nationality requirement in one member State, and a construction sector-related residency requirement in another.

4.269. According to information from the OECD on services' trade restrictiveness, EU member States were ranked relatively open compared to OECD peers for construction services, as 18 of the 23 member States analysed rank below the restrictiveness average for the sector.<sup>362</sup> Latvia, the United Kingdom, and Germany were ranked as the least restrictive among the 23 member States, whereas Belgium, Greece, and Italy were the most restrictive.<sup>363</sup> Further, there are relatively few restrictions for trade among EEA countries within the single market<sup>364</sup>, whereas more barriers or restrictions are applied to the MFN regime.<sup>365</sup> Most EEA trade restrictions are in the regulatory transparency matters category, i.e. public comment time and procedures; and cost, time and procedures for a construction permit.<sup>366</sup> The OECD data indicate there are essentially no, or very minimal, restrictions within the EEA for entry from other EEA countries, movement of persons, and other discriminatory measures for construction services.

4.270. With respect to the MFN regime, the OECD data indicate a range of restrictions that differ among the member States (Table A4.1). While there are no foreign equity restrictions among any of the 23 EU member States represented in the OECD data, and thus firms can be 100% foreign-owned, other restrictions are often applied on foreign entry, such as land acquisition restrictions, local presence requirements, and cross-border data flow restrictions.<sup>367</sup> A major difference, compared to the EEA regime, is the restriction on the movement of people, whereby each of the 23 member States have some type of labour market restriction, and there are limits on the duration of stay. Some member States also have discriminatory measures in terms of public procurement, and some entities may be state-owned. As for regulatory transparency, more onerous restrictions are generally applied compared to the EEA regime, i.e. in respect of public comment time and procedures; business visas; and cost, time and procedures for a construction permit.

#### 4.4.3 E-commerce

##### 4.4.3.1 E-commerce in the context of the Digital Single Market (DSM) Strategy

4.271. Adapting the EU economy to the opportunities and challenges created by the digital transformation has been a major policy priority for the EU in recent years. The digital economy is regarded as a prominent example of an area in which the potential of the EU's Single Market has not been fully exploited.<sup>368</sup> This is particularly important in view of the close complementarities

<sup>362</sup> Data were available for 23 member States: Austria, Belgium, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Poland, Portugal, the Slovak Republic, Slovenia, Spain, Sweden, and the United Kingdom. The OECD data are broadly categorized in five main areas: restrictions on foreign entry, restrictions to the movement of people, other discriminatory measures, barriers to competition, and regulatory transparency.

<sup>363</sup> OECD, *STRI Sector Brief: Construction services*. Viewed at: <http://www.oecd.org/trade/topics/services-trade/documents/oecd-stri-sector-note-construction.pdf>.

<sup>364</sup> Another source of information is available through the EU's Performance Checks, State of Play of the Internal Market in the Construction Sector from 2012 that lists certain rules and internal regulations of the member States. European Commission, *Results – Performance check – Construction services*. Viewed at: <http://ec.europa.eu/DocsRoom/documents/14954/attachments/1/translations>.

<sup>365</sup> OECD, *Intra-EEA STRI Database: Methodology and Results*. Viewed at: [https://www.oecd-ilibrary.org/trade/intra-eea-stri-database\\_2aac6d21-en](https://www.oecd-ilibrary.org/trade/intra-eea-stri-database_2aac6d21-en).

<sup>366</sup> OECD. *Intra-EEA Services Trade Restrictiveness Index Simulator*. Viewed at: <http://www.oecd.org/trade/topics/services-trade/>.

<sup>367</sup> It is noted from GATS commitments that Cyprus has certain foreign ownership restrictions.

<sup>368</sup> European Commission, *The Single market in a changing world. A unique asset in need of renewed political commitment*. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52018DC0772&from=EN>; Copenhagen Economics, *Making EU Trade in Services Work for All. Enhancing innovation and competitiveness throughout the EU economy*, pp.51-54. Viewed at: [https://www.copenhageneconomics.com/dyn/resources/Publication/publicationPDF/5/465/1543487161/final-report-on-single-market-for-services-15nov2018\\_v2.pdf](https://www.copenhageneconomics.com/dyn/resources/Publication/publicationPDF/5/465/1543487161/final-report-on-single-market-for-services-15nov2018_v2.pdf); and OECD, *OECD Economic Surveys: Euro Area*

between services provided by digital means and different sectors of the economy. According to a recent communication of the European Commission, "[d]igital technologies have become an integral part of the Single market to a point that the distinction between the traditional 'brick and mortar' Single market and the 'digital' Single market is no longer relevant".<sup>369</sup> Digital services are of critical importance to enable the EU to improve its performance in the services sector.<sup>370</sup>

4.272. The DSM Strategy was launched in 2015 as part of the Europe 2020 Strategy. It aims to create a market "in which the free movement of goods, persons, services and capital is ensured and where individuals and businesses can seamlessly access and exercise online activities under conditions of fair competition, and a high level of consumer and personal data protection, irrespective of their nationality or place of residence".<sup>371</sup> The Strategy rests on three main pillars: (i) better access for consumers and businesses to online goods and services across Europe; (ii) creating the right conditions for digital networks and services to flourish; and (iii) maximizing the growth potential of the European digital economy.<sup>372</sup>

4.273. A considerable number of legislative measures were adopted and/or took effect pursuant to the EU's DSM Strategy during the period under review. Of the 30 legislative initiatives presented by the Commission in the framework of the Strategy, 28 were politically agreed or finalized by the European Parliament and the Council of the EU, and two are still pending.<sup>373</sup>

4.274. To monitor the progress of EU member States towards a digital economy and society, the Commission developed the Digital Economy and Society Index (DESI), which is composed of five principal dimensions: connectivity; human capital; use of Internet services; integration of digital technology; and digital public services.<sup>374</sup> According to the 2019 edition of the DESI, all EU member States improved their performance. The member States with the highest scores were Finland, Sweden, the Netherlands and Denmark, followed by the United Kingdom, Luxembourg, Ireland, Estonia and Belgium. The countries that made the most progress over the last five years were Ireland, Lithuania, Latvia, Cyprus and Spain. A comparison of the digital performance of EU member States with that of 17 non-EU countries<sup>375</sup> shows that the top four EU member States (Finland, Sweden, the Netherlands and Denmark) were among the global leaders in digitalisation, just behind the Republic of Korea, with higher scores than Japan and the United States. At the same time, the average digital performance of EU member States was significantly lower than that of Japan and the United States.<sup>376</sup>

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2018, p. 43. Viewed at: [https://read.oecd-ilibrary.org/economics/oecd-economic-surveys-euro-area-2018\\_eco\\_surveys-euz-2018-en#page1](https://read.oecd-ilibrary.org/economics/oecd-economic-surveys-euro-area-2018_eco_surveys-euz-2018-en#page1).

<sup>369</sup> European Commission, *The Single market in a changing world. A unique asset in need of renewed political commitment*, pp. 11-12.

<sup>370</sup> Copenhagen Economics (2018), *Making EU Trade in Services Work for All. Enhancing innovation and competitiveness throughout the EU economy*, p.52.

<sup>371</sup> European Commission, *A Digital Single Market Strategy for Europe*. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015DC0192&from=EN>; and European Commission, *on the Mid-Term Review on the implementation of the Digital Single Market Strategy. A Connected Digital Single Market for All*. Viewed at: [https://eur-lex.europa.eu/resource.html?uri=cellar:a4215207-362b-11e7-a08e-01aa75ed71a1.0001.02/DOC\\_1&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:a4215207-362b-11e7-a08e-01aa75ed71a1.0001.02/DOC_1&format=PDF).

<sup>372</sup> The previous report reviewed developments relating to the regulatory regime for e-commerce, which concerns the first pillar of the DSM Strategy. WTO document WT/TPR/S/357/Rev.1, 13 October 2017, Section 4.3.2. It should be noted that this report does not purport to provide a complete analysis of developments relating to all three pillars of the Strategy, but mainly covers the first two. Under the third pillar, the review period saw the adoption of the Regulation on a framework for the free flow of non-personal data in the European Union, the Regulation 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; the Revision of the European Interoperability Framework; the e-Government Action Plan; and the Directive on open data and the re-use of public sector information.

<sup>373</sup> European Commission, *A Digital Single Market for the benefit of all Europeans*. Viewed at: <https://ec.europa.eu/digital-single-market/en/news/digital-single-market-benefit-all-europeans>.

<sup>374</sup> European Commission, *The Digital Economy and Society Index (DESI)*. Viewed at: <https://ec.europa.eu/digital-single-market/en/desi>. The precise indicators used to measure each of these dimensions are described in European Commission, *DESI 2019 Digital Economy and Society Index. Methodological Note*. Viewed at: <https://ec.europa.eu/digital-single-market/en/desi>.

<sup>375</sup> Australia, Brazil, Canada, Chile, China, Iceland, Israel, Japan, the Republic of Korea, Mexico, New Zealand, Norway, Russia, Serbia, Switzerland, Turkey and the United States.

<sup>376</sup> European Commission, *Digital Economy and Society Index (DESI) 2019: Questions and Answers*. Viewed at: [https://europa.eu/rapid/press-release\\_MEMO-19-2933\\_en.htm](https://europa.eu/rapid/press-release_MEMO-19-2933_en.htm).

#### 4.4.3.2 Improving access for consumers to online goods and services across Europe

4.275. The Directive on electronic commerce, adopted in June 2000<sup>377</sup> and discussed in previous reports<sup>378</sup>, constitutes the basic legal framework for the regulation of e-commerce in the EU.

4.276. The European Commission's communication on the DSM Strategy identified five types of regulatory barriers to the growth of cross-border e-commerce within the EU: (i) the complexity and disparity of national contract and consumer protection laws; (ii) the cost and inefficiencies of high-quality cross-border parcel delivery services; (iii) practices used by online sellers that result in the denial of access to websites based in other member States; (iv) obstacles to the cross-border access to copyright-protected content and services; and (v) the burdens on businesses arising from different VAT systems.<sup>379</sup>

4.277. When it made its proposals for new rules on digital contracts, the Commission illustrated the untapped potential of cross-border e-commerce within the EU by pointing out that only 15% of EU consumers bought online from other EU countries, while 44% bought online in their own country. It also observed that only 12% of EU retailers sold online to consumers in other EU countries, while 37% sold online in their own country.<sup>380</sup> More recent data indicate that, in 2017, 33% of European consumers bought online from other EU countries, and that 18% of European retailers sold online to other EU countries.<sup>381</sup>

4.278. During the period under review, the EU adopted legislative measures with respect to all five types of regulatory barriers identified in the DSM Strategy communication:

- Regulation on cross-border portability of online content subscriptions in the internal market (June 2017) (Section 3.3.7);
- Regulation on cooperation between national consumer protection agencies (December 2017);
- Directive and two regulations on VAT aspects of e-commerce (December 2017);
- Regulation on unjustified geoblocking (March 2018);
- Regulation on cross-border parcel delivery services (April 2018);
- Directive on copyright in the Digital Single Market (April 2019) (Section 3.3.7);
- Directive on copyright and related rights applicable to certain online transmissions of broadcasting organizations and retransmissions of television and radio programmes (April 2019) (Section 3.3.7); and
- Directives on contracts for the supply of digital content and the provision of digital services and on contracts for the sale of goods (May 2019).

##### 4.4.3.2.1 Cooperation regarding the application of consumer protection rules

4.279. Closely related to the harmonization of certain aspects of contracts laws (Section 4.4.3.2.5), the implementation of the DSM Strategy involved steps to strengthen their enforcement. A regulation

<sup>377</sup> Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce). Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32000L0031&from=EN>.

<sup>378</sup> WTO document WT/TPR/S/317/Rev1, 21 October 2015, pp.157-158.

<sup>379</sup> European Commission, *A Digital Single Market Strategy for Europe*, pp. 4-9.

<sup>380</sup> European Commission, *Commission proposes digital contract rules across the EU*. Viewed at: <https://www.darkpony.com/blog-en/commission-proposes-digital-contract-rules-across-the-eu/>.

<sup>381</sup> European Commission, *The Single market in a changing world. A unique asset in need of renewed political commitment*. Statistics on various indicators of the development of e-commerce in the EU are available at: [https://ec.europa.eu/eurostat/statistics-explained/index.php/E-commerce\\_statistics\\_for\\_individuals](https://ec.europa.eu/eurostat/statistics-explained/index.php/E-commerce_statistics_for_individuals) (e-commerce statistics for individuals).

adopted in December 2017 amends existing EU rules on cooperation between national consumer protection authorities to make them more effective in a digital context.<sup>382</sup> This regulation entered into force in January 2018 and will be applicable from 17 January 2020.

4.280. It specifies the minimum powers of investigation and enforcement that national consumer protection authorities must possess in order to address unlawful online practices. It also establishes a mechanism for mutual assistance and a procedure for coordinated investigation and enforcement for widespread infringements with an EU dimension. Finally, it provides for a mechanism whereby competent national authorities shall notify the Commission and other competent authorities of any case in which an infringement covered by the regulation may affect consumers' interests in other member States.<sup>383</sup>

#### 4.4.3.2.2 VAT aspects of e-commerce

4.281. Reform of VAT rules is an important dimension of the DSM Strategy. In December 2017, the EU adopted new VAT rules as part of a modernization of VAT for e-commerce. The new rules comprise three legal acts, a Council Directive<sup>384</sup>, a Council Regulation<sup>385</sup> and a Council Implementing Regulation.<sup>386</sup> Some of the rules became applicable on 1 January 2019, while others will become applicable on 1 January 2021.

4.282. One of the main rationales for the adoption of these new rules was the fact that the complexity of compliance with VAT obligations had often been identified by businesses as one of the key reasons why they did not engage in cross-border e-commerce. According to the Commission, "companies that sell goods online pay around EUR 8,000 in VAT compliance costs for every country into which they sell".<sup>387</sup> Secondly, the existing VAT rules were regarded as creating a competitive disadvantage for EU business relative to non-EU companies. Thirdly, the complexity of the VAT rules entailed a significant loss of potential revenue for EU member States.<sup>388</sup>

4.283. The new VAT rules for e-commerce adopted in December 2017 were based, in part, on an assessment of the positive experience gained with the application of the special scheme introduced in 2015 regarding the application of VAT to certain services. Under this Mini One-Stop-Shop system (MOSS), suppliers of telecommunications, broadcasting and electronic services have been able to sell to consumers in other EU member States and account for VAT in respect of sales to all member States in only one member State, thus obviating the need for a separate VAT registration in each individual member State to which they sell. The VAT paid to the tax authorities of the member States is allocated among the member States through a mechanism managed by the Commission.<sup>389</sup>

<sup>382</sup> Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No. 2006/2004. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R2394&from=EN>.

<sup>383</sup> Regulation (EU) 2017/2394, Arts. 9, 11, 15-21, 26.

<sup>384</sup> Council Directive (EU) 2017/2455 of 5 December 2017 amending Directive 2006/112/EC and Directive 2009/132/EC as regards certain value added tax obligations for supplies of services and distance sales of goods. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017L2455&from=EN>.

<sup>385</sup> Council Regulation (EU) 2017/2454 of 5 December 2017 amending Regulation (EU) No. 904/2010 on administrative cooperation and combating fraud in the field of value added tax. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R2454&from=EN>.

<sup>386</sup> Council Implementing Regulation (EU) 2017/2459 of 5 December 2017 amending Implementing Regulation (EU) No. 282/2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R2459&from=EN>.

<sup>387</sup> European Commission, *Modernising VAT for e-commerce: Question and Answer*. Viewed at: [https://europa.eu/rapid/press-release\\_MEMO-16-3746\\_en.htm](https://europa.eu/rapid/press-release_MEMO-16-3746_en.htm).

<sup>388</sup> European Commission, *Proposal for a Council Directive amending Directive 2006/112/EC and Directive 2009/132/EC as regards certain value added tax obligations for supplies of services and distance sales of goods*, p. 2. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016PC0757&from=en>. The Commission noted, in 2017, that "It is estimated that Member States currently lose EUR 5 billion of VAT revenues annually due to non-compliance as well as the VAT foregone from the VAT exemption for the importation of small consignments". European Commission, *Modernising VAT for e-commerce: Question and Answer*.

<sup>389</sup> European Commission, *VAT on digital services (MOSS scheme)*. Viewed at: [https://europa.eu/youreurope/business/taxation/vat/vat-digital-services-moss-scheme/index\\_en.htm](https://europa.eu/youreurope/business/taxation/vat/vat-digital-services-moss-scheme/index_en.htm).

4.284. The rules that became applicable from 1 January 2019 involve several changes designed to improve the operation of the MOSS.<sup>390</sup> These include the introduction of a threshold of EUR 10,000 for EU-wide sales, below which companies may charge VAT in the member State where the supplier is established; simplification of the rules regarding the evidence to be provided to prove the location of customers<sup>391</sup>; and a provision allowing the service supplier to use the invoicing rules of a single member State (the member State of establishment) instead of having to use the invoicing rules of each member State of destination. They also amend the MOSS to make it applicable to taxable persons not established in the EU but who have a VAT registration in a member State.

4.285. The changes made by the VAT rules adopted in December 2017 that will become applicable in January 2021<sup>392</sup> provide that the special mechanism currently provided for under the MOSS will be extended to apply to other services and to distance sales of goods, including both intra-EU distance sales of goods and sales of goods from third countries or territories. Regarding distance sales of goods imported from third countries or territories, the new VAT rules subject such sales to VAT in the member State of the consumer and abolish the VAT exemption for low value consignments. For imports of goods in consignments with a value not exceeding EUR 150 and not subject to excise duties, compliance with VAT obligations will be simplified through either the special import scheme, the Import One Stop Shop mechanism (IOSS)<sup>393</sup>, whereby VAT is no longer payable at the time of importation, but pre-paid at the time of purchase, or through a special arrangement, whereby VAT is paid upon importation on a monthly basis. Finally, another major change made by the new VAT rules is that businesses operating electronic interfaces, such as marketplaces or platforms, will be deemed to be suppliers of goods sold to customers in the EU by companies using the marketplace or platform, where those goods with a value up to EUR 150 are imported into the EU or when it concerns goods that are located in the EU and where the companies using the marketplace are not established in the EU. This means that large marketplaces will be liable to ensure payment of VAT on sales of such goods.<sup>394</sup>

4.286. In addition to these measures aimed at improving compliance, the Commission also proposed in December 2018 a legislative package to request payment service providers established in Europe to transmit VAT-relevant payment data to tax authorities. This proposal will require payment service providers such as banks, companies responsible for card payments and e-money institutions to provide tax authorities with information on the beneficiary of cross-border payments. This information will then be centralised in a European database – the Central Electronic System of Payment information ("CESOP") - where tax authorities will be able to access the data to establish the amount of payments received by online sellers and crosscheck this information with other databases to identify fraudsters. Citizens' rights will be preserved as no information on the payer/buyer will be collected and a threshold has been put in place to ensure only information relating to business receiving important amounts of payments is transmitted.

#### **4.4.3.2.3 Prohibition of unjustified geoblocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment**

4.287. As part of the package of measures designed to reduce barriers to cross-border e-commerce within the EU, the DSM Strategy envisaged the prohibition of practices involving unjustified geoblocking and other forms of geographically-based discrimination. The term "geoblocking" refers to practices used for commercial reasons by online sellers that result in the denial of access to websites based in other member States.<sup>395</sup>

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<sup>390</sup> Council Directive (EU) 2017/2455, Art. 1; and Council Implementing Regulation (EU) 2017/2459, Art. 1.

<sup>391</sup> In this regard, the new rules provide that companies that make cross-border sales of telecommunications, broadcasting and electronic services to consumers in other EU member States at a total value of less than EUR 100,000 per year must provide one piece, rather than two, of evidence to establish the location of their customers.

<sup>392</sup> Council Directive (EU) 2017/2455, Arts. 2 and 3.

<sup>393</sup> See Section 3.1.1.

<sup>394</sup> The Council reached political agreement on two proposals, submitted by the Commission in December 2018, designed to enable a smooth transition to the new VAT system that will apply from 1 January 2021.

<sup>395</sup> European Commission, *A Digital Single Market Strategy for Europe*, p.6. The communication noted that "[b]y limiting consumer opportunities and choice, geo-blocking is a significant cause of consumer dissatisfaction and of fragmentation of the Internal Market".

4.288. A Regulation prohibiting unjustified geoblocking and other forms of discrimination entered into force in March 2018 and became applicable in December 2018.<sup>396</sup> The core provisions of the Regulation are the following.<sup>397</sup>

4.289. Firstly, it defines three situations involving, respectively, the sale of goods without physical delivery, the sale of electronically-supplied services, and the sale of services provided in a physical location, in which traders are prohibited from applying different general conditions of access to goods or services for reasons related to a customer's nationality, place of residence or place of establishment.<sup>398</sup>

4.290. Secondly, the Regulation provides that a trader shall not, through the use of technological measures or otherwise, block or limit a customer's access to the trader's online interface for reasons related to the customer's nationality, place of residence or place of establishment. It also prohibits a trader from redirecting a customer to a version of its online interface that is different from the online interface to which the customer initially sought access, for reasons related to the customer's nationality, place of residence or place of establishment.

4.291. Thirdly, the Regulation prohibits a trader from applying different conditions for certain payment transactions based on a customer's nationality, place of residence or establishment, the location of the payment account, the place of establishment of the payment service provider or the place of the payment instrument within the EU.

#### **4.4.3.2.4 Regulatory oversight and transparency of cross-border parcel delivery services**

4.292. The Commission's communication on the DSM Strategy identified high prices and inefficiency of cross-border delivery services as an obstacle to cross-border online sales within the EU, and announced a set of measures to improve price transparency and enhance regulatory oversight of the cross-border parcel delivery market.<sup>399</sup> A Regulation adopted in April 2018 lays down provisions to foster better cross-border parcel delivery services.<sup>400</sup> These concern: (i) regulatory oversight related to parcel delivery services; (ii) transparency of tariffs and assessment of tariffs for the purpose of identifying those that are unreasonably high; and (iii) information for consumers made available by traders concerning cross-border parcel delivery services.

4.293. Firstly, regarding regulatory oversight, the Regulation requires all parcel delivery service providers to submit certain information to the national regulatory authority of the member State in which they are established. As required by Article 4 of the Regulation, the Commission adopted an implementing act on the format for the submission of this information.<sup>401</sup>

4.294. Secondly, the Regulation gives national postal regulators the data they need to monitor cross-border markets and check the affordability and cost-orientation of prices. It requires all cross-border parcel delivery service providers to provide the national regulatory authority of the member States in which they are established with the public list of tariffs applicable on 1 January of each calendar year for the delivery of single-piece postal items. The national authorities are required

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<sup>396</sup> Regulation (EU) 2018/302 of the European Parliament and of the Council of 28 February 2018 on addressing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulations (EC) No. 2006/2004 and (EU) 2017/2394 and Directive 2009/22/EC. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R0302&from=EN>.

<sup>397</sup> Regulation (EU) 2018/302, Arts. 4,3 and 5.

<sup>398</sup> The Regulation applies to cross-border transactions and not to situations which are purely internal to a member State.

<sup>399</sup> European Commission, *A Digital Single Market Strategy for Europe*, pp.5-6. The previous TPR noted that prices charged by postal operators to deliver a small parcel to another member State were on average three to five times higher than domestic prices, without a clear correlation to the actual cost. WTO document WT/TPR/S/357/Rev.1, 13 October 2017, para. 4.117.

<sup>400</sup> Regulation (EU) 2018/644 of the European Parliament and of the Council of 18 April 2018 on cross-border parcel delivery services. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R0644&from=EN>.

<sup>401</sup> Commission Implementing Regulation (EU) 2018/1263 of 20 September 2018 establishing the forms for the submission of information by parcel delivery service providers pursuant to Regulation (EU) 2018/644 of the European Parliament and of the Council. Viewed at: [http://www.ancom.org.ro/uploads/links\\_files/Regulation\\_2018\\_-\\_1263.pdf](http://www.ancom.org.ro/uploads/links_files/Regulation_2018_-_1263.pdf).

to submit this information to the Commission, which must publish it on a dedicated website.<sup>402</sup> National regulatory authorities are also required to conduct an assessment of whether cross-border tariffs of the parcel delivery service providers subject to a universal service obligation are unreasonably high, based on a list of factors set out in the Regulation<sup>403</sup>, to be evaluated in accordance with a methodology for which the Commission set out guidelines in a communication issued in December 2018.<sup>404</sup>

4.295. Thirdly, for certain contracts, traders concluding sales contracts with consumers that include the sending of cross-border parcels are obligated to make available to consumers, at the pre-contractual stage, information on the cross-border delivery options in relation to the specific sales contract and charges payable by consumers for the cross-border parcel delivery and, where applicable, their own complaints handling procedures.

#### 4.4.3.2.5 Harmonization of contract and consumer protection laws

4.296. A Directive on certain aspects concerning contracts for the supply of digital content and the provision of digital services<sup>405</sup> and a Directive on certain aspects concerning contracts for the sale of goods<sup>406</sup> entered into force in June 2019. Member States have until 1 July 2021 to adopt and publish the measures provided for in these Directives, and are required to apply them from 1 January 2022.

4.297. As discussed in the previous Review<sup>407</sup>, these two Directives aim to address obstacles to the development of cross-border e-commerce within the EU that arise from differences between national consumer protection and contract laws. When it submitted the proposals for these Directives in December 2015, the Commission observed that, for nearly 40% of retailers selling online, differences in national contract laws were a significant obstacle to cross-border sales, with the additional one-off cost for businesses to adapt to different consumer contracts laws when selling cross-border amounting to around EUR 9,000 for each member State they wished to sell to. It also noted that three out of ten consumers' top concerns in respect of buying online pertained to key contract rights, such as non-delivery of their order, delivery of a wrong or damaged product, or the repair and replacement of a faulty product; and only 10% of 70 million EU consumers who had experienced problems with four popular types of digital content had received remedies.<sup>408</sup>

4.298. The two Directives provide for a full harmonization of rules on certain essential elements of consumer contract law, notably rules on the conformity of the digital content, digital service or good with the contract, remedies in the case of a lack of such conformity, and the modalities for the exercise of those remedies.

4.299. The two Directives are designed to be complementary to each other in terms of their scope of application. The Directive on digital content and digital services "applies to the supply of digital content or digital services, including digital content supplied on a tangible medium, such as DVDs, CDs, USB sticks and memory cards, as well as to the tangible medium itself, provided that the

<sup>402</sup> European Commission, *Public tariffs on cross-border parcel delivery services*. Viewed at: [https://ec.europa.eu/growth/sectors/postal-services/parcel-delivery/public-tariffs-cross-border\\_en](https://ec.europa.eu/growth/sectors/postal-services/parcel-delivery/public-tariffs-cross-border_en).

<sup>403</sup> Regulation (EU) 2018/644, Art. 6(2), of the European Parliament and of the Council of 18 April 2018 on cross-border parcel delivery services. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R0644&from=EN>.

<sup>404</sup> European Commission, *Communication from the Commission on guidelines to national regulatory authorities on the transparency and assessment of cross-border parcel tariffs pursuant to Regulation (EU) 2018/644 and Commission Implementing Regulation (EU) 2018/1263*. Viewed at: [https://eur-lex.europa.eu/resource.html?uri=cellar:4fd5f9aa-fdf8-11e8-a96d-01aa75ed71a1.0023.02/DOC\\_1&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:4fd5f9aa-fdf8-11e8-a96d-01aa75ed71a1.0023.02/DOC_1&format=PDF).

<sup>405</sup> Directive (EU) 2019/770 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L0770&qid=1570782546972&from=EN>.

<sup>406</sup> Directive (EU) 2019/771 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the sale of goods, amending Regulation (EU) 2017/2394 and Directive 2009/22/EC, and repealing Directive 1999/44/EC. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L0771&qid=1570782682095&from=EN>.

<sup>407</sup> WTO document WT/TPR/S/357/Rev.1, 13 October 2017, paras. 4.108-113.

<sup>408</sup> European Commission, *Digital Contracts for Europe*. Viewed at: [https://ec.europa.eu/info/sites/info/files/digital\\_contracts\\_factsheet\\_en.pdf](https://ec.europa.eu/info/sites/info/files/digital_contracts_factsheet_en.pdf).



tangible medium serves exclusively as a carrier of the digital content".<sup>409</sup> The Directive on contracts for the sale of goods applies to "contracts for the sale of goods, including goods with digital elements which require digital content or a digital service in order to perform their function".<sup>410</sup>

4.300. The Directive on certain aspects of contracts for the supply of digital content and digital services defines the obligation of the trader to supply the digital content or digital service, lays down requirements for the digital content or digital service to be considered to be in conformity with the contract, and defines the conditions under which the trader is liable for the failure to supply the digital content or digital service or for the lack of conformity of the digital content or service with the contract.<sup>411</sup> In the latter regard, the Directive provides that the trader is liable for any failure to supply the digital content or digital service, and defines the conditions under which the trader is liable for a lack of conformity of the digital content or digital service with the contract. Similarly, it provides that the burden of proof with regard to whether the digital content or service was supplied lies with the trader, and defines when the burden of proof is on the trader with regard to whether the digital content or digital service was in conformity with the contract.<sup>412</sup>

4.301. Regarding remedies, the Directive provides that, in the case of a failure to supply, the consumer shall call upon the trader to supply the digital content or digital service without undue delay and that, if the trader then fails to supply the digital content or digital service without undue delay, the consumer shall be entitled to terminate the contract. In the case of a lack of conformity of the digital content or digital service with the contract, the consumer has the right to have the digital content or service brought into conformity, to receive a proportionate reduction in the price, or to terminate the contract under conditions specified in the Directive.<sup>413</sup>

4.302. The Directive on certain aspects of contracts for the sale of goods<sup>414</sup> defines the obligation of the seller to deliver the goods in accordance with subjective and objective requirements of conformity with the sales contract, and provides that the seller is liable to the consumer for any lack of conformity which exists at the time when the goods were delivered or which becomes apparent within two years of that time. Regarding the burden of proof, the Directive provides that any lack of conformity which becomes apparent within one year of the time when the goods were delivered shall be presumed to have existed at the time when the goods were delivered. In the case of a lack of conformity, the consumer shall be entitled to have the goods brought into conformity or to receive a proportionate reduction in price or to terminate the contract under the conditions defined in the Directive.<sup>415</sup> The Directive also contains requirements with respect to commercial guarantees.

4.303. The harmonization of contract laws under the two Directives entails significant improvements in the rights of consumers, including, for example, the reversal of the burden of proof with respect

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<sup>409</sup> The term "digital content" is defined as "data which produced and supplied in digital form", and "digital service" as either "a service that allows a consumer to create, process, store or access data in digital form", or "a service that allows the sharing of or any other interaction with data in digital form uploaded or created by the consumer or other users of that service". Directive (EU)2019/770, Arts. 2(1) and (2).

<sup>410</sup> The term "goods with digital elements" means "any tangible movable items that incorporate, or are inter-connected with, digital content or a digital service in such a way that the absence of that digital content or digital service would prevent the goods from performing their functions". Directive (EU)2019/770, Art. 2 (3).

<sup>411</sup> Directive (EU) 2019/770, Arts. 5-8 and 11.

<sup>412</sup> Directive (EU) 2019/770, Art. 12.

<sup>413</sup> Directive (EU) 2019/770, Arts. 13 and 14.

<sup>414</sup> This Directive applies to sales contracts between a consumer and a seller. As stated in the Preamble, "while online sales of goods constitute the vast majority of cross-border sales in the Union, differences in national contract laws equally affect retailers using distance sales channels and retailers selling face-to-face and prevent them from expanding across borders. This Directive should cover all sales channels, in order to create a level playing field for all businesses selling goods to consumers". Directive (EU) 2019/771, Preamble, recital 9.

<sup>415</sup> Directive (EU) 2019/771, Arts. 10, 11 and 13.

to the existence of a defect at the time of the supply of a digital content or a digital service<sup>416</sup> or the supply of a good, and the provision of more effective remedies in the case of a lack of conformity.<sup>417</sup>

#### 4.4.4 Telecommunications services

##### 4.4.4.1 Telecommunications in the context of the DSM Strategy

4.304. The second pillar of the DSM Strategy aims to create the right conditions and a level playing field for advanced digital networks and innovative services. The European Commission's communication on the Strategy noted that it must be built on reliable, trustworthy, high-speed, affordable networks and services which must safeguard consumers' fundamental rights to privacy and personal data protection while also encouraging innovation. This required a strong, competitive and dynamic telecoms sector to carry out the necessary investments. Moreover, the market power of some online platforms potentially raised concerns. The communication identified a comprehensive overhaul of EU telecoms rules as one of the main priority areas under this pillar.<sup>418</sup>

4.305. As part of this second pillar, the Commission adopted a communication and a set of related proposals in September 2016, designed to achieve the objective of very high-capacity Internet connectivity.<sup>419</sup> This communication set out three strategic, non-binding objectives for network deployment by 2025:

- gigabit connectivity<sup>420</sup> for all main socio-economic drivers, e.g. schools, transport hubs, main providers of public services, and digitally-intensive enterprises;
- all urban areas and all major terrestrial transport paths to have uninterrupted 5G coverage; and
- all European households, rural or urban, to have access to Internet connectivity offering a downlink of at least 100 Mbps, upgradable to gigabit speed.

4.306. The Commission estimated, in 2016, that these objectives required an additional investment of circa EUR 155 billion.<sup>421</sup>

4.307. For European households, broadband take-up and coverage increased from 22.6% in 2016 to 29.6% in 2018.<sup>422</sup>

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<sup>416</sup> For example, as pointed out in the Secretariat Report prepared for the previous Review, if a consumer discovers today that a product s/he purchased online more than six months ago is defective and asks the seller to repair or replace it, s/he may be asked to prove that this defect existed at the time of delivery; in contrast, under the new rules, throughout the two-year guarantee period, the consumer will be able to ask for a remedy without having to prove that the defect existed at the time of delivery.

<sup>417</sup> European Commission, *Digital Contracts*. Viewed at: [https://ec.europa.eu/info/sites/info/files/factsheet\\_digital\\_contracts.pdf](https://ec.europa.eu/info/sites/info/files/factsheet_digital_contracts.pdf).

<sup>418</sup> European Commission, *A Digital Single Market Strategy for Europe*, pp. 9-13. Other priorities identified in this context were: reform of the Audiovisual Media Services Directive to create a media framework for the 21<sup>st</sup> century; creation of a fit-for-purpose regulatory environment for platforms and intermediaries; and measures to reinforce trust and security in digital services and in the handling of personal data. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015DC0192&from=EN>.

<sup>419</sup> European Commission, *Connectivity for a Competitive Digital Single Market. Towards a European Gigabit Society*. Viewed at: <https://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-587-EN-F1-1.PDF>.

<sup>420</sup> Defined as "cost-effective symmetrical Internet connectivity offering a downlink and an uplink of at least 1 Gbps".

<sup>421</sup> European Commission, *Connectivity for a Competitive Digital Single Market. Towards a European Gigabit Society*, p. 8. Viewed at: <https://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-587-EN-F1-1.PDF>.

<sup>422</sup> European Commission, *Digital Agenda Scoreboard key indicators - See the evolution of an indicator and compare countries*. Viewed at: [https://digital-agenda-data.eu/charts/see-the-evolution-of-an-indicator-and-compare-countries#chart={\"indicator-group\":\"broadband\",\"indicator\":\"bb\\_ftpcov\",\"breakdown\":\"total\\_pophh\",\"unit-measure\":\"pc\\_hh\\_all\",\"ref-area\":\[\"EU\",\"EU\"\]}](https://digital-agenda-data.eu/charts/see-the-evolution-of-an-indicator-and-compare-countries#chart={\).

4.308. During the period under review, the main developments regarding the implementation of this second pillar of the DSM Strategy were:

- abolition of retail roaming charges (June 2017);
- Decision on the use of the 470-790 MHz frequency band in the Union (May 2017);
- Regulation on the promotion of Internet connectivity in local communities (October 2017);
- Commission Recommendation on measures to effectively tackle illegal content online (March 2018);
- Directive amending the Audiovisual Media Services Directive (November 2018) (Section 4.4.6);
- Directive establishing the European Electronic Communications Code (December 2018);
- Regulation establishing the Body of European Regulators for Electronic Communications (BEREC) and the Agency for Support for BEREC (BEREC Office) (December 2018); and
- Regulation on fairness and transparency for business users of online intermediation services (June 2019) (Section 4.4.5).

#### 4.4.4.2 Reform of telecoms rules: the European Electronic Communications Code

4.309. Table 4.23 provides data on selected indicators of recent developments in the telecoms sector.

**Table 4.23 Selected indicators of developments in the telecoms sector, 2010-18**

	2010	2011	2012	2013	2014	2015	2016	2017	2018
Mobile phone subscribers (million)	616	639	660	672	687	689	698	n.a.	n.a.
Total telephone subscribers (fixed & mobile) (million)	829	840	846	851	843	833	833	832	828
Households with broadband access - % of households with at least one member aged 16 to 74 <sup>a</sup>	61	67	72	76	78	80	83	85	86
Level of Internet access - % of households <sup>b</sup>	70	73	76	79	81	83	85	87	89
Internet use by individuals - % of individuals aged 16 to 74 <sup>c</sup>	68	71	73	75	78	79	82	84	85
Individuals using mobile devices to access the Internet on the move <sup>d</sup>	n.a.	21	36	43	51	57	59	65	69
Individuals using Internet to order goods or services - % <sup>e</sup>	40	42	44	47	50	53	55	57	60
Total availability of computer - % of households <sup>f</sup>	74	76	78	80	n.a.	82	n.a.	84	n.a.
<b>Telecom service revenue</b>									
Overall									
EUR bn <sup>g</sup>	..	253.1	245.0	233.9	226.3	223.5	222.3	222.6	..
% growth (y-o-y)	..	..	-3.2	-4.5	-3.2	-1.3	-0.5	0.1	..

	2010	2011	2012	2013	2014	2015	2016	2017	2018
By type of service % growth (y-o-y)									
Fixed telephony	..	..	-8.4	-8.3	-7.7	-6.4	-6.3	-6.4	..
Mobile	..	..	-2.5	-5.7	-4.7	-1.8	-0.1	0.8	..
N Fixed broadband	..	..	0.6	1.4	3.2	3.5	2.7	3.0	..

n.a. Not applicable.

.. Not available.

- a Eurostat. "The availability of broadband is measured by the percentage of households that are connectable to an exchange that has been converted to support xDSL-technology, to a cable network upgraded for Internet traffic, or to other broadband technologies. It includes fixed and mobile connections". Viewed at: <https://ec.europa.eu/eurostat/tgm/table.do?tab=table&init=1&plugin=1&language=en&pcode=tin00073>.
- b "Percentage of households who have Internet access at home. All forms of Internet use are included. The population considered is aged 16 to 74". Viewed at: <https://ec.europa.eu/eurostat/tgm/table.do?tab=table&init=1&plugin=1&language=en&pcode=tin00134>.
- c "Last update: 03 July 2019. Last Internet use: within last 3 months, 12 months before the survey, ever used, never used - whether at home, at work or from anywhere else and whether for private or work/business related purposes". Viewed at: <https://ec.europa.eu/eurostat/tgm/table.do?tab=table&init=1&plugin=1&language=en&pcode=tin00028>.
- d "Use of mobile devices via mobile or wireless connection: mobile phone (or smart phone), portable computer (e.g. laptop, tablet) or another mobile device (e.g. PDA, e-book reader) away from home or work." Viewed at: <https://ec.europa.eu/eurostat/tgm/table.do?tab=table&init=1&plugin=1&language=en&pcode=tin00083>.
- e Eurostat. Viewed at: <https://ec.europa.eu/eurostat/tgm/table.do?tab=table&init=1&language=en&pcode=tin00096&plugin=1>.
- f Eurostat. Total percentage of households having access to, via one of its members, a computer. Viewed at: [https://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=isoc\\_ci\\_cm\\_h&lang=en](https://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=isoc_ci_cm_h&lang=en).
- g European Telecommunications Network Operators' Association (ETNO), Annual Economic Report, 2017. Viewed at: [https://etno.eu/datas/publications/economic-reports/ETNO%20Annual%20Economic%20Report%202017%20\(final%20version%20web\).pdf](https://etno.eu/datas/publications/economic-reports/ETNO%20Annual%20Economic%20Report%202017%20(final%20version%20web).pdf).

Source: Information compiled by the WTO Secretariat from sources listed in the footnote; and information provided by the authorities.

4.310. The implementation of the DSM Strategy resulted in a major reform of EU rules governing the functioning of the telecommunications infrastructure and services markets<sup>423</sup>, with the adoption, in December 2018, of a new European Electronic Communications Code (recast) (EECC).<sup>424</sup> Member States have until 21 December 2020 to adopt and publish the laws, regulations and administrative provisions necessary to comply with the EECC.

4.311. The adoption of the EECC was the outcome of a major periodic review of the EU telecommunications framework, undertaken in the context of the DSM Strategy and which aimed to adapt the existing rules to new technological and market developments. In this regard, the Strategy called for an ambitious overhaul of the telecoms regulatory framework focused on five priorities: (i) a consistent single market approach to spectrum policy and management; (ii) creating the conditions for a true single market by tackling regulatory fragmentation to allow economies of scale for efficient networks and service providers, and effective protection of consumers; (iii) ensuring a level playing field for market players, and consistent application of the rules; (iv) incentivizing investment in high-speed broadband networks; and (v) a more effective regulatory institutional framework.<sup>425</sup>

<sup>423</sup> The EU regulatory framework for telecommunications was described in previous reports: WTO documents WT/TPR/S/317/Rev.1, 21 October 2015, pp. 138-144; and WT/TPR/S/248/Rev.1, 1 August 2011, pp. 131-132.

<sup>424</sup> Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (recast). Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018L1972&from=EN>.

<sup>425</sup> European Commission, *A Digital Single Market Strategy for Europe*, p.10

4.312. Whereas the current EU telecoms regulatory framework mainly consists of four Directives, originally adopted in 2002 and last amended in 2009, on access<sup>426</sup>, authorization<sup>427</sup>, framework<sup>428</sup> and universal service<sup>429</sup>, the EECC amends and integrates these Directives into a single instrument. The rationale for the adoption of a single legal instrument is that "[t]he convergence of the telecommunications, media and information technology sector means that all electronic communications networks and services should be covered to the extent possible by a single European electronic communications code established by means of a single Directive".<sup>430</sup>

4.313. The EECC expands the scope of application of EU telecoms regulation, in line with the principle of technological neutrality and to keep pace with technological development. It applies to "electronic communications services", i.e. services "normally provided for remuneration via electronic communications networks", which it defines as including three types of services: Internet access; interpersonal communications services; and services consisting wholly or mainly of the conveyance of signals.<sup>431</sup>

4.314. The introduction of the concept of "interpersonal communications services"<sup>432</sup> means that the EECC covers services provided through digital messaging platforms that, in recent years, have increasingly displaced more traditional communication services, such as voice telephony and SMS services. It should be noted, however, that the EECC distinguishes between interpersonal communications services which connect with publicly-assigned numbering resources (number-based interpersonal communications services) and interpersonal communications services which do not connect with publicly-assigned numbering resources (number-independent interpersonal communications services), and imposes more stringent regulatory obligations in respect of number-based services than on number-independent services.<sup>433</sup> End-user-related regulatory obligations apply to Internet access and number-based interpersonal communications services, whereas, in the case of number-independent interpersonal communications services, regulatory obligations are mostly limited to security obligations.

4.315. Another aspect of the expansion of the scope of EU telecoms regulation under the EECC is that it broadens the concept of "remuneration" on the grounds, *inter alia*, that "[i]n the digital economy market participants increasingly consider information about users as having monetary value". Thus, the provision of information and the exposure to advertising are included as forms of remuneration.

4.316. A central objective of the EECC is to contribute to the creation of the additional capacity in high-speed broadband networks necessary to achieve the strategic Internet connectivity objectives set by the EU Commission in 2016. In this respect, the EECC includes access to, and deployment of, very high-capacity networks as a new general objective, in addition to the three existing primary

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<sup>426</sup> Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive). Viewed at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32002L0019>.

<sup>427</sup> Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communication networks and services (Authorisation Directive). Viewed at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:108:0021:0032:EN:PDF>.

<sup>428</sup> Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework directive). Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32002L0021>.

<sup>429</sup> Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive). Viewed at: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32002L0022>.

<sup>430</sup> Directive (EU) 2018/1972, Preamble, recital 7.

<sup>431</sup> Directive (EU) 2018/1972, Art. 2(4).

<sup>432</sup> The EECC defines "interpersonal communications service" as "a service normally provided for remuneration that enables direct interpersonal and interactive exchange of information via electronic communications networks between a finite number of persons, whereby the persons initiating or participating in the communication determine its recipient(s) and does not include services which enable interpersonal and interactive communication merely as a minor ancillary feature that is intrinsically linked to another service". Directive (EU) 2018/1972, Art. 2(5).

<sup>433</sup> Directive (EU) 2018/1972, Art. 2(6) and (7). The Preamble, recital 18, states that "[n]umber-independent interpersonal communications services should be subject to obligations only where public interests require that specific regulatory obligations apply to all types of interpersonal communications services, regardless of whether they use numbers for the provision of their service. It is justified to treat number-based interpersonal communications services differently, as they participate in, and hence also benefit from, a publicly assured interoperable ecosystem".

objectives of promoting competition, contributing to the development of the internal market, and promoting the interests of the citizens of the EU.

4.317. Article 3 of Directive (EU) 2018/1972 states that the national regulatory authorities, other competent authorities, the Body of European Regulators for Electronic Communications (BEREC), the European Commission and the member States shall, *inter alia*, "promote connectivity and access to, and take-up of, very high capacity networks, including fixed, mobile and wireless networks, by all citizens and businesses of the Union". A very high-capacity network "means either an electronic communications network which consists of wholly of optical fibre elements at least up to the distribution point at the serving location, or an electronic communications network which is capable of delivering under usual peak-time conditions similar network performance in terms of available downlink and uplink bandwidth, resilience, error-related parameters, and latency and its variation".<sup>434</sup>

4.318. The EECC requires national regulators to conduct a geographical survey of the reach of networks capable of delivering broadband by 21 December 2023, and to update it every three years. On the basis of the information obtained in this survey, regulators may designate areas where no very high-capacity network is planned, organize calls for the deployment of high-capacity networks in such areas, and apply penalties where an undertaking or a public authority which has declared its intention to deploy a very high-capacity network fails to do so.<sup>435</sup>

4.319. To achieve this objective, the EECC also creates incentives for private investment in such networks by providing for more flexible regulation in certain areas<sup>436</sup>:

- the deployment of high-capacity networks is one of the factors to be considered by national regulators in carrying out their responsibilities, to encourage and ensure adequate access and interconnection. National regulators may exempt certain providers from access and interconnection obligations if such providers make available a viable and similar alternative means of reaching end-users by providing access to a very high-capacity network;
- investment in very high-capacity networks is also a factor to be considered by national regulators in determining whether to impose obligations of access to, and use of, specific networks and associated facilities on undertakings with significant market power. Similarly, where national regulatory authorities impose upon undertakings with significant market power obligations regarding the prices at which such undertakings provide access to other operators, the authorities are required to take into account the investment made by the undertaking in very high-capacity networks;
- the EECC provides that undertakings with significant market power may offer commitments to open the deployment of new very high-capacity networks to co-investment and that, if such co-investment meet certain specified conditions, regulatory authorities may not impose additional access obligations regarding the elements of the very high-capacity network subject to the commitment;
- the EECC also reduces access obligations in the case of wholesale market players with significant market power that make private investments in networks and sell or rent access to those networks without offering services to end-users; and

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<sup>434</sup> Directive (EU) 2018/1972, Art.2(2). Under Article 82 of the Directive, the BEREC is required, by 21 December 2020, to issue guidelines on the criteria that a network is to fulfil in order to be considered a very high-capacity network.

<sup>435</sup> Directive (EU)2018/1972, Arts. 22 and 29.

<sup>436</sup> It should be noted that the objective of promoting investment in high-capacity networks is also promoted by the Connecting Europe Broadband Fund and the the Connecting Europe Facility (CEF). In addition, the EU adopted special state aid rules that allow for certain subsidies to establish broadband networks.

- to provide more predictability for investors, the period after which national regulators are required to review a determination that an undertaking has significant market power has been extended from three to five years.<sup>437</sup>

4.320. The EECC aims to increase coordination and coherence of radio spectrum management in the EU. This is motivated by a concern that radio spectrum management by member States has resulted in widely different conditions, and that the lack of consistent EU-wide objectives and criteria for the assignment of radio spectrum at the member State level has created barriers to entry, hindered competition and reduced predictability for investors.<sup>438</sup> A more harmonized approach to the assignment of radio spectrum is seen as being particularly important in light of the growing demand for spectrum due to the increase in wireless traffic.

4.321. In addition to requiring member States to cooperate with each other regarding the strategic planning and coordination of radio spectrum policy, the EECC requires them to promote the harmonization of the use of radio spectrum by electronic communications networks and services across the EU, and to act in accordance with certain objectives and principles in this regard.<sup>439</sup> The EECC provides that member States shall facilitate the use of radio spectrum under general authorizations but allows for the granting of individual rights of use in certain circumstances. It provides detailed rules on the conditions that may be attached to the granting of individual rights, the procedures for granting such rights, and their duration and renewal. Member States are obliged to ensure that rights to use radio spectrum are valid for at least 15 years, with the possibility of an extension of five years.<sup>440</sup>

4.322. The EECC significantly alters the scope of universal service obligations. The Universal Service Directive of 2002 provides for universal service obligations, defined in terms of connection to the public telephone network and access to publicly-available telephone services. In contrast, the EECC defines universal service obligations in terms of access, at an affordable price, in light of specific national conditions, to an available adequate broadband Internet access service and to voice communication services.<sup>441</sup>

4.323. The EECC strengthens the protection of rights of consumers in several respects. As a result of the expansion of the scope of the framework, protection of end-user rights applicable to traditional telecommunications services will also apply to non-traditional equivalent communications services, mainly Internet access services and number-based interpersonal communications services:

- the EECC provides for greater clarity regarding contracts, by identifying the information that providers of publicly-available electronic communications services operators are required to provide before a consumer is bound by a contract or any corresponding offer. This includes a requirement to provide a concise and easily-readable summary of that information;
- it requires regulatory authorities to ensure that providers of Internet access services or publicly-available interpersonal communication services publish information on the terms and conditions of their services, and that end-users have access, free of charge, to at least one independent tool that enables them to compare and evaluate different Internet access services and publicly-available number-based interpersonal communications services;

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<sup>437</sup> Directive (EU) 2018/1972, Arts. 61, 73, 74, 76, 80, 67. Other elements of the EECC, specifically designed to create incentives for investment in high-capacity networks, include, in particular, Arts. 79 (commitments procedure) and 81 (migration from legacy infrastructure).

<sup>438</sup> European Commission, *A Digital Single Market Strategy for Europe*, p.9.

<sup>439</sup> Directive (EU) 2018/1972, Art. 45.

<sup>440</sup> Directive (EU) 2018/1972, Arts. 46-49.

<sup>441</sup> Directive (EU) 2018/1972, Art. 84(1). "Member States shall ensure that all consumers in their territories have access at an affordable price, in light of specific national conditions, to an available adequate broadband Internet access service and to voice communications services at the quality specified in their territories, including the underlying connection, at a fixed location." A voice communications service is "a publicly available electronic communications service for originating and receiving, directly or indirectly, national or national and international calls through a number or numbers in a national or international numbering plan." Directive (EU) 2018/1972, Art. 2(32).

- in order to ensure that conditions and procedures for contract termination do not act as a disincentive to changing service provider, the EECC limits the maximum contractual commitment period to 24 months;
- it also allows consumers to terminate the contract immediately if conditions have been changed, with the possibility of keeping the number for one month after terminating the contract;
- it improves the rules on transparency and switching applicable to contracts involving bundles of services, including Internet, voice communication and television;
- it ensures more accurate caller location in emergency situations when phoning the European emergency number 112;
- it requires national regulatory authorities to ensure that providers of publicly-available electronic communications services provide equivalent access to communication services to end-users with disabilities.<sup>442</sup>

4.324. The EECC reinforces the role of national regulatory authorities. It requires member States to ensure that national regulatory and other competent authorities undertake a list of specified tasks, including implementing *ex ante* market regulation, ensuring the resolution of disputes between undertakings, carrying out radio spectrum management and decisions, contributing to the protection of end-user rights, and assessing and monitoring market-shaping and competition issues regarding open market access. The EECC also contains provisions aimed at reinforcing the independence of the national regulatory and other competent authorities to ensure the impartiality of their decisions.<sup>443</sup>

4.325. In addition to the adoption of the new EECC, the revision of the EU telecoms rules adopted in December 2018 include new rules aimed at creating a more effective institutional framework by strengthening the role of the BEREC.<sup>444</sup>

4.326. Finally, as part of the reform of telecoms rules, certain price caps apply as from 15 May 2019: 19 cents per minute (+VAT) prices for international calls within the EU to and 6 cents per minute (+VAT) for SMS messages.

#### **4.4.4.3 Other measures in the field of telecommunications**

##### **4.4.4.3.1 Use of the 470-790 MHz frequency band**

4.327. The European Commission's communication on the DSM Strategy stressed the importance of the 694-790 MHz ("700 MHz") frequency band for ensuring the provision of broadband services in rural areas, and announced that the Commission would make specific proposals for the coordinated release of the 700 MHz band, while accommodating the specific needs of audio-visual media distribution.<sup>445</sup> A Decision on this subject of the European Parliament and of the Council, dated 17 May 2017, requires member States to allow the use of the 700 MHz frequency band for wireless broadband electronic communications services by June 2020, subject to the possibility of a delay of

<sup>442</sup> Directive (EU) 2018/1972, Arts. 102-103, 105-107, 109.

<sup>443</sup> Directive (EU) 2018/1972, Arts. 5-9.

<sup>444</sup> Regulation (EU) 2018/1971 of the European Parliament and of the Council of 11 December 2018 establishing the Body of European Regulators for Electronic Communications (BEREC) and the Agency for Support for BEREC (BEREC Office), amending Regulation (EU) 2015/2120 and repealing Regulation (EC) No. 1211/2009. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R1971&from=EN>.

<sup>445</sup> European Commission, *A Digital Single Market Strategy for Europe*, p.10.



up to two years for certain justified reasons.<sup>446</sup> The availability of this band in 2020 for broadband wireless services is seen as a critical step in the deployment of 5G.<sup>447</sup>

#### 4.4.4.3.2 Abolition of retail roaming charges

4.328. As at 15 June 2017, roaming charges were abolished for customers travelling periodically within the EU, in accordance with a Regulation adopted in November 2015.<sup>448</sup> In order to avoid negative effects of abusive use of regulated retail roaming services by roaming customers, the Regulation allows roaming providers to apply a "fair use" policy. Detailed rules and conditions on this "fair use" policy are laid down in an Implementing Regulation adopted in December 2016.

#### 4.4.4.3.3 Promotion of Internet connectivity in local communities

4.329. In pursuance of its Internet connectivity objectives, and specifically with a view to promoting "digital inclusion", the EU launched an initiative in 2017 to provide support, in the form of grants and/or other types of financial assistance, for the provision of high-quality local wireless connectivity, free of charge and without discrimination, in centres of local public life.<sup>449</sup> Such financial assistance is available to public sector bodies that meet certain conditions. Under this initiative, municipalities can apply for vouchers up to a value of EUR 15,000.<sup>450</sup> The total amount of funding available under this initiative is EUR 120 million over the period 2018-20.

### 4.4.5 Other measures adopted during the review period under the second pillar of the DSM Strategy

#### 4.4.5.1 Online platforms

4.330. The European Commission issued a communication in 2016 that provided its overall assessment of online platforms as part of its DSM Strategy.<sup>451</sup> This communication also set out certain basic principles: (i) a level playing field for comparable digital services; (ii) responsible behaviour of online platforms to protect core values; (iii) transparency and fairness for maintaining user trust and safeguarding innovation; and (iv) open and non-discriminatory markets in a data-driven economy.

4.331. On 1 March 2018, the Commission adopted a non-binding Recommendation on measures to effectively tackle illegal content online.<sup>452</sup> The Recommendation follows up on a communication of 28 September 2017 that provides guidance on the responsibilities of online service providers regarding illegal content online. It encourages member States and hosting service providers to take effective, appropriate and proportionate measures to tackle illegal content online. It is based on the e-Commerce Directive<sup>453</sup>, which exempts hosting service providers from liability if the provider does

<sup>446</sup> Decision (EU) 2017/899 of the European Parliament and of the Council of 17 May 2017 on the use of the 470-790 MHz frequency band in the Union. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017D0899&from=en>.

<sup>447</sup> European Commission, *5G for Europe: An Action Plan and accompanying Staff Working Document*. Viewed at: <https://ec.europa.eu/digital-single-market/en/news/communication-5g-europe-action-plan-and-accompanying-staff-working-document>.

<sup>448</sup> Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open Internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) No. 531/2012 on roaming on public mobile communications networks within the Union. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015R2120&from=EN>.

<sup>449</sup> Regulation (EU) 2017/1953 of the European Parliament and of the Council of 25 October 2017 amending Regulations (EU) No. 1316/2013 and (EU) No. 283/2014 as regards the promotion of Internet connectivity in local communities. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R1953&from=EN>.

<sup>450</sup> European Commission, *WiFi4EU – Free Wi-Fi for Europeans*. Viewed at: <https://ec.europa.eu/digital-single-market/en/wifi4eu-free-wi-fi-europeans>.

<sup>451</sup> European Commission, *Online Platforms and the Digital Single Market. Opportunities and Challenges for Europe*. Viewed at: <https://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-288-EN-F1-1.PDF>.

<sup>452</sup> Commission Recommendation of 1 March 2018 on measures to effectively tackle illegal content online. Viewed at: <https://www.isdc.ch/media/1585/8-commissionrecommendationonmeasurestoeffectivelytackleillegalcontentonline-1.pdf>.

<sup>453</sup> Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on

not have actual knowledge of illegal activity or information and is not aware of facts or circumstances from which the illegal activity or information is apparent, or if the provider acts expeditiously to remove or to disable access to the illegal information upon obtaining such knowledge or awareness.

4.332. Chapter II of the Recommendation relates to all types of illegal content, and provides for mechanisms to submit notices, whereby a notice provider requests a hosting service provider, on a voluntary basis, to remove or disable access to content that the notice provider considers to be illegal. The Chapter provides detailed guidance with respect to matters such as the content of the notice; the information to be provided to the content provider if the hosting service provider decides to remove or disable access to the content; the transparency of the hosting service provider's policies in respect of the removal or the disabling of access to online content; proactive measures to be taken by hosting service providers; and safeguards that avoid the removal of content that is not illegal. Provision is also made for cooperation between member States and hosting service providers, and between hosting service providers.

4.333. In addition to these provisions that apply to all types of illegal content, the Recommendation contains specific provisions on terrorist content in Chapter III.<sup>454</sup> It states that hosting service providers should expressly set out in their terms of service that they will not store terrorist content, and should take measures so that they do not store terrorist content. Three types of measures are set out in the latter regard. Firstly, member States should ensure that their competent authorities have the capability to detect and identify terrorist content and to request the removal or the disabling of access to such content. If a hosting service provider receives such a request, it must assess and, where appropriate, remove or disable access to the content, as a general rule, within one hour from the moment it receives the request. Secondly, hosting service providers should take proactive measures, including by using automated means, to identify and remove or disable access to terrorist content. Thirdly, hosting service providers should be encouraged to cooperate, through the sharing of technological tools, to prevent the dissemination of terrorist content across different hosting services.

4.334. In November 2018, the EU adopted a revision of the Audiovisual Media Services Directive which, for the first time, imposed certain obligations on online platforms whose principal purpose, or the principal purpose of a dissociable section thereof, or essential functionality is the provision of audiovisual content to the general public. The aim of these new rules is to reinforce the protection of users and especially minors against certain types of illegal and harmful audiovisual content online. (Section 4.4.6).

4.335. In June 2019, the EU adopted a Regulation laying down rules to improve the fairness and transparency of online platforms, which shall apply from 12 July 2020.<sup>455</sup> The Regulation addresses potential frictions that arise from the growing dependence of business users upon providers of intermediation services "by laying down rules to ensure that business users of online intermediation services and corporate website users in relation to online search engines are granted appropriate transparency, fairness and effective redress possibilities".<sup>456</sup>

4.336. The main provisions of this Regulation can be summarized as follows.

4.337. Firstly, "online intermediation services" within the meaning of this Regulation are defined as information society services that allow business users to offer goods or services to consumers with a view to facilitating the initiating of direct transactions between the business users and consumers, and which are provided to business users on the basis of contractual relationships between the business users and the providers of those services. The Regulation applies to providers of online intermediation and search engine services, irrespective of whether they are established in a member State or outside the EU, if the business users or corporate website users are established in the EU

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electronic commerce). Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32000L0031&from=EN>.

<sup>454</sup> In this respect, the Recommendation is based on progress made in the context of the EU Internet Forum.

<sup>455</sup> Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R1150&from=EN>.

<sup>456</sup> Regulation (EU) 2019/1150, Art. 1.

and offer their goods and services to consumers located within the EU at least for part of the transaction.<sup>457</sup>

4.338. Secondly, the Regulation requires providers of online intermediation services to ensure transparency of their terms and conditions, including by drafting the terms and conditions in clear and intelligible language and making them easily available to business users, and to notify business users concerned of any proposed changes of their terms and conditions and, subject to certain exceptions, allow a period of at least 15 days within which the business user may terminate the contract.

4.339. Thirdly, if a provider of online intermediation services decides to restrict or suspend the provision of its online intermediation services to a given business user, it is required to provide a statement of reasons before the restriction or suspension takes effect. Where a provider of online intermediation services decides to terminate the whole of its online intermediation services to a business user, it is required to provide a statement of reasons to that business user at least 30 days before the termination takes effect.<sup>458</sup>

4.340. Fourthly, the Regulation sets out a series of specific requirements regarding the information to be provided by online intermediation service providers on their terms and conditions: (i) online intermediation service providers and providers of search engine services are required to set out the main parameters they use to determine ranking ("the relative prominence given to the goods or services offered through online intermediation services, or the relevance given to search results by online search engines"); (ii) providers of online intermediation services are required to include in their terms and conditions a description of any differentiated treatment they give in relation to goods or services offered to consumers through those intermediation services either by that provider itself or any business users which it controls and by any other business users; and (iii) providers of online intermediation services are required to include in their terms and conditions a description of the access that the provider of the intermediation services or the business user have to data provided for the use of the intermediation service or generated by the use of the service, and to indicate whether any such data is provided to third parties.<sup>459</sup>

4.341. Fifthly, the Regulation requires that providers of online intermediation services establish an internal complaint-handling system to address complaints of business users and to identify in their terms and conditions two or more mediators with which they are willing to engage to attempt to resolve, out of court, any dispute between the provider of that service and a business user. It lays down certain conditions that such mediators must fulfil, and provides that the Commission shall encourage the creation of organizations providing such mediation services. Finally, the Regulation defines the conditions under which organizations and associations representing business users or corporate website users, as well as public bodies set up in member States, have the right to initiate proceedings before the competent national courts of the member States to stop or prohibit non-compliance with the terms of the Regulation by providers of online intermediation services or search engine services.<sup>460</sup>

#### 4.4.5.1.1 EU Cybersecurity Act

4.342. The EU Cybersecurity Act entered into force on 27 June 2019.<sup>461</sup> It reinforces the role of the EU Agency for Cybersecurity (ENISA) by expanding its mandate and providing it with more resources. The revised mandate of ENISA is to: contribute to the development and implementation of EU policy and law in the field of cybersecurity; support capacity building and preparedness across the EU; promote operational cooperation at the EU level; support and promote the development and implementation of EU policy on cybersecurity certification; provide analysis and advice, and raise awareness and identify research needs in the field of cybersecurity; and contribute to the EU's international cooperation in this field. The Act also establishes a European cybersecurity

<sup>457</sup> Regulation (EU) 2019/1150, Arts. 2(2) and 1(2). The term "consumer" for the purposes of this Regulation only covers natural persons. Regulation (EU) 2019/1150, Art. 2(4).

<sup>458</sup> Regulation (EU) 2019/1150, Arts.3-4.

<sup>459</sup> Regulation (EU) 2019/1150, Arts.5, 7, 9.

<sup>460</sup> Regulation (EU) 2019/1150, Arts. 11-14.

<sup>461</sup> Regulation (EU) 2019/881 of the European Parliament and of the Council of 17 April 2019 on ENISA (the European Union Agency for Cybersecurity) and on information and communications technology cybersecurity certification and repealing Regulation (EU) No. 526/2013 (Cybersecurity Act). Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R0881&from=EN>.

certification framework in order to increase the level of cybersecurity and enable a harmonized approach to cybersecurity certification within the EU, with a view to creating a single digital market for ICT products, services and processes.

#### 4.4.6 Audiovisual services

4.343. As part of the DSM Strategy, the Commission presented a proposal for the comprehensive reform of the existing Audiovisual Media Services Directive (AVMSD) in May 2016. The revised AVMSD was adopted in November 2018 and entered into force in December 2018.<sup>462</sup> It requires member States to transpose its provisions into national legislation by 19 September 2020.

4.344. A key consideration motivating the revision of the AVMSD was the significant evolution of the audiovisual services market since the last codification of the AVMSD in 2010, as a result of the convergence of television and Internet services. Specifically, as summarized in the previous Review, the factors which, in the view of the European Commission, required an adaptation of the EU regulatory regime for audiovisual services were: the multiplication of the type of broadcasters (traditional TV broadcasters, video-on-demand providers, and video-sharing platforms); the decreasing average TV viewing time, especially among young people; the increasing share of Internet video in Internet traffic; the low share of revenues invested by on-demand service providers in original programming as compared to traditional TV broadcasters; the fragmented rules across the EU faced by the industry regarding the compulsory share of European content; the fact that 31% of video-on-demand services available in one EU member State were established in another member State; and the need for more independence of the regulators from government and industry.<sup>463</sup>

4.345. The main changes effected by the amendments to the AVMSD can be summarized as follows.

4.346. Firstly, in order to reinforce the country of origin principle<sup>464</sup>, the revised AVMSD simplifies the rules to determine which country has jurisdiction over a media service provider, requires member States to provide information on which media service providers are under their jurisdiction and to maintain an up-to-date database to ensure transparency, and clarifies procedures for cooperation between the member States regarding permissible limitations to the country of origin principle.<sup>465</sup>

4.347. Secondly, the revised AVMSD reinforces the existing rules on hate speech, and introduces a ban on provocations to commit terrorist acts. It requires member States to ensure that audiovisual media services provided by media service providers under their jurisdiction do not contain any (i) incitement to violence or hatred directed against a group or a member of a group on grounds such as sex, race, colour, ethnic or social origin, or any other grounds of discrimination prohibited by the EU Charter of Fundamental Rights; or (ii) provocation to commit a terrorist offence. Thirdly, the revised AVMSD contains additional protections of children. It requires member States to ensure that audiovisual media services that may impair the physical, mental or moral development of minors are only made available in such a way as to ensure that minors will not normally hear or see them. It obligates member States to encourage the use of self-regulation and co-regulation through codes of conduct regarding inappropriate audiovisual communications in children's programmes for foods that are high in fat, salt and sugar. It prohibits product placement in children's programmes and the transmission of teleshopping during such programmes.<sup>466</sup>

4.348. Fourthly, the revised AVMSD extends certain rules for audiovisual media services to video-sharing platforms, including audiovisual content shared on certain social media services. (i) The AVMSD lays down rules to determine when a video-sharing platform provider shall be considered to be within the jurisdiction of a member State; requires member States to establish and maintain

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<sup>462</sup> Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities. Viewed at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018L1808&from=EN>.

<sup>463</sup> WTO document WT/TPR/S/357/Rev.1, 13 October 2017, para. 4.101.

<sup>464</sup> The country of origin principle as expressed in Article 2 of the AVMSD states that "each member State shall ensure that all audiovisual media services transmitted by media service providers under its jurisdiction comply with the rules of the system of law applicable to audiovisual media services intended for the public in that Member State".

<sup>465</sup> Directive 2018/1808, Art. 1(3).

<sup>466</sup> Directive 2010/13/EU, as amended, Arts. 6a, 9, 11, and 20.

up-to-date lists of video-sharing platform providers within their jurisdiction; and provides that the European Commission may request an opinion from the European Regulators Group for Audiovisual Media Services (ERGA) when member States disagree on which member State has jurisdiction over a video-sharing platform provider.<sup>467</sup> (ii) Without prejudice to the provisions of the e-Commerce Directive on liability of intermediary service providers, the revised AVMSD requires member States to ensure that video-sharing platform providers under their jurisdiction take appropriate measures<sup>468</sup> to protect minors from programmes, user-generated videos and audiovisual communications that may impair their physical, mental and or moral development, and to protect the general public from programmes, user-generated videos and audiovisual communications that contain incitements to violence or hatred against a group of persons or members of a group on the grounds referred to in Article 21 of the Charter of Fundamental Rights, or that contain content the dissemination of which is a criminal offence under EU law (namely public provocation to commit terrorist offences, child pornography, and racism or xenophobia).<sup>469</sup> (iii) The AVMSD imposes on video-sharing platforms certain obligations regarding the audiovisual commercial communications provided in their platforms, depending on the degree of control exercised over such audiovisual commercial communications.<sup>470</sup>

4.349. Fifthly, the revised AVMSD establishes rules on the promotion of European content in respect of on-demand audiovisual service providers.<sup>471</sup> Member States are required to ensure that media service providers of on-demand audiovisual media services under their jurisdiction secure at least a 30% European share in their catalogues, and ensure prominence of those works. If a member State requires media service providers under its jurisdiction to contribute financially to the production of European works, it may also impose such an obligation upon media service providers established in another member State which targets audiences in its territory.<sup>472</sup>

4.350. Sixthly, the revised AVMSD introduces more flexibility regarding restrictions on television advertising. For example, the current limitation of advertising of 12 minutes per hour is replaced with an overall limit of 20% of broadcasting time between 6am and 6pm and between 6pm and midnight.<sup>473</sup>

4.351. Finally, the revised AVMSD requires member States to establish national regulatory authorities or bodies, which must be legally distinct from the Government, and to ensure that such authorities or bodies exercise their powers impartially, transparently, and in accordance with the objectives of the AVMSD. The national regulatory authorities or bodies must provide to each other and the Commission information necessary for the application of the AVMSD. At the EU level, the revised AVMSD established the ERGA, a new body composed of representatives of the national regulatory bodies or authorities with primary responsibility for overseeing audiovisual media services. ERGA's tasks are to provide technical expertise to the European Commission, to exchange experience and best practice on the application of the regulatory framework for audiovisual media services, to cooperate and provide its members with the information necessary for the application of the AVMSD, and to give opinions at the request of the Commission on certain matters under the AVMSD.<sup>474</sup>

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<sup>467</sup> Directive 2010/13/EU, as amended, Art. 28(a).

<sup>468</sup> The revised AVMSD provides guidance on what constitute "appropriate measures" in this context. It identifies several factors to be taken into account when determining what are appropriate measures, and lists specific examples of such measures. It also provides that appropriate measures may not include any *ex ante* control measures or upload filtering of content. Directive 2010/13/EU, as amended, Art. 28(b)(3).

<sup>469</sup> Directive 2010/13/EU, as amended, Art. 28(b).

<sup>470</sup> Directive 2010/13/EU, as amended, Art. 28(b) para. 2 and para. 3(b) and (c).

<sup>471</sup> The revised AVMSD does not change the existing provisions on European content as they apply to television broadcasting.

<sup>472</sup> Directive 2010/13/EU, as amended, Art. 13.

<sup>473</sup> Directive 2010/13/EU, as amended, Art. 23.

<sup>474</sup> Directive 2010/13/EU, as amended, Art. 30.

## 5 APPENDIX TABLES

Table A1.1 Selected economic indicators, 2015-18

	Inflation rate (HICP - annual average rate of change), %				Unemployment rate (% of labour force)				General government gross debt (% of GDP)				General government deficit/surplus (% of GDP)				Current account balance (% of GDP) <sup>a</sup>			
	2015	2016	2017	2018	2015	2016	2017	2018	2015	2016	2017	2018	2015	2016	2017	2018	2015	2016	2017	2018
<b>EU-28</b>	0.1	0.2	1.7	1.9	9.4	8.6	7.6	6.8	84.9	83.8	82.1	80.4	-2.4	-1.7	-1.0	-0.7	0.9	1.4	1.3	1.3
Austria	0.8	1.0	2.2	2.1	5.7	6.0	5.5	4.9	84.9	82.9	78.3	74.0	-1.0	-1.5	-0.7	0.2	1.7	2.7	1.6	2.3
Belgium	0.6	1.8	2.2	2.3	8.5	7.8	7.1	6.0	105.2	104.9	101.8	100.0	-2.4	-2.4	-0.7	-0.7	1.4	0.6	1.2	-1.0
Bulgaria	-1.1	-1.3	1.2	2.6	9.2	7.6	6.2	5.2	26.0	29.3	25.3	22.3	-1.7	0.1	1.1	1.8	0.1	3.2	3.5	5.4
Croatia	-0.3	-0.6	1.3	1.6	16.1	13.4	11.0	8.4	84.4	81.0	78.0	74.8	-3.3	-1.1	0.8	0.3	3.2	2.0	3.3	1.9
Cyprus	-1.5	-1.2	0.7	0.8	15.0	13.0	11.1	8.4	107.5	103.4	93.9	100.6	-1.0	0.1	1.7	-4.4	-0.6	-4.3	-5.2	-4.5
Czech Republic	0.3	0.6	2.4	2.0	5.1	4.0	2.9	2.2	40.0	36.8	34.7	32.6	-0.6	0.7	1.6	1.1	0.2	1.6	1.7	0.3
Denmark	0.2	0.0	1.1	0.7	6.3	6.0	5.8	5.1	39.8	37.2	35.5	34.2	-1.2	0.2	1.7	0.8	8.2	7.8	7.7	7.1
Estonia	0.1	0.8	3.7	3.4	6.2	6.8	5.8	5.4	10.0	10.2	9.3	8.4	0.1	-0.5	-0.8	-0.6	1.8	1.7	2.7	2.0
Finland	-0.2	0.4	0.8	1.2	9.4	8.8	8.6	7.4	63.0	62.6	60.9	59.0	-2.4	-1.7	-0.7	-0.8	-0.9	-2.0	-0.8	-1.4
France	0.1	0.3	1.2	2.1	10.4	10.1	9.4	9.1	95.6	98.0	98.4	98.4	-3.6	-3.5	-2.8	-2.5	-0.4	-0.5	-0.7	-0.6
Germany	0.7	0.4	1.7	1.9	4.6	4.1	3.8	3.4	72.1	69.2	65.3	61.9	0.9	1.2	1.2	1.9	8.5	8.4	8.0	7.2
Greece	-1.1	0.0	1.1	0.8	24.9	23.6	21.5	19.3	175.9	178.5	176.2	181.2	-5.6	0.5	0.7	1.0	-0.8	-1.7	-1.9	-2.8
Hungary	0.1	0.4	2.4	2.9	6.8	5.1	4.2	3.7	76.1	75.5	72.9	70.2	-2.0	-1.8	-2.4	-2.3	2.4	4.6	2.3	-0.5
Ireland	0.0	-0.2	0.3	0.7	10.0	8.4	6.7	5.8	76.7	73.9	67.8	63.6	-1.9	-0.7	-0.3	0.1	4.4	-4.2	0.5	10.8
Italy	0.1	-0.1	1.3	1.2	11.9	11.7	11.2	10.6	135.3	134.8	134.1	134.8	-2.6	-2.4	-2.4	-2.2	1.4	2.6	2.7	2.6
Latvia	0.2	0.1	2.9	2.6	9.9	9.6	8.7	7.4	36.7	40.2	38.6	36.4	-1.4	0.1	-0.5	-0.7	-0.9	1.4	1.0	-0.7
Lithuania	-0.7	0.7	3.7	2.5	9.1	7.9	7.1	6.2	42.7	39.9	39.3	34.1	-0.3	0.2	0.5	0.6	-2.4	-1.1	0.5	0.3
Luxembourg	0.1	0.0	2.1	2.0	6.5	6.3	5.6	5.5	22.0	20.1	22.3	21.0	1.4	1.8	1.4	2.7	5.1	5.1	5.0	4.9
Malta	1.2	0.9	1.3	1.7	5.4	4.7	4.0	3.7	57.8	55.5	50.3	45.8	-1.0	0.9	3.4	1.9	2.8	3.8	11.4	11.4
Netherlands	0.2	0.1	1.3	1.6	6.9	6.0	4.9	3.8	64.6	61.9	56.9	52.4	-2.0	0.0	1.3	1.5	6.3	8.1	10.8	10.9
Poland	-0.7	-0.2	1.6	1.2	7.5	6.2	4.9	3.9	51.3	54.2	50.6	48.9	-2.6	-2.4	-1.5	-0.2	-0.6	-0.5	0.1	-1.0
Portugal	0.5	0.6	1.6	1.2	12.6	11.2	9.0	7.0	131.2	131.5	126.0	122.2	-4.4	-1.9	-3.0	-0.4	0.1	1.1	1.2	0.4
Romania	-0.4	-1.1	1.1	4.1	6.8	5.9	4.9	4.2	37.8	37.3	35.1	35.0	-0.6	-2.6	-2.6	-3.0	-1.2	-2.1	-3.2	-4.6
Slovak Republic	-0.3	-0.5	1.4	2.5	11.5	9.7	8.1	6.5	51.9	52.0	51.3	49.4	-2.7	-2.5	-1.0	-1.1	-2.1	-2.7	-1.9	-2.6
Slovenia	-0.8	-0.2	1.6	1.9	9.0	8.0	6.6	5.1	82.6	78.7	74.1	70.4	-2.8	-1.9	0.0	0.8	3.8	4.8	6.1	5.6

	Inflation rate (HICP - annual average rate of change), %				Unemployment rate (% of labour force)				General government gross debt (% of GDP)				General government deficit/surplus (% of GDP)				Current account balance (% of GDP) <sup>a</sup>			
	2015	2016	2017	2018	2015	2016	2017	2018	2015	2016	2017	2018	2015	2016	2017	2018	2015	2016	2017	2018
Spain	-0.6	-0.3	2.0	1.7	22.1	19.6	17.2	15.3	99.3	99.2	98.6	97.6	-5.2	-4.3	-3.0	-2.5	2.0	3.2	2.7	1.9
Sweden	0.7	1.1	1.9	2.0	7.4	6.9	6.7	6.3	43.9	42.3	40.7	38.8	0.0	1.0	1.4	0.8	4.2	3.8	2.8	1.7
United Kingdom	0.0	0.7	2.7	2.5	5.3	4.8	4.3	4.0	86.9	86.8	86.2	85.9	-4.6	-3.4	-2.4	-2.3	-5.0	-5.3	-3.5	-4.4

a EU-28 with the extra-EU countries. Each member State with all other countries (including other EU countries).

Source: Eurostat, *Harmonized indices of consumer prices (prc\_hicp\_aind)*. Viewed at: <https://ec.europa.eu/eurostat/web/hicp/data/database>; *Employment and unemployment (une\_rt\_a)*. Viewed at: <https://ec.europa.eu/eurostat/web/lfs/data/database>; General government deficit/surplus (tec00127). Viewed at: <http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=tec00127&lang=en>; General government gross debt (sdg\_17\_40). Viewed at: [http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=sdg\\_17\\_40&lang=en](http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=sdg_17_40&lang=en); and *Balance of Payments (bop\_gdp6\_q)*. Viewed at: <https://ec.europa.eu/eurostat/web/balance-of-payments/data/database>.

**Table A1.2 Extra-EU merchandise exports by product group, 2015-18**

	2015	2016	2017	2018
<b>Total (EUR billion)</b>	<b>1,790.4</b>	<b>1,745.4</b>	<b>1,878.4</b>	<b>1,956.4</b>
	(% of total)			
<b>Primary products</b>	<b>14.8</b>	<b>14.6</b>	<b>15.7</b>	<b>16.1</b>
Agriculture	7.9	8.3	8.2	7.8
Food	6.6	7.0	6.8	6.5
Agricultural raw materials	1.3	1.3	1.3	1.3
Mining	6.9	6.3	7.6	8.3
Fuels	4.8	4.3	5.3	5.9
Non-ferrous metals	1.3	1.2	1.3	1.4
Ores and other minerals	0.8	0.8	0.9	1.0
<b>Manufactures</b>	<b>80.7</b>	<b>81.9</b>	<b>81.0</b>	<b>80.4</b>
Iron and steel	1.9	1.7	1.7	1.8
Chemicals	17.6	17.9	17.7	18.2
Organic chemicals	2.7	2.7	2.4	2.5
Pharmaceuticals	8.0	8.2	8.3	8.6
Plastics	2.2	2.2	2.2	2.2
Essential oils and resinoids and perfume materials	1.6	1.7	1.7	1.7
Fertilizers	0.2	0.2	0.2	0.2
Other chemicals	2.9	2.9	3.0	2.9
Other semi-manufactures	6.9	7.0	6.8	6.6
Machinery and transport equipment	42.1	42.7	42.3	41.4
Office machines and telecommunications equipment	4.3	4.5	4.4	4.2
Electronic data processing and office equipment	1.3	1.3	1.2	1.2
Integrated circuits and electronic components	1.0	1.3	1.3	1.2
Telecommunication equipment	2.0	1.9	1.9	1.8
Transport equipment	18.0	18.3	17.7	17.0
Automotive products	11.5	11.6	11.5	10.9
Other transport equipment	6.4	6.7	6.2	6.1
Other machinery	19.8	19.9	20.2	20.1
Power generating machines	3.1	3.3	3.3	3.3
Other non-electrical machinery	12.1	11.9	12.1	12.1
Other electrical machines	4.6	4.8	4.8	4.8
Textiles	1.0	1.0	1.0	1.0
Clothing	1.4	1.4	1.5	1.5
Other consumer goods	9.8	10.2	10.1	10.0
<b>Other</b>	<b>4.5</b>	<b>3.6</b>	<b>3.2</b>	<b>3.5</b>

Source: Eurostat, *International trade in goods*. Viewed at: <https://ec.europa.eu/eurostat/web/international-trade-in-goods/data/database>.



**Table A1.3 Extra-EU merchandise exports by destination, 2015-18**

	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>
<b>Total (EUR billion)</b>	<b>1,790.4</b>	<b>1,745.4</b>	<b>1,878.4</b>	<b>1,956.4</b>
	(% of total)			
<b>Americas</b>	<b>29.5</b>	<b>29.4</b>	<b>28.5</b>	<b>29.4</b>
United States	20.7	20.8	20.0	20.8
Other America	8.7	8.5	8.5	8.6
Canada	2.0	2.0	2.0	2.1
Mexico	1.9	1.9	2.0	2.0
Brazil	1.9	1.8	1.7	1.7
<b>Europe</b>	<b>17.5</b>	<b>17.5</b>	<b>17.5</b>	<b>17.2</b>
EFTA	11.3	11.2	10.9	11.0
Switzerland	8.5	8.2	8.1	8.1
Norway	2.7	2.8	2.7	2.8
Other Europe	6.2	6.3	6.6	6.2
Turkey	4.4	4.5	4.5	3.9
<b>Commonwealth of independent states (CIS)</b>	<b>6.2</b>	<b>6.2</b>	<b>6.8</b>	<b>6.7</b>
Russian Federation	4.1	4.1	4.6	4.4
Ukraine	0.8	0.9	1.1	1.1
<b>Africa</b>	<b>8.7</b>	<b>8.3</b>	<b>8.0</b>	<b>7.8</b>
South Africa	1.4	1.3	1.3	1.2
Morocco	1.0	1.2	1.2	1.2
<b>Middle East</b>	<b>8.6</b>	<b>8.3</b>	<b>7.9</b>	<b>7.0</b>
United Arab Emirates	2.7	2.6	2.3	1.9
Saudi Arabia, Kingdom of	2.2	1.9	1.8	1.6
Israel	1.1	1.2	1.1	1.1
<b>Asia</b>	<b>27.9</b>	<b>28.7</b>	<b>29.6</b>	<b>29.8</b>
China	9.5	9.7	10.5	10.7
Japan	3.2	3.3	3.2	3.3
Other Asia	15.3	15.7	15.8	15.8
Korea, Republic of	2.7	2.5	2.7	2.5
India	2.1	2.2	2.2	2.3
Singapore	1.7	1.8	1.8	1.9
Hong Kong, China	2.0	2.0	2.0	1.9
Australia	1.8	1.9	1.8	1.8
Chinese Taipei	1.0	1.1	1.1	1.1
<b>Other</b>	<b>1.7</b>	<b>1.5</b>	<b>1.8</b>	<b>2.1</b>

Source: Eurostat, *International trade in goods*. Viewed at: <https://ec.europa.eu/eurostat/web/international-trade-in-goods/data/database>.

**Table A1.4 Extra-EU merchandise imports by product group, 2015-18**

	2015	2016	2017	2018
<b>Total (EUR billion)</b>	<b>1,725.2</b>	<b>1,706.5</b>	<b>1,855.3</b>	<b>1,979.2</b>
	(% of total)			
<b>Primary products</b>	<b>31.6</b>	<b>27.9</b>	<b>30.5</b>	<b>32.9</b>
Agriculture	8.7	8.8	8.5	8.0
Food	7.3	7.4	7.1	6.6
Agricultural raw materials	1.4	1.4	1.4	1.4
Mining	22.9	19.1	22.0	24.9
Fuels	19.0	15.5	18.0	20.8
Non-ferrous metals	2.1	2.0	2.2	2.3
Ores and other minerals	1.8	1.6	1.8	1.8
<b>Manufactures</b>	<b>65.7</b>	<b>67.3</b>	<b>66.0</b>	<b>64.3</b>
Iron and steel	1.7	1.6	1.9	2.0
Chemicals	10.8	10.8	10.6	10.3
Organic chemicals	2.6	2.5	2.4	2.4
Pharmaceuticals	4.2	4.4	4.2	3.9
Plastics	1.3	1.4	1.4	1.4
Essential oils and resinoids and perfume materials	0.5	0.6	0.5	0.5
Fertilizers	0.3	0.2	0.2	0.2
Other chemicals	1.8	1.8	1.8	1.8
Other semi-manufactures	5.4	5.5	5.3	5.2
Machinery and transport equipment	30.9	32.2	32.0	31.3
Office machines and telecommunications equipment	11.7	11.4	11.5	11.2
Electronic data processing and office equipment	4.4	4.1	4.0	3.8
Integrated circuits and electronic components	1.5	1.5	1.8	1.9
Telecommunication equipment	5.8	5.8	5.7	5.5
Transport equipment	7.5	8.5	8.3	7.7
Automotive products	3.8	4.3	4.5	4.4
Other transport equipment	3.7	4.2	3.9	3.3
Other machinery	11.7	12.2	12.2	12.4
Power generating machines	2.4	2.6	2.6	2.7
Other non-electrical machinery	4.7	4.8	4.7	4.8
Other electrical machines	4.7	4.9	4.8	4.9
Textiles	1.5	1.6	1.5	1.4
Clothing	5.0	5.1	4.7	4.5
Other consumer goods	10.5	10.6	10.1	9.6
<b>Other</b>	<b>2.7</b>	<b>4.9</b>	<b>3.5</b>	<b>2.8</b>

Source: Eurostat, *International trade in goods*. Viewed at: <https://ec.europa.eu/eurostat/web/international-trade-in-goods/data/database>.

**Table A1.5 Extra-EU merchandise imports by origin, 2015-18**

	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>
<b>Total (EUR billion)</b>	<b>1,725.2</b>	<b>1,706.5</b>	<b>1,855.3</b>	<b>1,979.2</b>
	(% of total)			
<b>Americas</b>	<b>21.8</b>	<b>21.9</b>	<b>21.1</b>	<b>20.5</b>
United States	14.5	14.6	13.9	13.6
Other America	7.3	7.3	7.3	6.9
Brazil	1.8	1.7	1.7	1.6
Canada	1.6	1.7	1.7	1.6
Mexico	1.1	1.2	1.3	1.3
<b>Europe</b>	<b>15.0</b>	<b>16.1</b>	<b>15.1</b>	<b>15.0</b>
EFTA	10.5	11.1	10.2	10.0
Switzerland	6.0	7.2	6.0	5.6
Norway	4.3	3.7	4.0	4.2
Other Europe	4.6	5.0	4.9	5.0
Turkey	3.6	3.9	3.8	3.8
<b>Commonwealth of independent states (CIS)</b>	<b>10.6</b>	<b>9.3</b>	<b>10.5</b>	<b>11.5</b>
Russian Federation	7.9	7.0	7.8	8.5
Kazakhstan	0.9	0.7	0.9	1.1
Ukraine	0.7	0.8	0.9	0.9
<b>Africa</b>	<b>7.7</b>	<b>6.8</b>	<b>7.1</b>	<b>7.7</b>
South Africa	1.1	1.3	1.2	1.2
Nigeria	1.1	0.6	0.8	1.2
Algeria	1.2	1.0	1.0	1.1
<b>Middle East</b>	<b>4.1</b>	<b>4.0</b>	<b>4.5</b>	<b>4.8</b>
Saudi Arabia, Kingdom of	1.2	1.1	1.2	1.5
<b>Asia</b>	<b>40.0</b>	<b>41.2</b>	<b>40.9</b>	<b>39.7</b>
China	20.3	20.6	20.2	19.9
Japan	3.5	3.9	3.7	3.5
Other Asia	16.1	16.7	16.9	16.2
Korea, Republic of	2.4	2.4	2.7	2.5
India	2.3	2.3	2.4	2.3
Viet Nam	1.7	1.9	2.0	1.9
Chinese Taipei	1.5	1.6	1.6	1.5
Malaysia	1.3	1.3	1.3	1.3
Thailand	1.1	1.2	1.2	1.2
Singapore	1.1	1.1	1.1	1.1
<b>Other</b>	<b>0.8</b>	<b>0.8</b>	<b>0.8</b>	<b>0.9</b>

Source: Eurostat, *International trade in goods*. Viewed at: <https://ec.europa.eu/eurostat/web/international-trade-in-goods/data/database>.

Table A1.6 Intra- and extra-EU merchandise trade by member State, 2015-18

	Intra-and extra-EU trade (%)							
	2015		2016		2017		2018	
	Extra-EU-28	Intra-EU-28	Extra-EU-28	Intra-EU-28	Extra-EU-28	Intra-EU-28	Extra-EU-28	Intra-EU-28
<b>Export</b>								
<b>EU-28</b>	<b>36.8</b>	<b>63.2</b>	<b>35.9</b>	<b>64.1</b>	<b>35.9</b>	<b>64.1</b>	<b>35.7</b>	<b>64.3</b>
Austria	29.9	70.1	29.4	70.6	28.8	71.2	28.6	71.4
Belgium	28.3	71.7	28.0	72.0	27.8	72.2	27.1	72.9
Bulgaria	35.1	64.9	33.7	66.3	36.4	63.6	31.4	68.6
Croatia	34.1	65.9	34.5	65.5	36.0	64.0	32.2	67.8
Cyprus	55.8	44.2	51.4	48.6	61.7	38.3	71.4	28.6
Czech Republic	16.7	83.3	16.4	83.6	16.1	83.9	15.6	84.4
Denmark	38.7	61.3	38.3	61.7	38.2	61.8	38.9	61.1
Estonia	24.8	75.2	26.1	73.9	28.2	71.8	32.0	68.0
Finland	41.1	58.9	41.4	58.6	40.5	59.5	41.0	59.0
France	41.1	58.9	40.6	59.4	41.2	58.8	41.0	59.0
Germany	42.1	57.9	41.5	58.5	41.5	58.5	41.0	59.0
Greece	45.5	54.5	43.7	56.3	46.3	53.7	47.2	52.8
Hungary	18.7	81.3	18.6	81.4	18.8	81.2	18.2	81.8
Ireland	47.0	53.0	49.8	50.2	48.9	51.1	49.8	50.2
Italy	45.2	54.8	44.1	55.9	44.3	55.7	43.7	56.3
Latvia	30.4	69.6	30.0	70.0	33.2	66.8	33.3	66.7
Lithuania	38.7	61.3	39.3	60.7	41.7	58.3	41.2	58.8
Luxembourg	16.0	84.0	17.2	82.8	15.7	84.3	15.8	84.2
Malta	54.2	45.8	57.7	42.3	43.5	56.5	42.3	57.7
Netherlands	24.2	75.8	23.9	76.1	24.7	75.3	25.6	74.4
Poland	20.7	79.3	20.3	79.7	20.0	80.0	19.7	80.3
Portugal	27.3	72.7	24.9	75.1	25.9	74.1	23.9	76.1
Romania	26.3	73.7	24.9	75.1	24.2	75.8	22.9	77.1
Slovak Republic	14.5	85.5	14.5	85.5	14.3	85.7	14.3	85.7
Slovenia	24.0	76.0	24.7	75.3	24.3	75.7	23.7	76.3
Spain	34.9	65.1	33.2	66.8	33.7	66.3	33.8	66.2
Sweden	41.5	58.5	40.9	59.1	40.9	59.1	40.5	59.5
United Kingdom	55.6	44.4	52.6	47.4	52.3	47.7	52.9	47.1
<b>Import</b>								
<b>EU-28</b>	<b>36.5</b>	<b>63.5</b>	<b>35.9</b>	<b>64.1</b>	<b>36.1</b>	<b>63.9</b>	<b>36.5</b>	<b>63.5</b>
Austria	23.2	76.8	22.0	78.0	22.7	77.3	22.4	77.6
Belgium	37.2	62.8	36.2	63.8	35.5	64.5	35.7	64.3
Bulgaria	35.7	64.3	33.6	66.4	36.0	64.0	36.4	63.6
Croatia	22.3	77.7	23.1	76.9	22.3	77.7	22.3	77.7
Cyprus	36.5	63.5	33.8	66.2	39.3	60.7	42.6	57.4
Czech Republic	22.7	77.3	21.2	78.8	22.0	78.0	23.5	76.5
Denmark	30.5	69.5	28.7	71.3	30.2	69.8	30.0	70.0
Estonia	18.4	81.6	18.2	81.8	19.0	81.0	23.4	76.6
Finland	27.0	73.0	27.0	73.0	28.3	71.7	29.8	70.2
France	30.9	69.1	30.1	69.9	30.4	69.6	30.9	69.1
Germany	34.4	65.6	33.7	66.3	33.7	66.3	33.6	66.4
Greece	45.3	54.7	42.9	57.1	45.5	54.5	47.5	52.5
Hungary	23.4	76.6	22.3	77.7	23.9	76.1	25.2	74.8
Ireland	33.9	66.1	34.5	65.5	34.4	65.6	36.1	63.9
Italy	41.3	58.7	39.2	60.8	39.8	60.2	41.0	59.0
Latvia	20.7	79.3	19.6	80.4	21.4	78.6	25.2	74.8
Lithuania	32.3	67.7	28.9	71.1	29.4	70.6	31.1	68.9
Luxembourg	27.8	72.2	22.6	77.4	16.8	83.2	12.3	87.7
Malta	33.2	66.8	44.5	55.5	37.8	62.2	27.8	72.2
Netherlands	54.2	45.8	53.1	46.9	54.0	46.0	54.2	45.8
Poland	29.3	70.7	27.6	72.4	28.3	71.7	30.7	69.3
Portugal	23.5	76.5	22.2	77.8	23.7	76.3	24.2	75.8
Romania	22.8	77.2	22.9	77.1	24.2	75.8	25.3	74.7
Slovak Republic	21.3	78.7	19.8	80.2	20.2	79.8	19.8	80.2
Slovenia	30.0	70.0	29.1	70.9	30.6	69.4	32.8	67.2
Spain	39.3	60.7	38.1	61.9	40.3	59.7	41.6	58.4
Sweden	30.0	70.0	28.9	71.1	28.5	71.5	29.8	70.2
United Kingdom	46.4	53.6	49.5	50.5	48.1	51.9	47.2	52.8

Source: Eurostat, *International trade in goods*. Viewed at: <https://ec.europa.eu/eurostat/web/international-trade-in-goods/data/database>.

**Table A2.1 European Union, Selected notifications to the WTO, March 2017-September 2019**

WTO agreement	Description	Document symbol	Date
<b>Agreement on Agriculture</b>			
Articles 10 and 18.2	Food Aid (Table ES:3) Export subsidies (Tables ES:1 and ES:2)	G/AG/N/EU/53 G/AG/N/EU/52 G/AG/N/EU/51 G/AG/N/EU/45 G/AG/N/EU/44 G/AG/N/EU/38	22/02/2019 22/02/2019 22/02/2019 30/04/2018 30/04/2018 25/04/2017
Article 16.2	Possible negative effects of the reform programme on least developed and net food-importing developing countries (Table NF:1)	G/AG/N/EU/54 G/AG/N/EU/49 G/AG/N/EU/42	09/04/2019 07/01/2019 28/02/2018
Article 18.2	Domestic support commitments (Table DS:1)	G/AG/N/EU/55 G/AG/N/EU/46 G/AG/N/EU/43	12/04/2019 23/08/2018 05/03/2018
Article 18.2	Imports under tariff quotas (Table MA:2)	G/AG/N/EU/50 G/AG/N/EU/48 G/AG/N/EU/41 G/AG/N/EU/40 G/AG/N/EU/37	22/02/2019 30/10/2018 05/02/2019 15/11/2017 17/03/2017
Articles 5.7 and 18.2	Use of special safeguard provisions (Table MA:5)	G/AG/N/EU/56 G/AG/N/EU/47 G/AG/N/EU/39 G/AG/N/EU/36	24/09/2019 30/10/2018 04/10/2017 20/03/2017
<b>General Agreement on Trade in Services</b>			
Article III:4 and/or IV:2	Contact and enquiry points	S/ENQ/78/Rev.19 S/ENQ/78/Rev.18 S/ENQ/78/Rev.17	29/08/2019 01/02/2019 07/06/2018
Article V:7(a)	Economic integration agreements: EU-Armenia; EU-Japan; EU-Canada; EU-Colombia, Peru and Ecuador	S/C/N/959 S/C/N/921 S/C/N/896 S/C/N/876	26/08/2019 14/01/2019 21/09/2017 03/03/2017
<b>GATT 1994</b>			
Article XVII:4(a)	State trading enterprises and products traded by them	G/STR/N/17/EU	12/07/2018
Article XXIV:7(a)	Free-trade areas: EU-Japan EU-Botswana, Lesotho, Mozambique, Namibia, South Africa and Swaziland  EU-Canada EU-EU-Ghana EU-Colombia, Ecuador and Peru	WT/REG396/N/1  WT/REG381/N/1/Add.1 WT/REG381/N/1 WT/REG389/N/1 WT/REG382/N/1 WT/REG380/N/1	14/01/2019  12/02/2018 04/04/2017 21/09/2017 04/04/2017 03/03/2017
<b>Agreement on the Implementation of Article VI of the GATT 1994 (Anti-dumping Agreement)</b>			
Article 16.4	Anti-dumping actions (preliminary and final)	G/ADP/N/327 G/ADP/N/320 G/ADP/N/306 G/ADP/N/299	29/05/2019 29/11/2018 14/12/2017 31/05/2017
Article 16.4	Anti-dumping actions (taken within the preceding six months)	G/ADP/N/322/EU G/ADP/N/314/EU G/ADP/N/308/EU G/ADP/N/300/EU G/ADP/N/294/EU	04/04/2019 23/10/2018 29/03/2018 19/10/2017 11/04/2017
Article 18.5	New or changes to laws or regulations relevant to the Agreement and the administration of such laws and regulations	G/ADP/N/1/EU/3/Suppl.3 G/ADP/N/1/EU/3/Suppl.2 G/ADP/N/1/EU/3/Suppl.1	02/07/2018 23/01/2018 18/04/2017

WTO agreement	Description	Document symbol	Date
<b>Agreement on Government Procurement</b>			
Appendix	Procurement thresholds	GPA/THR/EU/1	17/04/2018
Article XIX:5	Statistics	GPA/123/Add.7	03/07/2017
<b>Agreement on Import Licensing</b>			
Articles 1.4(a), 5, 7.3 and/or 8.2(b)	Import licensing procedures	G/LIC/N/1/EU/12 G/LIC/N/2/EU/12 G/LIC/N/2/EU/11	G/LIC/N/1/EU/11 21/06/2018 21/06/2018 10/08/2017 10/08/2017
	Questionnaire	G/LIC/N/3/EU/8 G/LIC/N/3/EU/7 G/LIC/N/3/EU/6	25/09/2019 03/10/2018 03/10/2017
<b>Decision on Notification Procedures for Quantitative Restrictions</b>			
G/L/59/Rev.1	Quantitative restrictions	G/MA/QR/N/EU/4	28/09/2018
<b>Agreement on Rules of Origin</b>			
Paragraph 4 of Annex II	Preferential rules of origin EU-Japan EU-Canada EU-Ghana EU-Botswana, Lesotho, Mozambique, Namibia, South Africa and Swaziland EU-Colombia, Ecuador and Peru	G/RO/N/184 G/RO/N/169 G/RO/N/159  G/RO/N/158 G/RO/N/157	15/04/2019 24/05/2018 21/07/2017  21/07/2017 21/07/2017
WT/L/917/Add.1 (Paragraph 4.3 of the 2015 Ministerial Decision)	Preferential rules of origin for LDCs	G/RI/LDC/N/EU/1	30/06/2017
<b>Agreement on Subsidies and Countervailing Measures</b>			
Article 25.1	Subsidies	G/SCM/N/343/EU/Add.25/Rev.1 G/SCM/N/343/EU/Add.11, 16 and 27 G/SCM/N/343/EU/Add. 24 G/SCM/N/343/EU/Add.4 and 7 G/SCM/N/343/EU and Add.17 G/SCM/N/343/EU/Add.12, 22 and 28 G/SCM/N/343/EU/Add.8 and 13 G/SCM/N/343/EU/Add.3 G/SCM/N/315/EU/Add.1 G/SCM/N/315/EU/Add.23 G/SCM/N/315/EU/Add.15 G/SCM/N/315/EU/Add.22 G/SCM/N/315/EU/Add.2, G/SCM/N/315/EU/Add.7, G/SCM/N/315/EU/Add.3 G/SCM/N/315/EU/Add.11 and 18 G/SCM/N/315/EU/Add.19 G/SCM/N/315/EU/Add.21, 27 and 28 G/SCM/N/315/EU/Add.14, 16, 20, 24, 25 and 26, G/SCM/N/315/EU/Add.17 G/SCM/N/315/EU/Add.13 G/SCM/N/315/EU/Add.9 G/SCM/N/315/EU/Add.8, 10 and 12, G/SCM/N/315/EU/Add.6, G/SCM/N/315/EU/Add.5 G/SCM/N/315/EU and Add.4 G/SCM/N/284/EU/Add.1 G/SCM/N/284/EU/Add.25	19/09/2019 18/09/2019 17/09/2019 16/09/2019 13/09/2019 10/09/2019 13/08/2019 09/08/2019 11/04/2019 20/03/2018 28/02/2018 23/02/2018 04/10/2017 04/09/2017 01/09/2017 30/08/2017 28/07/2017 25/07/2017 24/07/2017  21/07/2017 20/07/2017 19/07/2017 17/07/2017 14/07/2017 12/07/2017 11/07/2017 05/05/2017 31/03/2017
Article 25.11	Countervailing duty actions (preliminary and final)	G/SCM/N/348 G/SCM/N/332 G/SCM/N/326	29/05/2019 12/04/2018 09/11/2017
	Countervailing duty actions (taken within the preceding six months)	G/SCM/N/342/EU G/SCM/N/334/EU G/SCM/N/328/EU G/SCM/N/321/EU G/SCM/N/313/EU	16/04/2019 04/10/2018 28/03/2018 19/10/2017 13/04/2017
Article 32.6	Laws and regulations	G/SCM/N/1/EU/2/Suppl.3 G/SCM/N/1/EU/2/Suppl.2 G/SCM/N/1/EU/2/Suppl.1	02/07/2018 23/01/2018 24/04/2017

WTO agreement	Description	Document symbol	Date
<b>Agreement on Trade Related Aspects of Intellectual Property Rights</b>			
Article 63.2	Laws and regulations	IP/N/1/EU/23-IP/N/1/EU/G/10 IP/N/1/EU/22-IP/N/1/EU/G/9, IP/N/1/EU/21-IP/N/1/EU/E/4 IP/N/1/EU/20-IP/N/1/EU/E/3 IP/N/1/EU/19-IP/N/1/EU/E/2 IP/N/1/EU/18-IP/N/1/EU/U/5 IP/N/1/EU/17-IP/N/1/EU/U/4 IP/N/1/EU/16-IP/N/1/EU/P/9 IP/N/1/EU/15-IP/N/1/EU/G/8 IP/N/1/EU/14-IP/N/1/EU/G/7 IP/N/1/EU/13-IP/N/1/EU/G/6 IP/N/1/EU/12-IP/N/1/EU/G/5 IP/N/1/EU/11-IP/N/1/EU/G/4 IP/N/1/EU/10-IP/N/1/EU/T/9 IP/N/1/EU/9-IP/N/1/EU/T/8 IP/N/1/EU/8-IP/N/1/EU/T/7 IP/N/1/EU/7-IP/N/1/EU/C/10	26/03/2019 26/03/2019 04/05/2017 04/05/2017 04/05/2017 04/05/2017 04/05/2017 04/05/2017 04/05/2017 04/05/2017 04/05/2017 04/05/2017 04/05/2017 04/05/2017 04/05/2017 04/05/2017 04/05/2017 04/05/2017 04/05/2017
<b>Agreement on Safeguards</b>			
Article 12.1	Initiation of investigations or reviews, injury determinations and decisions to apply, extend or adjust a safeguard measure	G/SG/N/10/EU/1/Suppl.3 G/SG/N/10/EU/1/Suppl.2 G/SG/N/10/EU/1/Suppl.1 G/SG/N/10/EU/1 G/SG/N/6/EU/1/Suppl.1 G/SG/N/6/EU/1	15/08/2019 21/05/2019 07/02/2019 04/01/2019 29/06/2018 27/03/2018
Article 12.4	Provisional measures	G/SG/N/7/EU/1	18/07/2018
Article 12.5	Suspension of concessions	G/SG/N/12/EU/1	18/05/2018
<b>Agreement on Sanitary and Phytosanitary Measures</b>			
Article 7 and Annex B, paragraph 5	Proposed and adopted SPS regulations	228 notifications received. Viewed at <a href="http://spsims.wto.org">http://spsims.wto.org</a>	
<b>Trade Facilitation Agreement</b>			
Article 22	Notifications under Article 22	G/TFA/N/EU/2/Add.2 G/TFA/N/EU/2/Add.1 G/TFA/N/EU/2	14/06/2019 28/09/2018 20/07/2017
Articles 1, 10 and 12	Notifications under Articles 1, 10 and 12	G/TFA/N/EU/1/Rev.1 G/TFA/N/EU/1/Add.1 G/TFA/N/EU/1	21/03/2018 05/03/2018 20/07/2017
<b>Agreement on Technical Barriers to Trade</b>			
Articles 2.9 and 5.6	Proposed and adopted technical regulations and conformity assessment procedures	240 notifications received. Viewed at: <a href="http://tbtime.wto.org">http://tbtime.wto.org</a>	

Source: WTO Secretariat.

**Table A2.2 Involvement in WTO dispute settlement, March 2017-September 2019**

<b>Subject</b>	<b>Complainant/respondent</b>	<b>Date of request for consultations</b>	<b>Status as at 30 September 2019</b>	<b>WTO document series</b>
<b>EU as complainant</b>				
Certain measures on steel and aluminium products	EU/United States	01/06/2018	Panel composed	WT/DS548
Certain measures on the transfer of technology	EU/China	01/06/2018	In consultations	WT/DS549
Anti-dumping and countervailing duties on ripe olives from Spain	EU/United States	28/01/2019	Panel established but not yet composed	WT/DS577
Tariff treatment on certain goods in the information and communications technology sector	EU/India	02/04/2019	In consultations	WT/DS582
Certain measures concerning the production, importation and marketing of pharmaceutical products	EU/Turkey	02/04/2019	In consultations	WT/DS583
<b>EU as respondent</b>				
Additional duties on certain products from the United States	United States/EU	16/07/2018	Panel composed	WT/DS559

Source: WTO Secretariat.



**Table A2.3 Participation in RTAs (notified and non-notified in force), as at 30 September 2019**

RTA name	Date of entry into force	Coverage	GATT/WTO notification	
			Year	WTO provision
EU-Japan	01/02/19	Goods & Services	2019	GATT Art. XXIV & GATS Art. V
EU-Armenia	01/06/18	Services	2019	GATS Art. V
EU-Canada <sup>a</sup>	21/09/17	Goods & Services	2017	GATT Art. XXIV & GATS Art. V
EU-Colombia and Peru - Accession of Ecuador	01/01/17	Goods & Services	2017	GATT Art. XXIV & GATS Art. V
EU-Ghana	15/12/16	Goods	2017	GATT Art. XXIV
EU-SADC <sup>b</sup>	10/10/16	Goods	2017	GATT Art. XXIV
EU-Côte d'Ivoire	03/09/16	Goods	2008	GATT Art. XXIV
EU-Georgia	01/09/14	Goods & Services	2014	GATT Art. XXIV & GATS Art. V
EU-Republic of Moldova	01/09/14	Goods & Services	2014	GATT Art. XXIV & GATS Art. V
EU-Cameroon	04/08/14	Goods	2009	GATT Art. XXIV
EU-Ukraine	23/04/14	Goods & Services	2014	GATT Art. XXIV & GATS Art. V
EU-Central America <sup>c</sup>	01/08/13	Goods & Services	2013	GATT Art. XXIV & GATS Art. V
EU-Colombia and Peru	01/03/13	Goods & Services	2013	GATT Art. XXIV & GATS Art. V
EU-Eastern and Southern Africa States Interim EPA	14/05/12	Goods	2012	GATT Art. XXIV
EU-Republic of Korea	01/07/11	Goods & Services	2011	GATT Art. XXIV & GATS Art. V
EU-Serbia	01/02/10	Goods	2010	GATT Art. XXIV
	01/09/13	Services	2013	GATS Art. V
EU-Papua New Guinea / Fiji	20/12/09	Goods	2011	GATT Art. XXIV
EU-CARIFORUM States EPA	29/12/08	Goods & Services	2008	GATT Art. XXIV & GATS Art. V
EU-Bosnia and Herzegovina	01/07/08	Goods	2008	GATT Art. XXIV
	01/06/15	Services	2016	GATS Art. V
EU-Montenegro	01/01/08	Goods	2008	GATT Art. XXIV
	01/05/10	Services	2010	GATS Art. V
EU-Albania	01/12/06	Goods	2007	GATT Art. XXIV
	01/04/09	Services	2009	GATS Art. V
EU-Algeria	01/09/05	Goods	2006	GATT Art. XXIV
EU-Egypt	01/06/04	Goods	2004	GATT Art. XXIV
EU-Lebanon	01/03/03	Goods	2003	GATT Art. XXIV
EU-Chile	01/02/03	Goods	2004	GATT Art. XXIV
	01/03/05	Services	2005	GATS Art. V
EU-Jordan	01/05/02	Goods	2002	GATT Art. XXIV
EU-San Marino	01/04/02	Goods	2010	GATT Art. XXIV
EU-North Macedonia	01/06/01	Goods	2001	GATT Art. XXIV
	01/04/04	Services	2009	GATS Art. V
EU-Mexico	01/07/00	Goods	2000	GATT Art. XXIV
	01/10/00	Services	2002	GATS Art. V
EU-Israel	01/06/00	Goods	2000	GATT Art. XXIV
EU-Morocco	01/03/00	Goods	2000	GATT Art. XXIV
EU-South Africa	01/01/00	Goods	2000	GATT Art. XXIV
EU-Tunisia	01/03/98	Goods	1999	GATT Art. XXIV
EU-Palestinian Authority	01/07/97	Goods	1997	GATT Art. XXIV
EU-Faroe Islands	01/01/97	Goods	1997	GATT Art. XXIV
EU-Turkey	01/01/96	Goods	1995	GATT Art. XXIV
EEA	01/01/94	Services	1996	GATS Art. V
EU-Andorra	01/04/91	Goods	1998	GATT Art. XXIV
EU-Syria	01/07/77	Goods	1977	GATT Art. XXIV
EU-Norway	01/07/73	Goods	1973	GATT Art. XXIV
EU-Iceland	01/04/73	Goods	1972	GATT Art. XXIV

RTA name	Date of entry into force	Coverage	GATT/WTO notification	
			Year	WTO provision
EU-Switzerland-Liechtenstein	01/01/73	Goods	1972	GATT Art. XXIV
EU-Overseas Countries and Territories (OCT)	01/01/71	Goods	1970	GATT Art. XXIV
EU-Kosovo <sup>d</sup>	01/04/16	Goods	Not notified	

- a Starting date for provisional application.
- b The Agreement has been provisionally applied between Botswana, Eswatini, Lesotho, Namibia, South Africa and the EU as from 10 October 2016; and between Mozambique and the EU as from 4 February 2018. The Agreement will enter into force after it has been ratified by all the Parties.
- c The notifications made in February 2013 (see WTO documents WT/REG332/N/1 and S/C/N/680, 27 February 2013) stated that: "Provisional application of the Agreement by all signatory parties is expected in the course of the second quarter 2013"; further notifications to confirm the dates of entry into force between the EU and Central American countries are awaited.
- d All references to Kosovo in this report should be understood in the context of UNSC 1244 (1999).

Source: WTO Secretariat. Further information may be found in the WTO Database on RTAs. Viewed at: <http://rtais.wto.org>.

**Table A3.1 WTO TRQs, agricultural and non-agricultural products, 2018-19**

**Agricultural TRQs:**

HS code	Products	Quota size	Quota rate	Quota imports	Quota fill rate (%)	Legal basis
ex 0102 29	Live bovine animals	710 head (01.07.17-30.06.18)	6%	0 head	0.0%	Regulation 438/2009
ex 0102 29	Live bovine animals	711 head (01.07.17-30.06.18)	4%	0 head	0.0%	Regulation 438/2009
ex 0102 29	Live bovine animals	24,070 head (01.07.17-30.06.18)	16% EUR	0 head	0.0%	Regulation 438/2009
ex 0201 ex 0202 ex 0206 10 95 ex 0206 29 91	Meat of bovine animals, fresh or chilled Meat of bovine animals, frozen Edible offal: - Of bovine animals, fresh or chilled -- Thick skirt and thin skirt - Of bovine animals, frozen -- Thick skirt and thin skirt	37,950 t (product weight) (01.07.17-30.06.18)	20% 582/1,000kg/net	26,256 t	69.2%	Regulation 593/2013
0202 0206 29 91	Meat of bovine animals, frozen Edible offal - Of bovine animals, frozen -- Thick skirt and thin skirt, frozen	54,875 t (without bone) (01.07.17-30.06.18)	20%	54,875 t	100.0%	Regulation 593/2013
ex 0201 30 00 ex 0202 30 90	Meat of bovine animals, fresh or chilled, or frozen - Boneless -- Buffalo meat	200 t (without bone) (01.07.17-30.06.18)	20%	15 t	7.5%	Regulation 593/2013
ex 0202 30 90	Meat of bovine animals, frozen - Boneless -- Buffalo meat	2,250 t (without bone) (01.07.17-30.06.18)	20%	0 t	0.0%	Regulation 593/2013
ex 0202 20 30 ex 0202 30 ex 0206 29 91	Meat of bovine animals, frozen - Unseparated or separated forequarters - Boneless Edible offal - Of bovine animals, frozen -- Thick skirt and thin skirt	63,703 t (bone in) (01.07.17-30.06.18)	20% (*) or EUR 994.5/1,000kg/net (**)	788 t	1.2%	Regulation 593/2013

HS code	Products	Quota size	Quota rate	Quota imports	Quota fill rate (%)	Legal basis
ex 0206 29 91	Edible offal - Of bovine animals, frozen -- Thin skirt (whole)	1,500 t (01.07.17-30.06.18)	4%	0 t	0.0%	Regulation 593/2013
ex 0201 30 00	Boneless meat of bovine animals, fresh or chilled	12,500 t (01.07.17-30.06.18)	20%	11,866 t	94.9%	Regulation 593/2013
ex 0206 10 95	Edible offal of bovine animals: thick skirt and thin skirt, fresh or chilled					
ex 0201 30 00	Boneless meat of bovine animals, fresh or chilled	10,000 t (01.07.17-30.06.18)	20%	5,060 t	50.6%	
ex 0202 30 90	Boneless meat of bovine animals, frozen: - Other					Regulation 593/2013
ex 0206 10 95	Edible offal of bovine animals: - Thick skirt and thin skirt, fresh or chilled					
ex 0206 29 91	- Thick skirt and thin skirt, frozen					
ex 0201 30 00	Boneless meat of bovine animals, fresh or chilled	4,076 t (01.07.17-30.06.18)	20%	4,068 t	99.8%	
ex 0202 30 90	Boneless meat of bovine animals, frozen: - Other					Regulation 593/2013
ex 0206 10 95	Edible offal of bovine animals: - Thick skirt and thin skirt, fresh or chilled					
ex 0206 29 91	- Thick skirt and thin skirt, frozen					
ex 0201 20 90	Meat of bovine animals, fresh, or chilled: - Other cuts with bone in, other	1,300 t (01.07.17-30.06.18)	20%	1,119 t	86.1%	
ex 0202 30 00	- Boneless					
ex 0202 20 90	Meat of bovine animals, frozen: - Other cuts with bone in, other					Regulation 431/2008
ex 0202 30	- Boneless					
ex 0206 10 95	Thick and thin bovine skirt, fresh or chilled					
ex 0206 29 91	Thick and thin bovine skirt, frozen					
0203 11 10	Meat of swine	15,067 t (01.07.17-30.06.18)	EUR 268/1,000kg/net	0 t*	0.0%	Regulation 442/2009
0203 21 10	- Carcasses and half-carcasses of domestic swine, fresh, chilled and frozen					
0203 12 11	Meat of swine	10,759 t (01.07.17-30.06.18)	EUR 795/1,000 kg/net	781 t	7.3%	Regulation 442/2009
0203 12 19	- Cuts of domestic swine, fresh, chilled or frozen, with or without					
0203 19 11						

HS code	Products	Quota size	Quota rate	Quota imports	Quota fill rate (%)	Legal basis
0203 19 13 0203 19 15 ex 0203 19 55 0203 19 59 0203 22 11 0203 22 19 0203 29 11 0203 29 13 0203 29 15 ex 0203 29 55 0203 29 59	bone, excluding tenderloin presented alone					
ex 0203 19 55 ex 0203 29 55	Meat of swine - Boneless loins and hams, fresh or chilled - Boneless loins and hams, frozen	35,265 t (01.07.17-30.06.18)	EUR 250/1,000kg/net	1,005 t	2.9%	Regulation 442/2009
ex 0203 19 55 ex 0203 29 55	Boneless loins and hams of domestic swine, fresh, chilled or frozen	4,922 t (01.07.17-30.06.18)	EUR 250/1,000kg/net	0 t	0.0%	Regulation 442/2009
ex 0203 19 55 ex 0203 29 55	Meat of swine - Tenderloins, fresh or chilled - Tenderloins, frozen	5,000 t (01.07.17-30.06.18)	EUR 300/1,000kg/net	0 t*	0.0%	Regulation 442/2009
0207 11 10 0207 11 30 0207 11 90 0207 12 10 0207 12 90	Chicken carcass, fresh, chilled or frozen	6,249 t (01.07.17-30.06.18)	EUR 131-162/1,000kg/ net	4,872 t	78.0%	Regulation 536/2007
0207 13 10 0207 13 20 0207 13 30 0207 13 40 0207 13 50 0207 13 60 0207 13 70 0207 14 20 0207 14 30 0207 14 40 0207 14 60	Chicken cuts, fresh, chilled or frozen	8,570 t (01.07.17-30.06.18)	EUR 93-512/1,000 kg / net	8,570 t	100.0%	Regulation 536/2007
0207 14 10	- Poultry cuts and offal other than liver, frozen: -- Of fowls of the species <i>Gallus domesticus</i> : --- Cuts: ---- Boneless	2,705 t (01.07.17-30.06.18)	EUR 795/1,000kg/net	2,705 t	100.0%	Regulation 1385/2007

HS code	Products	Quota size	Quota rate	Quota imports	Quota fill rate (%)	Legal basis
0207 24 10 0207 24 90 0207 25 10 0207 25 90 0207 26 10 0207 26 20 0207 26 30 0207 26 40 0207 26 50 0207 26 60 0207 26 70 0207 26 80 0207 27 30 0207 27 40 0207 27 50 0207 27 60 0207 27 70	Turkey meat, fresh, chilled	1,781 t (01.07.17- 30.06.18)	EUR 93-425/1,000kg /net	0 t	0.0%	Regulation 533/2007
0207 11 10 0207 11 30 0207 11 90 0207 12 10 0207 12 90  0207 13 10 0207 13 20 0207 13 30 0207 13 40 0207 13 50 0207 13 60 0207 13 70  0207 14 10 0207 14 20 0207 14 30 0207 14 40 0207 14 50 0207 14 60 0207 14 70	Meat and edible offal of poultry, fresh, chilled or frozen	21,345 t (01.07.17- 30.06.18)	EUR 93-425/ 1,000kg/ net	365 t	1.7%	Regulation 536/2007
ex 0210 99 39	Salted poultry meat	264,245 t (01.07.17- 30.06.18)	15.4%	231,515 t	87.6%	Regulation 616/2007
0402 10 19	Skimmed milk powder	68,537 t (01.07.17- 30.06.18)	EUR 475/1,000kg/net	0 t	0.0%	Regulation 2535/2001

HS code	Products	Quota size	Quota rate	Quota imports	Quota fill rate (%)	Legal basis
0405 10 00 0405 90 00	Butter	11,360 t (01.07.17-30.06.18)	EUR 948/1,000kg/ net	0 t	0.0%	Regulation 2535/2001
ex 0406 10 30 ex 0406 10 50 ex 0406 10 80	Fresh cheese (unripened or uncured), including whey cheese and curd: -- Pizza cheese, frozen, cut into pieces, each weighing not more than 1 g, in containers of minimum 5 kg, with a moisture content of 52%, and a fat content of minimum 38%	5,360 t (01.07.17-30.06.18)	EUR 130/1,000kg/ net	0 t	0.0%	Regulation 2535/2001
ex 0406 30 10 0406 90 13	Cheese and curd: - Emmental, including processed Emmental	18,438 t (01.07.17-30.06.18)	EUR 719-858/1,000 kg/ net	0 t	0.0%	Regulation 2535/2001
ex 0406 30 10 0406 90 15	Gruyere, Sbrinz, including processed Gruyere	5,413 t (01.07.17-30.06.18)	EUR 719-858/ 1,000kg/ net	0 t	0.0%	Regulation 2535/2001
0406 90 01	Cheese for processing	20,007 t (01.07.17-30.06.18)	EUR 835/ 1,000kg/ net	0 t	0.0%	Regulation 2535/2001
0406 90 21	Cheddar	15,005 t (01.07.17-30.06.18)	EUR 210/ 1,000 kg/ net	3,000 t	20.0%	Regulation 2535/2001
ex 0406 10 30 ex 0406 10 50 ex 0406 10 80 ex 0406 20 00 0406 30 31 0406 30 39 0406 30 90 0406 40 10 0406 40 50 0406 40 90 0406 90 17 0406 90 18 0406 90 23 0406 90 25 0406 90 27 0406 90 29 0406 90 32 0406 90 35	Other cheeses	19,525 t (01.07.17-30.06.18)	EUR 690-1,064/ 1,000 kg/ net	194 t	1.0%	Regulation 2535/2001
0407 21 00 0407 29 10 0407 90 10	Poultry eggs for consumption, in shell	135,000 t (01.07.17-30.06.18)	EUR 152/ 1,000 kg/ net	2,088 t	1.6%	Regulation 539/2007

HS code	Products	Quota size	Quota rate	Quota imports	Quota fill rate (%)	Legal basis
0408 11 80 0408 19 81 0408 19 89	Eggs yolks	7,000 t (shell egg equivalent) (01.07.17-30.06.18)	EUR 176-711/ 1,000kg/ net	5,380 t	76.9%	Regulation 539/2007
0408 91 80 0408 99 80	Bird eggs, not in shell					
0703 20 00	Garlic	73,395 t (01.06.17-31.05.18)	9.6%	43,304 t	59.0%	Regulation 341/2007
ex 0707 00 05	Cucumbers, fresh or chilled, - From 1 November to 15 May	1,134 t (01.11.17-15.05.18)	<i>Ad valorem</i> duty reduced to 2.5	13 t	1.1%	Regulation 1831/1996
ex 0809 10 00	Apricots, fresh, 1.08-31.05	500 t (01.08.17-31.05.18)	10%	36 t	7.2%	Regulation 1831/1996
ex 1001 19 00	Durum wheat	50,000 t (01.07.17-30.06.18)	0%	0 t	0.0%	Regulation 2133/2001
1008 21 00 1008 29 00	Millet	1,300 t (01.07.17-30.06.18)	EUR 7/ 1,000 kg/ net	1,300 t	100.0%	Regulation 2133/2001
1104 22 95	Worked oats, other than kibbled	10,000 t (01.07.17-30.06.18)	0%	99 t	1.0%	Regulation 2094/2004
1601 00 91 1601 00 99	Sausages, dry or for spreading, uncooked Other sausages	3,002 t (01.07.17-30.06.18)	EUR 502-747/ 1,000 kg/ net	601 t	20.0%	Regulation 442/2009
1602 31 00	Prepared turkey meat	103,896 t (01.07.17-30.06.18)	8.5%	26,797	25.8%	Regulation 616/2007
1602 32 11	Processed chicken meat, uncooked, containing 57% or more by weight of poultry meat or offal	16,140 t (01.07.17-30.06.18)	EUR 630/ 1,000kg/net	12,640 t	78.3%	Regulation 616/2007
1602 32 19	Cooked chicken meat	250,953 t (01.07.17-30.06.18)	8%	243,658 t	97.1%	Regulation 616/2007
1602 32 30	Processed chicken meat, containing 25% or more but less than 57% by weight of poultry meat or offal	79,705 t (01.07.17-30.06.18)	10.9%	67,324 t	84.5%	Regulation 616/2007
1602 32 90	Processed chicken meat, containing less than 25% by weight of poultry meat or offal	2,865 t (01.07.17-30.06.18)	10.9%	2,100 t	73.3%	Regulation 616/2007



HS code	Products	Quota size	Quota rate	Quota imports	Quota fill rate (%)	Legal basis
1602 39 21	Processed duck, geese, guinea fowl meat, uncooked, containing 57% or more by weight of poultry meat or offal	10 t (01.07.17-30.06.18)	EUR 630/ 1,000kg/net	0 t	0.0%	Regulation 616/2007
1602 39 29	Processed duck, geese, guinea fowl meat, cooked, containing 57% or more by weight of poultry meat or offal	13,720 t (01.07.17-30.06.18)	10.9%	5,748 t	41.9%	Regulation 616/2007
Ex 1602 39 85	Processed duck, geese, guinea fowl meat, cooked, containing 25% or more but less than 57% by weight of poultry meat or offal	748 t (01.07.17-30.06.18)	10.9%	0 t	0.0%	Regulation 616/2007
Ex 1602 39 85	Processed duck, geese, guinea fowl meat, cooked, containing less than 25% by weight of poultry meat or offal	725 t (01.07.17-30.06.18)	10.9%	10 t	1.4%	Regulation 616/2007
1602 41 10 1602 42 10 1602 49 11 1602 49 13 1602 49 15 1602 49 19 1602 49 30 1602 49 50	Preserved meat of domestic swine	6,161 t (01.07.17-30.06.18)	EUR 271-784/ 1,000kg/ net	3 t	0.1%	Regulation 442/2009
1701	Cane or beet sugar	10,000 t (1) (White sugar equivalent) (01.10.17-30.09.18)	0%	10,000 t	100.0%	
1701 13 10 1701 14 10	Raw cane sugar, for refining	809,425 t (01.10.17-30.09.18)	EUR 98/1,000kg/net	54,549 t	6.7%	Regulation 891/2009
1702 50 00	Chemically pure fructose	4,504 t (01.01.17-30.06.18)	16%	30 t	0.7%	Regulation 32/2000
1704 00 00	Sugar confectionary	2,289 t (01.07.17-30.06.18)	35%	109 t	4.8%	Regulation 50/2015
1806 20 00 1806 31 00 1806 32 00 1806 90 00	Chocolate	2,026 t (01.07.17-30.06.18)	38%	104 t	5.1%	Regulation 50/2015

HS code	Products	Quota size	Quota rate	Quota imports	Quota fill rate (%)	Legal basis
1905 90 00	Biscuits	409 t (01.07.17-30.06.18)	40%	409 t	100.0%	Regulation 50/2015
ex 2009 61 90	Grape juice (including grape must): -- Of a Brix value not exceeding 30 --- Of a value not exceeding EUR 18/100 kg net weight	14,029 t (01.09.17-31.08.18)	22.4%- EUR 40+EUR 20.6/ 1,000 kg/ net	0 t	0.0%	Regulation 1472/2003
ex 2009 69 11	-- Other					
ex 2009 69 19	-- Of a Brix value exceeding 67 ---- Of a value not exceeding EUR 22/100 kg net weight ---- Other					
ex 2009 69 51	--- Of a Brix value exceeding 30 but not exceeding 67 ---- Of a value exceeding EUR 18/100 kg net weight:					
ex 2009 69 90	----- Concentrated ---- Of a value not exceeding EUR 18/100 kg net weight ----- Other					
2106 90 98	Food preparation	1,550 t (01.07.17-30.6.18)	E.A.	1,550 t	100.0%	Regulation 624/2013
3502 11 90	Egg albumin	15,500 t (shell egg equivalent) (01.07.17-30.06.18)	EUR 83-617/ 1,000kg/ net	1,320 t	8.5%	Regulation 539/2007
0104 10 30	Live sheep, other than pure-bred breeding animals	196 t (1) (live weight) (01.01.18-31.12.18)	10%	0 t	0.0%	Regulation 1354/2011
0104 10 80						
0104 20 90						
0203 19 13	Meat of swine, fresh, chilled or frozen: - Fresh or chilled: -- of domestic swine --- loins and cuts thereof, bone in	7,000 t (01.01.18-31.12.18)	0%	15 t	0.2%	Regulation 442/2009
0203 29 15	- Frozen: -- of domestic swine --- bellies, streaky and cuts thereof					
0204	Meat of sheep or goats, fresh, chilled or frozen	280,475 t (2) (carcass weight) (01.01.18-31.12.18)	0%	167,241 t	59.6%	Regulations 1354/2011, and 562/2018

HS code	Products	Quota size	Quota rate	Quota imports	Quota fill rate (%)	Legal basis
0207 14 10 0207 14 50 0207 14 70	- Poultry cuts and offal other than liver, frozen: -- Of fowls of the species <i>Gallus domesticus</i> : --- Cuts: ---- Boneless ---- With bone in: ---- Breasts and cuts thereof ---- Other (than halves and quarters; whole wings with or without tips; backs, necks, backs with necks attached, rumps and wing tips; legs and cuts thereof)	25,098 t (01.01.18-31.12.18)	0%	25,098 t	100.0%	Regulation 536/2007
0207 27 10 0207 27 20 0207 27 80	Poultry cuts and offal other than livers, frozen: - Of turkeys: -- Cuts: --- Boneless --- With bone in: ---- Halves or quarters ---- Other (than whole wings, with or without tips; backs, necks, backs with necks attached, rumps and wing tips, breasts and cuts thereof; legs and cuts thereof)	8,095 t (01.01.18-31.12.18)	0%	7,443 t	92.0%	Regulation 536/2007
ex 0405 10 11 ex 0405 10 19 ex 0405 10 30	Butter	74,693 t (01.01.18-31.12.18)	EUR 70/ 1,000 kg/ net	1,225 t	1.6%	Regulation 2535/2011
0406 90 01	Cheese for processing	4,500 t (01.01.18-31.12.18)	EUR 17.06/ 1,000 kg/ net	0 t	0.0%	Regulation 2535/2011
ex 0406 90 21	Cheddar	10,711 t (01.01.18-31.12.18)	EUR 17.06/ 1,000 kg/ net	220	2.1	Regulation 2535/2011
ex 0406 90 21	Cheddar	4,000 t (01.01.18-31.12.18)	EUR 13.5/ 1,000 kg/ net	0 t	0.0	Regulation 2535/2011
ex 0701 90 50	Potatoes, fresh or chilled, new, 1.01-15.05	4,295 t (01.01.18-15.05.18)	3%	4,295 t	100.0%	Regulation 1831/1996
0702 00 00	Tomatoes	472 t (01.01.18-31.12.18)	12%	472 t	100.0%	Regulation 973/2006

HS code	Products	Quota size	Quota rate	Quota imports	Quota fill rate (%)	Legal basis
0706 10 00	Carrots and turnips, fresh or chilled	1,244 t (01.01.18-31.12.18)	7%	1,244 t	100.0%	Regulation 1831/1996
0709 60 10	Sweet peppers, fresh or chilled	500 t (01.01.18-31.12.18)	1.5%	500 t	100.0%	Regulation 1831/1996
0712 20 00	Dried onions	12,000 t (01.01.18-31.12.18)	10%	8,818 t	73.5%	Regulation 1831/1996
0714 10 00	Manioc (cassava)	5,750,000 t (01.01.18-31.12.18)	6%	2,392 t	0.0%	Regulation 1475/2007
0714 10 00 0714 30 00 0714 40 00 0714 50 00 0714 90 20	Manioc (cassava), other than pellets of flour and meal Arrowroot, salep and similar roots and tubers with a high starch content	1,352,590 t (01.01.18-31.12.18)	6%	3,316 t	0.2%	Regulation 1085/2010
0714 20 90	Sweet potatoes - Other than for human consumption	5,000 t (01.01.18-31.12.18)	0%	95 t	1.9%	Regulation 1085/2010
0714 20 90	Sweet potatoes - Other than for human consumption	600,000 t (01.01.18-31.12.18)	0%	19,407 t	3.2%	Regulation 1085/2010
0802 11 90 0802 12 90	Almonds, other than bitter	90,000 t (01.01.18-31.12.18)	2%	90,000 t	100.0%	Regulation 1831/1996
ex 0805 10	Oranges - Sweet oranges	20,000 t (01.02.18-30.04.18)	10%	0 t	0.0%	Regulation 1831/1996
ex 0805 29 00	Other citrus fruit hybrids	15,000 t (01.02.18-30.04.18)	2%	5,445 t	36.3%	Regulation 1831/1996
ex 0805 50 10	Lemons 15.01.-14.06	10,000 t (15.01.18-14.06.18)	6%	9,503 t	95.0%	Regulation 1831/1996
ex 0806 10 10	Table grapes, fresh 21.07-31.10	1,500 t (21.07.18-31.10.18)	<i>Ad valorem</i> duty reduced to 9%	1,500 t	100.0%	Regulation 1831/1996
ex 0808 10 80	Apples, fresh 1.04-31.07	696 t (01.04.18-31.07.18)	<i>Ad valorem</i> duty reduced to 0	696 t	100.0%	Regulation 1831/1996
ex 0808 30 90	Pears, fresh, other than perry pears, in bulk 1.08-31.12	1,000 t (01.08.18-31.12.18)	<i>Ad valorem</i> duty reduced to 5%	1,000 t	100.0%	Regulation 1831/1996

HS code	Products	Quota size	Quota rate	Quota imports	Quota fill rate (%)	Legal basis
ex 0809 10 00	Apricots, fresh 1.06-31.07	2,500 t (01.06.18- 31.07.18)	<i>Ad valorem</i> duty reduced to 10%	0 t	0.0%	Regulation 1831/1996
ex 0809 29 00	Cherries, fresh, other than sour cherries 21.05-15.07	800 t (21.05.18- 15.07.18)	<i>Ad valorem</i> duty reduced to 4%	25 t	3.1%	Regulation 1831/1996
ex 1001 19 00 ex 1001 99 00	Wheat	300,000 t (01.01.18- 31.12.18)	0%	288 t	0.1%	Regulation 2133/2001
ex 1001 99 00	Common wheat (medium and low quality)	3,112,030 t (01.01.18- 31.12.18)	EUR 12/ 1,000 kg/ net	1,631,534 t	52.4%	Regulation 2133/2001
ex 1003 00	Malting barley	50,890 t (01.01.18- 31.12.18)	EUR 8/ 1,000 kg/ net	0 t	0.0%	Regulation 2305/2003
1003 00	Barley	307,105 t (01.01.18- 31.12.18)	EUR 16/ 1,000 kg/ net	22,189 t	7.2%	Regulation 2305/2003
1005 10 90 1005 90 00	Maize	277,988 t (01.01.18- 31.12.18)	0%	277,988 t	100.0%	Regulation 969/2006
1005 90 00	Maize	2,000,000 t (01.01.18- 31.12.18) (3)	Rate to be fixed by competent Community authorities	2,000,000 t	100.0%	Regulations 1342/2003 and 1296/2008
1005 90 00	Maize	500,000 t (01.01.18- 31.12.18) (3)	Max EUR 50/ 1,000 kg/ net	500,000 t	100.0%	Regulations 1342/2003 and 1296/2008
1006 10 00	Paddy rice	7 t (01.01.18- 31.12.18)	15%	7 t	100.0%	Regulation 1273/2011
1006 20 00	Husked (brown) rice	1,634 t (01.01.18- 31.12.18)	15%	24 t	1.5%	Regulation 1273/2011
1006 30 00	Semi-milled or wholly milled rice	63,000 t (01.01.18- 31.12.18)	0%	63,000 t	100.0%	Regulation 1273/2011
1006 30 00	Semi-milled or wholly milled rice	13,500 t (01.01.18- 31.12.18)	0%	13,500 t	100.0%	Regulation 1273/2011
1006 30 00	Semi-milled or wholly milled rice	26,716 t (01.01.18- 31.12.18)	0%	26,716 t	100.0%	Regulation 1273/2011

HS code	Products	Quota size	Quota rate	Quota imports	Quota fill rate (%)	Legal basis
1006 40 00	Broken rice, intended for the production of foodstuffs of tariff heading 1901 10	1,000 t (01.01.18-31.12.18)	0%	0 t	0.0%	Regulation 480/2012
1006 40 00	Broken rice	100,000 t (01.01.18-31.12.18)	EUR 45/ 1,000 kg/ net	10,366 t	10.4%	Regulation 1273/2011
1006 40 00	Broken rice	31,788 t (01.01.18-31.12.18)	0%	31,788 t	100.0%	Regulation 1273/2011
1007 10 90 1007 90 00	Grain sorghum	300,000 t (01.01.18-31.12.18) (3)	This rate will be fixed by the competent Community authorities	300,000 t	100.0%	Regulations 1342/2003 and 1296/2008
ex 1108 14 00	Manioc starch	8,000 t (01.01.18-31.12.18) (4)	EUR 170.59/ 1,000 kg/ net	8,000 t	100.0%	Regulation 1085/2010
ex 1108 14 00	Manioc starch	2,000 t (01.01.18-31.12.18) (4)	EUR 170.59/ 1,000 kg/ net	2,000 t	100.0%	Regulation 1085/2010
1702 50 00	Chemically pure fructose	1,253 t (01.01.18-31.12.18)	20%	0 t	0.0%	Regulation 32/2000
1806 00 00	Chocolate	107 t (01.01.18-31.12.18)	43%	3 t	2.8%	Regulation 928/2006
ex 1902	Pasta	532 t (01.01.18-31.12.18)	11%	532 t	100.0%	Regulation 32/2000
1901 90 99 1904 30 00 1904 90 80 1905 90 20	Food preparations of cereals	191 t (01.01.18-31.12.18)	33%	191 t	100.0%	Regulation 32/2000
2003 10 20 2003 10 30 0711 51 00	Mushrooms, prepared or preserved otherwise than by vinegar or acetic acid: - Of the species <i>Agaricus</i> : -- Provisionally preserved, completely cooked -- Other Vegetables provisionally preserved but unsuitable in that state for immediate consumption: Mushrooms of the species <i>Agaricus</i>	35,430 t (01.01.18-31.12.18)	12-23%	1,093 t	3.1%	Regulation 1973/2006

HS code	Products	Quota size	Quota rate	Quota imports	Quota fill rate (%)	Legal basis
2008 20 11 2008 20 19 2008 20 31 2008 20 39 2008 20 71 2008 30 11 2008 30 19 2008 30 31 2008 30 39 2008 30 79 2008 40 11 2008 40 19 2008 40 21 2008 40 29 2008 40 31 2008 40 39 2008 50 11 2008 50 19 2008 50 31 2008 50 39 2008 50 51 2008 50 59 2008 50 71 2008 60 11 2008 60 19 2008 60 31 2008 60 39 2008 60 60 2008 70 11 2008 70 19 2008 70 31 2008 70 39 2008 70 51 2008 70 59 2008 80 11 2008 80 19 2008 80 31 2008 80 39 2008 80 70	Preserved fruit	2,838 t (01.01.18- 31.12.18)	20%	945 t	33.3%	Regulation 973/2006
ex 2009 11 99	Orange juice - Frozen -- Of a density not exceeding 1.33 g/cm <sup>3</sup> at 20°C --- Other	1,500 t (01.01.18- 31.12.18)	13%	0 t	0.0%	Regulation 1831/1996

HS code	Products	Quota size	Quota rate	Quota imports	Quota fill rate (%)	Legal basis
2009 11 11 2009 11 19 2009 19 11 2009 19 19 2009 29 11 2009 29 19 2009 39 11 2009 39 19 2009 49 11 2009 49 19 2009 79 11 2009 79 19 2009 81 11 2009 81 19 2009 89 11 2009 89 19 2009 89 34 2009 89 35 2009 89 36 2009 89 38 2009 90 11 2009 90 19 2009 90 21 2009 90 29	Fruit juices	7,044 t (01.01.18- 31.12.18)	20%	7,034 t	99.9%	Regulation 973/2006
2106 90 98	Food preparations - others	921 t (01.01.18- 31.12.18)	18%	921 t	100.0%	Regulations 928/2006 and 624/2013
2204 21 93 2204 21 95 2204 21 97 2204 21 94 2204 21 96 2204 21 98	Wine of fresh grapes	40,000 hl (01.01.18- 31.12.18)	EUR 10/ hl	40,000 hl	100.0%	Regulation 218/2007
2204 22 93 2204 22 95 2204 22 97 2204 22 94 2204 22 96 2204 22 98 2204 29 93 2204 29 95 2204 29 97 2204 29 94	Wine of fresh grapes	20,000 hl (01.01.18- 31.12.18)	EUR 8/ hl	20,000 hl	100.0%	Regulation 218/2004



HS code	Products	Quota size	Quota rate	Quota imports	Quota fill rate (%)	Legal basis
2204 29 96 2204 29 98 2205 90 10	Vermouth	13,810 hl (01.01.18-31.12.18)	EUR 7/ hl	0 hl	0.0%	Regulation 1518/2007
2302 30 10  2302 30 90 2302 40 10  2302 40 90	Bran, sharps and other residues, whether or not in the form of pellets, derived from the sifting, milling or other working of cereals: - Of wheat: -- Of which the starch content does not exceed 28% by weight, and of which the proportion that passes through a sieve with an aperture of 0.2 mm does not exceed 10% by weight or alternatively the proportion that passes through the sieve has an ash content, calculated on the dry product, equal to or more than 1.5% by weight -- Other - Of other cereals (than maize or rice): -- Of which the starch content does not exceed 28% by weight, and of which the proportion that passes through a sieve with an aperture of 0.2 mm does not exceed 10% by weight or alternatively the proportion that passes through the sieve has an ash content, calculated on the dry product, equal to or more than 1.5% by weight -- Other	475,000 t (01.01.18-31.12.18)	EUR 30.6-62.25/ 1,000 kg/ net	216 t	0.0%	Regulation 2133/2001
2303 10 11	Corn gluten	10,000 t (01.01.18-31.12.18)	16%	8,181 t	81.8%	Regulation 937/2006
2309 10 13 2309 10 15 2309 10 19 2309 10 33 2309 10 39	Dog and cat food	2,058 t (01.01.18-31.12.18)	7%	1,001 t	48.6%	Regulation 899/2006

HS code	Products	Quota size	Quota rate	Quota imports	Quota fill rate (%)	Legal basis
2309 10 51 2309 10 53 2309 10 59 2309 10 70						
2309 90 31 2309 90 41 2309 90 51 2309 90 96	Preparations of a kind used in animal feeding - Other: -- Containing no milk products or containing less than 10% by weight of such products -- Containing no or less than 10% by weight of starch -- Containing more than 10% but not more than 30% by weight of starch -- Other	2,700 t (01.01.18-31.12.18)	7%	2,700 t	100.0%	Regulation 440/1996
ex 2309 90 31 ex 2309 90 41	Preparations consisting of a mixture of malt sprouts and of barley screenings before the malting process (possibly including other seeds) with barley cleanings after the malting process, and containing by weight 15.5% or more of protein Preparations consisting of a mixture of malt sprouts and of barley screenings before the malting process (possibly including other seeds) with barley cleanings after the malting process, and containing by weight 15.5% or more of protein and not more than 23% of starch	100,000 t (01.01.18-31.12.18)	0%	0 t	0.0%	Regulation 440/1996
ex 2309 90 31 ex 2309 90 41	Preparations consisting of a mixture of malt sprouts and of barley screenings before the malting process (possibly including other seeds) with barley cleanings after the malting process, and containing by weight 12.5% or more of protein Preparations consisting of a mixture of malt sprouts and of barley screenings before the malting process (possibly including other seeds) with barley cleanings after the malting process, and containing	20,000 t (01.01.18-31.12.18)	0%	684 t	3.4%	Regulation 2133/2001

HS code	Products	Quota size	Quota rate	Quota imports	Quota fill rate (%)	Legal basis
2309 90 31	by weight 12.5% or more of protein and not more than 28% of starch Preparations of a kind used in animal feeding - Other:	2,800 t (01.01.18-31.12.18)	7%	2,800 t	100.0%	Regulation 88/2007
2309 90 41	-- Containing no milk products or containing less than 10% by weight of such products					
2309 90 51	-- Containing no or less than 10% by weight of starch -- Containing more than 10% but not more than 30% by weight of starch -- Containing more than 30% by weight of starch					

(\*) When the meat is intended for the manufacture of preserved food which does not contain characteristic components other than beef and jelly.

(\*\*) When the meat is intended for the manufacture of products other than the preserved food referred to in the first indent.

E.A. Indicates that the goods are chargeable with an "agricultural component" fixed in accordance with Regulation (EEC) No. 2658/1987.

Source: WTO secretariat based on WTO documents G/AG/N/EU/48, 30 October 2018 and G/AG/N/EU/50, 22 February 2019; and on *Indicative list of WTO Tariff Quotas opened by the competent authorities of the European Union*, 2018. CIRCABC. Viewed at: [https://circabc.europa.eu/faces/jsp/extension/wai/navigation/container.jsp?FormPrincipal: idcl=FormPrincipal: id1&FormPrincipal\\_SUBMIT=1&id=37b43134-17c0-435d-97be-83e2f684871c&javax.faces.ViewState=XeKNoB%2BqNqwElmtYmU1TNqyxInGy%2FRH8o3PI7E%2FK4meScsZ6XKYdW7nQzIHIOwK%2B3d9mznzfUQW8skFfzs0xvX4AH9y8Rz6Oea1B%2FIWqr7mEZFKGOLCI7sfGACf2cGWPvPL%2BPGus3MlzAZnmYhi79smn0g%3D](https://circabc.europa.eu/faces/jsp/extension/wai/navigation/container.jsp?FormPrincipal: idcl=FormPrincipal: id1&FormPrincipal_SUBMIT=1&id=37b43134-17c0-435d-97be-83e2f684871c&javax.faces.ViewState=XeKNoB%2BqNqwElmtYmU1TNqyxInGy%2FRH8o3PI7E%2FK4meScsZ6XKYdW7nQzIHIOwK%2B3d9mznzfUQW8skFfzs0xvX4AH9y8Rz6Oea1B%2FIWqr7mEZFKGOLCI7sfGACf2cGWPvPL%2BPGus3MlzAZnmYhi79smn0g%3D).

### Non-agricultural TRQs

HS code	Products	Quota size	Quota rate	Quota imports	Quota fill rate (%)	Legal basis
0302 40 00 ex01 0303 50 00 ex01 0304 10 97 ex01 0304 10 98 0304 90 22 ex01	Herrings	34,000 t	0%	29,334 t	87%	Council Regulation (EC) No. 32/2000
0302 69 68 0303 78 19	Silver hake ( <i>Merluccius bilinearis</i> )	2,000 t	8%	0	0%	Council Regulation (EC) No. 32/2000

HS code	Products	Quota size	Quota rate	Quota imports	Quota fill rate (%)	Legal basis
0303 29 00	Fish of the genus <i>Coregonus</i>	1,000 t	5.5%	219 t	22%	Council Regulation (EC) No. 32/2000
0304 20 94	Fish of the genus <i>Allocyttus</i> and of the species <i>Pseudocyttus maculatus</i>	200 t	0%	199 t	100%	Council Regulation (EC) No. 32/2000
0305 51 10 0305 51 90 0305 59 11 0305 59 19 0305 62 00 0305 69 10	Cod of the species <i>Gadus morhua</i> and <i>Gadus ogac</i> Fish of the species <i>Boreogadus saida</i>	25,000 t	0%	25,000 t	100%	Council Regulation (EC) No. 32/2000
1604 20 50	Prepared or preserved fish (excl. whole or in pieces): of sardines, bonito, mackerel of the species <i>Scomber scombrus</i> and <i>Scomber japonicus</i> , fish of the species <i>Orcynopsis unicolor</i>	865 t	0%	187 t	22%	Council Regulation (EC) No. 32/2000
1604 20 50	Prepared or preserved fish (excl. whole or in pieces): of sardines, bonito, mackerel of the species <i>Scomber scombrus</i> and <i>Scomber japonicus</i> , fish of the species <i>Orcynopsis unicolor</i>	1,410 t	0%	36 t	2.5%	Council Regulation (EC) No. 32/2000
1604 20 70	Prepared or preserved fish (excl. whole or in pieces): of tuna, skipjack or other fish of the genus <i>Euthynnus</i>	742 t	0%	742 t	100%	Council Regulation (EC) No. 32/2000
1604 20 70	Prepared or preserved fish (excl. whole or in pieces): of tuna, skipjack or other fish of the genus <i>Euthynnus</i>	1,816 t	0%	1,816 t	100%	Council Regulation (EC) No. 32/2000
1605 20 10 1605 20 91 1605 20 99	Shrimp of the species <i>Pandalus borealis</i> , shelled, boiled, frozen, but not further prepared	500 t	0%	500 t	100%	Council Regulation (EC) No. 32/2000
1605 40 00	Freshwater crayfish, cooked in dill, frozen	3,000 t	0%	3,000 t	100%	Council Regulation (EC) No. 32/2000

HS code	Products	Quota size	Quota rate	Quota imports	Quota fill rate (%)	Legal basis
4412 19 00 4412 92 99 4412 99 80	Plywood of coniferous species, without the addition of other substances — of which the faces are not further prepared than the peeling process, of a thickness greater than 8.5 mm, or — sanded, of a thickness greater than 18.5 mm	650,000 m3	0%	650,000 m3	100%	Council Regulation (EC) No. 32/2000
4801 00 00	Newsprint	650,000 t	0%	Not used	0%	Council Regulation (EC) No. 32/2000
5306 10 10 5306 10 30	Unbleached flax yarn (other than tow yarn) measuring 333.3 decitex or more (not exceeding 30 metric number)	400 t	1.8%	0	0%	Council Regulation (EC) No. 32/2000
7018 10 90	Glass beads, imitation precious and semi-precious stones and similar glass smallwares	52 t	0%	16 t	31%	Council Regulation (EC) No. 32/2000
7202 21 00 7202 29 10 7202 29 90	Ferro-silicon	12,600 t	0%	12,600 t	100%	Council Regulation (EC) No. 32/2000
7202 30 00	Ferro-silico-manganese	18,550 t	0%	18,550 t	100%	Council Regulation (EC) No. 32/2000
7202 49 10 7202 49 50	Ferro-chromium containing not more than 0.10% by weight of carbon, and more than 30% but not more than 90% of chromium	2,950 t	0%	2,950 t	100%	Council Regulation (EC) No. 32/2000

Source: WTO document WT/Let/1220, 14 December 2016; and information provided by the authorities.

**Table A3.2 Excise duties other than on EU harmonized products, by member State, 2020**

	Product	Rate	Source
Austria	None		
Belgium	Non-alcoholic beverages and coffee Environmental levy Packaging fee	EUR 0-71.54/hl EUR 2.70-4.50/kg EUR 9.86 or EUR 1.41/hl	<a href="http://finances.belgium.be/fr/entreprises/accises">http://finances.belgium.be/fr/entreprises/accises</a>
Bulgaria	None		
Croatia	Coffee Non-alcoholic beverages Motor vehicles	HRK 6-20/kg HRK 40-240/hl Varies by engine size, price, etc.	<a href="http://www.ijf.hr/upload/files/file/ENG/taxtable.pdf">http://www.ijf.hr/upload/files/file/ENG/taxtable.pdf</a>
Cyprus	Cars Double cabin vehicles Other vehicles Motorcycles Smoked salmon and sturgeon Caviar Crystal Chinaware	From EUR 0 to EUR 2,250 EUR 0.26/c.c. 15% EUR 1.71 or EUR 2.56/c.c.  EUR 5.13/kg 30% 20% 20%	<a href="http://www.mof.gov.cy/mof/customs/customs.nsf/All/A2C3593B5465A799422577D6002FEAC4?OpenDocument">http://www.mof.gov.cy/mof/customs/customs.nsf/All/A2C3593B5465A799422577D6002FEAC4?OpenDocument</a>
Czech Republic	None		
Denmark	Ice cream Chocolate & confections Coffee and tea Incandescent lamps and electrical fuses Cigarette paper Coal  Landfill Hazardous waste Packaging Piped water Sulphur Nitrous oxides Tyres Pesticides  Chlorinated solvents Batteries  Motor vehicles Gaming Insurance	DKK 5.58 to DKK 6.98 per litre DKK 11.04 to DKK 25.97 per kg DKK 0.75 to DKK 18.29 per kg  DKK 0.59 to DKK 8.79 per piece DKK 5 per piece DKK 1,068 to DKK 2,113 per tonne DKK 475 per tonne DKK 160 per tonne Varies by type DKK 6.25 per m <sup>3</sup> DKK 23.3 per kg DKK 11.7 per kg DKK 5 to DKK 225 per piece DKK 107 per kg or litre per agent  DKK 2 per kg DKK 6 to DKK 120 per kg or package Varies by type Varies by game 1.1%	<a href="http://www.skat.dk/SKAT.aspx?oId=1921338">http://www.skat.dk/SKAT.aspx?oId=1921338</a>
Estonia	Packaging (glass, plastic, metal, paper, cardboard, wood)	From EUR 0.6 to EUR 2.5 per kg, depending on type	<a href="https://www.emta.ee/eng/business-client/excise-duties-assets-gambling/about-excise-duties/rates-excise-duty">https://www.emta.ee/eng/business-client/excise-duties-assets-gambling/about-excise-duties/rates-excise-duty</a>
Finland	Sweets, ice cream and soft drinks Beverage containers Oil waste Oil protection Landfill	Range from EUR 0.12 per litre to EUR 1.72 per kg EUR 0.51 per litre EUR 0.0575 per kg EUR 0.50 per tonne EUR 70 per tonne	<a href="https://www.vero.fi/en/business-and-corporations/about-corporate-taxes/excise-taxes/">https://www.vero.fi/en/business-and-corporations/about-corporate-taxes/excise-taxes/</a>
France	Non-alcoholic beverages	From EUR 0.54 to EUR 3.03 per hl	<a href="http://www.douane.gouv.fr/articles/a12186-tarifs-2016-droits-des-alcools-boissons-alcooliques-et-non-alcooliques">http://www.douane.gouv.fr/articles/a12186-tarifs-2016-droits-des-alcools-boissons-alcooliques-et-non-alcooliques</a>

	Product	Rate	Source
Germany	Coffee Coffee products Nuclear fuel Biofuels	EUR 2.19 to EUR 4.78 per kg EUR 0.12 to EUR 3.83 per kg EUR 145 per g Quota system	<a href="http://www.zoll.de/DE/Fachthemen/Steuern/Verbrauchssteuern/verbrauchssteuern_node.html">http://www.zoll.de/DE/Fachthemen/Steuern/Verbrauchssteuern/verbrauchssteuern_node.html</a>
Greece	Electronic cigarette refills Coffee Instant coffee and coffee containing products	EUR 0.10 per ml EUR 2 to EUR 3 per kg EUR 4 per kg	<a href="https://www2.deloitte.com/content/dam/Deloitte/gr/Documents/tax/gr_indirect_tax_customs_leg_43892016_en_noexp.pdf">https://www2.deloitte.com/content/dam/Deloitte/gr/Documents/tax/gr_indirect_tax_customs_leg_43892016_en_noexp.pdf</a>
Hungary	None		
Ireland	Betting Sweetened drinks	2%-25% EUR 16.26 to EUR 24.39 per hl	<a href="http://www.revenue.ie/en/tax/excise/duties/excise-duty-rates.html">http://www.revenue.ie/en/tax/excise/duties/excise-duty-rates.html</a>
Italy	Nitrogen oxide emissions Sulphur emissions Lubricating oils Bitumen oil	EUR 209.00 per tonne/year EUR 106.00 per tonne/year EUR 787.81 per 1,000 kg EUR 30.99 per 1,000 kg	<a href="https://www.agenziadoganemopolio.gov.it/portale/documents/20182/889198/Aliquota+nazionali+aggiornamento+al+1+gennaio+2015.pdf/9109f7b8-985a-4837-b0e0-ac09fdbbc77e">https://www.agenziadoganemopolio.gov.it/portale/documents/20182/889198/Aliquota+nazionali+aggiornamento+al+1+gennaio+2015.pdf/9109f7b8-985a-4837-b0e0-ac09fdbbc77e</a>
Latvia	Non-alcoholic beverages Coffee	EUR 7.4 per 100 litres EUR 142.29 per 100 kg	<a href="http://www.fm.gov.lv/en/s/taxes/excise_duty/">http://www.fm.gov.lv/en/s/taxes/excise_duty/</a>
Lithuania	Coal Coke and lignite	EUR 3.77 to EUR 7.53 per tonne EUR 4.63 to EUR 8.98 per tonne	<a href="https://finmin.lrv.lt/en/competence-areas/taxation/main-taxes/excise-duties">https://finmin.lrv.lt/en/competence-areas/taxation/main-taxes/excise-duties</a>
Luxembourg	None		
Malta	Non-alcoholic beverages Plastic bags, CN 3923 Toilet waters, CN 3303 Make-up, CN 3304 Hair products, CN 3305 Shampoo, CN 330510 Personal hygiene products, 3307 Aftershave, deodorizers, 3307 Shower gel, 3401 Prefabricated concrete structures, CN 681091 Ceramic tiles, CN 6907, 6908 Glass sheets, CN 7005 Iron bars, CN 7213 Iron rods, CN 721310 Iron bars, CN 72139110, 72139149, 72142000 Iron beams, CN 7216 Wire mesh, CN 73142010, 73142090 and 73143900	EUR 400 per 1,000 litres EUR 425 per 100 kg EUR 220 per 100 litres EUR 50 per 100 litres/kg EUR 50 per 100 litres/kg EUR 3 per 100 litres EUR 3 per 100 litres/kg EUR 50 per 100 litres/kg EUR 3 per 100 litres/kg EUR 25.60 per 1,000 kg EUR 7.50 per 1,000 kg EUR 16 per 1,000 kg EUR 30 per 1,000 kg EUR 5 per 1,000 kg EUR 15 per 1,000 kg EUR 50 per 1,000 kg EUR 30 per 1,000 kg	<a href="https://customs.gov.mt/docs/default-source/rates-of-exchange/Rates-of-Exchange-2016/learn-more.pdf?sfvrsn=0">https://customs.gov.mt/docs/default-source/rates-of-exchange/Rates-of-Exchange-2016/learn-more.pdf?sfvrsn=0</a>
Netherlands	Non-alcoholic drinks	EUR 8.83 per hl	<a href="https://www.government.nl/topics/excise-duty/contents/excisable-products">https://www.government.nl/topics/excise-duty/contents/excisable-products</a> <a href="http://download.belastingdienst.nl/douane/docs/tarievenlijst_accijns_acc0552z72fol.pdf">http://download.belastingdienst.nl/douane/docs/tarievenlijst_accijns_acc0552z72fol.pdf</a>
Poland	Cars	3.1% or 18.6%	<a href="http://www.finanse.mf.gov.pl/in/excise-duty/basic-information">http://www.finanse.mf.gov.pl/in/excise-duty/basic-information</a>
Portugal	Motor vehicles Plastic bags	.. ..	.. ..

	Product	Rate	Source
Romania	Green coffee Roasted coffee Soluble coffee Natural fur products Articles from crystal Jewelleries from gold and/or platinum Cars Perfume products Microwave ovens Air conditioning units Hunting and other guns Yachts and boats	EUR 680 per tonne EUR 1,000 per tonne EUR 4 per kg 45% 55% 25% EUR 1 per cm <sup>3</sup> 10%-35% 20% 20% 100% 30%-50%	<a href="http://www.aneir-cpce.ro/chapter5/excise1.htm">http://www.aneir-cpce.ro/chapter5/excise1.htm</a>
Slovak Republic	Coal Natural gas Compressed natural gas	EUR 10.62 per tonne EUR 1.32 to EUR 9.36 per MWh EUR 0.141 to EUR 0.01989 per kg	<a href="https://www.financnasprava.sk/en/individuals/taxes-individuals/excise-duties">https://www.financnasprava.sk/en/individuals/taxes-individuals/excise-duties</a>
Slovenia	None		
Spain	None		<a href="https://www.agenciatributaria.es/AEAT.internet/en_gb/Inicio/La_Agencia_Tributaria/Aduanas_e_Impuestos_Especiales/ Presentacion/Impuestos_especiales/Impuestos_especiales.shtml">https://www.agenciatributaria.es/AEAT.internet/en_gb/Inicio/La_Agencia_Tributaria/Aduanas_e_Impuestos_Especiales/ Presentacion/Impuestos_especiales/Impuestos_especiales.shtml</a>
Sweden	Advertising Waste (landfills) Pesticides  Gravel Lottery Gaming  Profits (monetary gains) Automobile insurance	8%, 3% for periodicals SEK 500 per tonne SEK 34 per kg active ingredient SEK 15 per tonne 35% Varies by number of tables (SEK 2,000-SEK 25,000) 30% 32%	<a href="http://www.skatteverket.se/foretagochorganisationer/skatter/punktskatter.4.71004e4c133e23bf6db800057013.html">http://www.skatteverket.se/foretagochorganisationer/skatter/punktskatter.4.71004e4c133e23bf6db800057013.html</a>
United Kingdom	Betting Vehicles Biofuels Climate change	10%-50%, varies by game GBP 0-GBP 2,000, varies GBP 0.5795 per litre GBP 0.00195 to GBP 0.00559 per kWh or GBP 0.01251 to GBP 0.01526 per kg, depending on commodity	<a href="https://www.gov.uk/government/publications/uk-trade-tariff-excise-duties-reliefs-drawbacks-and-allowances/uk-trade-tariff-excise-duties-reliefs-drawbacks-and-allowances#introduction">https://www.gov.uk/government/publications/uk-trade-tariff-excise-duties-reliefs-drawbacks-and-allowances/uk-trade-tariff-excise-duties-reliefs-drawbacks-and-allowances#introduction</a> <a href="https://www.gov.uk/government/publications/rates-and-allowance-excise-duty-gambling-duty/excise-duty-gambling-duty-rates#gambling-duties">https://www.gov.uk/government/publications/rates-and-allowance-excise-duty-gambling-duty/excise-duty-gambling-duty-rates#gambling-duties</a> <a href="https://www.gov.uk/government/publications/vehicle-excise-duty/vehicle-excise-duty">https://www.gov.uk/government/publications/vehicle-excise-duty/vehicle-excise-duty</a>

.. Not available.

Source: As noted in the table.



**Table A3.3 Indicative list of export-credit agencies or guarantee schemes, as at September 2019**

Member State	Agency	Overview	Link
Austria	Oesterreichische Kontrollbank AG (OeKB)	Provides guarantees of the Republic of Austria under the Export Financing Guarantees Act and the Export Guarantees Act	<a href="https://www.oekb.at/en/export-services/about-oekb-export-services.html">https://www.oekb.at/en/export-services/about-oekb-export-services.html</a>
Belgium	Crenendo	Credendo – export-credit agency offers credit insurance, investment insurance, financial guarantees, and direct financing	<a href="https://www.credendo.com">https://www.credendo.com</a>
Bulgaria	Bulgarian Export Insurance Agency (BAEZ)	BAEZ provides insurance against export risks under the Export Insurance Act and under the Insurance Code	<a href="https://baez.bg">https://baez.bg</a>
Croatia	Croatian Bank for Reconstruction and Development (HBOR)	HBOR provides export-credit insurance according to the Act on the Croatian Bank for Reconstruction and Development	<a href="https://www.hbor.hr">https://www.hbor.hr</a>
Cyprus	No information available		
Czech Republic	Export Guarantee and Insurance Corporation (EGAP) and Czech Export Bank	Insurance against political and commercial risks related to the financing export of goods, services and investments	<a href="http://www.egap.cz">http://www.egap.cz</a> <a href="http://www.ceb.cz">http://www.ceb.cz</a>
Denmark	Eksport Kredit Fonden (EKF)	Denmark's official export-credit agency for financing of export projects	<a href="http://www.ekf.dk">http://www.ekf.dk</a>
Estonia	KredEx	KredEx helps enterprises develop faster and expand more safely in foreign markets, offering loans, venture capital, credit insurance and guarantees with state guarantee	<a href="http://kredex.ee/en/">http://kredex.ee/en/</a>
Finland	Finnvera and Finnish Export-Credit Ltd (FEC)	Covers credit risks in export trade, working capital for export products, export credits, cash for export receivables, financing for the buyer, and export-credit guarantees	<a href="http://www.finnvera.fi">http://www.finnvera.fi</a> <a href="http://www.fec.fi">http://www.fec.fi</a>
France	Bpifrance Assurance Export	Facilitates exports, provides export insurance and guarantees	<a href="http://www.bpifrance.fr/Qui-sommes-nous/Nosmetiers/International2/Assurance-Export">http://www.bpifrance.fr/Qui-sommes-nous/Nosmetiers/International2/Assurance-Export</a>
Germany	Euler Hermes Aktiengesellschaft	Provides export-credit guarantees as a key foreign trade promotion instrument of the Government	<a href="https://eulerhermes.com">https://eulerhermes.com</a>
Greece	Export-Credit Insurance Organisation (ECIO)	Offers short- and long-term export credits, export-credit insurance, and foreign investment insurance	<a href="http://www.ecio.gr">http://www.ecio.gr</a>

Member State	Agency	Overview	Link
Hungary	Hungarian Export-Credit Insurance Ltd (MEHIB) and Hungarian Export-Import Bank plc (EXIM)	EXIM offers financing for buyers, discounting facilities, and guarantee commitments	<a href="http://www.exim.hu/en/">http://www.exim.hu/en/</a>
Ireland	Credit Guarantee Scheme	The Credit Guarantee Scheme is provided only to SMEs	<a href="https://dbei.gov.ie/en/Publications/Publication-files/SME-CGS-Information-Booklet.pdf">https://dbei.gov.ie/en/Publications/Publication-files/SME-CGS-Information-Booklet.pdf</a>
Italy	Servizi Assicurativi del Commercio Estero (SACE)	Offers financing solutions to purchase Italian goods and services	<a href="http://www.sace.it/">http://www.sace.it/</a>
Latvia	Latvian Guarantee Agency (LVA) and Export-Credit Agency (ECA)	LVA and ECA are run by ALTUM, a state-owned development finance institution which offers loans, guarantees, and venture capital. It also develops and implements state aid programmes	<a href="https://www.altum.lv/en/">https://www.altum.lv/en/</a>
Lithuania	INVEGA	National promotional institution providing guarantees on export to non-marketable risk countries	<a href="http://invega.lt">http://invega.lt</a>
Luxembourg	Office du Dueroire (ODL)	Provides insurance and financial support to eligible companies	<a href="http://www.ducroire.lu">http://www.ducroire.lu</a>
Malta	No information available		
Netherlands	Export-credit guarantee scheme	Initiated in 2009, the export-credit guarantee scheme promotes the export of Dutch capital goods. Banks can take out export-credit insurance (EKV) with the State of the Netherlands	<a href="https://www.government.nl/topics/export-import-and-customs/export-credit-insurance-eci">https://www.government.nl/topics/export-import-and-customs/export-credit-insurance-eci</a> <a href="http://atradius.com/nl/en/duchstatebusiness/index.jsp">http://atradius.com/nl/en/duchstatebusiness/index.jsp</a>
Poland	Korporacja Ubezpieczeń Kredytów Eksportowych (KUKE)	KUKE provides insurance services for both domestic and export transactions to facilitate trade and financing	<a href="http://www.kuke.com.pl">http://www.kuke.com.pl</a>
Portugal	Companhia de Seguro de Créditos	Offers state guarantees for short-term export credits, supplier and buyer credit cover, and other covered risks	<a href="http://www.cosec.pt">http://www.cosec.pt</a>
Romania	EximBank Romania	EximBank Romania provides export-credit insurance	<a href="https://www.eximbank.ro/">https://www.eximbank.ro/</a>
Slovak Republic	Export-Import Bank of the Slovak Republic (Eximbanka SR)	Provides export insurance, export financing, bank guarantees, and concessional loans.	<a href="http://www.eximbanka.sk">http://www.eximbanka.sk</a>
Slovenia	Slovenska izvozna in razvojna banka, d.d. (SID)	As an authorized export-credit agency, SID provides insurance for international commercial transactions against non-marketable risks on behalf of the Republic	<a href="http://www.sid.si/home">http://www.sid.si/home</a>

Member State	Agency	Overview	Link
Spain	Compañía Española de Seguros de Crédito a la Exportación (CESCE)	CESCE manages export-credit insurance on behalf of Spain	<a href="http://www.cesce.es">http://www.cesce.es</a>
Sweden	Swedish Export Credit (SEK) and the Export-Credit Committee (EKN)	SEK helps finance Swedish exports by providing long-term funding, and EKN offers state supported export credits	<a href="https://www.sek.se">https://www.sek.se</a> <a href="https://www.ekn.se">https://www.ekn.se</a>
United Kingdom	UK Export Finance	The United Kingdom's export-credit agency and government department offering export insurance, direct lending, letters of credit, investment insurance, etc.	<a href="https://www.gov.uk/government/organisations/uk-export-finance">https://www.gov.uk/government/organisations/uk-export-finance</a>

Source: Compiled from the various websites listed.

Table A3.4 SOEs

Country	Definition of SOE by the member State providing statistics	Main responsible government institutions	No. of SOEs (year) (indicative)	References
Austria	All companies in which the federal Government has a direct or majority interest (over 50% equity)	The Federal Ministry of Finance under the terms of the Austrian Federal Ministries Act	100 (2018)	<a href="https://english.bmf.gv.at/budget-economic-policy/Management-of-State-Owned-Enterprises.html">https://english.bmf.gv.at/budget-economic-policy/Management-of-State-Owned-Enterprises.html</a> ; <a href="https://www.bmf.gv.at/budget/das-budget/Beteiligungen_des_Bundes_Maerz_2018.pdf?6dj8e5">https://www.bmf.gv.at/budget/das-budget/Beteiligungen_des_Bundes_Maerz_2018.pdf?6dj8e5</a>
Belgium	Federal Government as shareholder, investor, or equity stakeholder	The Federal Holding and Investment Company (SFPI-FPIM) manages the federal Government's shareholdings and cooperates with the Government on specific projects pursuant to the interests of the Belgian economy. The federal Government is the sole shareholder of SFPI-FPIM. Five companies designated as "autonomous public enterprises" (SNCB, Infrabel, Belgocontrol, bPost, and Proximus) are overseen by the Government <sup>a</sup>	93 (2017)	<a href="http://www.sfpi-fpim.be/fr">http://www.sfpi-fpim.be/fr</a> ; <a href="http://www.sfpi-fpim.be/sites/default/files/attachments/sfpi_ra2017_web.pdf">http://www.sfpi-fpim.be/sites/default/files/attachments/sfpi_ra2017_web.pdf</a>
Bulgaria	State enterprises and commercial companies with at least 50% participation by the state. Regulated by both commercial law and public law	Some SOEs are owned by the central Government, others by local governments. The Ministry of Finance is the body responsible for strategic decisions on financial assets. Ministries, central and local public authorities, and other bodies owning a majority stake in public sector holdings are responsible for operational decisions	Over 900 at national and local level (of which 220 under Central Government) (2017)	<a href="https://www.minfin.bg/bg/948">https://www.minfin.bg/bg/948</a> ; <a href="http://www.statecapture.eu/wp-content/uploads/2018/01/BG_c.pdf">http://www.statecapture.eu/wp-content/uploads/2018/01/BG_c.pdf</a> ; <a href="https://ec.europa.eu/info/sites/info/files/2019-european-semester-country-report-bulgaria_en.pdf">https://ec.europa.eu/info/sites/info/files/2019-european-semester-country-report-bulgaria_en.pdf</a> ; and information provided by the authorities
Croatia	Companies majority-owned and controlled by the government; companies and legal entities of strategic importance to Croatia; companies where Croatia has a minority share but a special interest	The State Property Ministry; and the Ministry of Finance	1,149 enterprises majority-owned by the state (as at 2016). Among these, 49 are classified as being of special state interest	<a href="http://www.ijf.hr/upload/files/file/ENG/FISCU S/5.pdf">http://www.ijf.hr/upload/files/file/ENG/FISCU S/5.pdf</a>
Cyprus	A company, association or institution in which the government may exercise decisive influence, with the exception of listed companies on a regulated market. The decisive influence on the part of the government shall be presumed when the	The government has stakes in 13 firms, almost all of which are owned by the central Government. The main body in charge of strategic decisions regarding financial assets owned by the central Government is the Council of Ministers. Ministries, central and local public authorities, as well as other bodies owning a majority stake in SOEs, are	12 majority-owned by the state (>50%); 1 minority-owned (10%-50%) (2015)	Information provided by the authorities

Country	Definition of SOE by the member State providing statistics	Main responsible government institutions	No. of SOEs (year) (indicative)	References
	government, directly or indirectly: (a) holds the majority of the issued capital of a company, or (b) holds the majority of the votes attached to shares issued by the company, or (c) can appoint more than half the members of the administrative, management or supervisory body	responsible for operational decisions		
Czech Rep.	Equity investments by the Ministry of Finance in companies. Joint-stock companies controlled by the Ministry of Finance, with a share of 40%-100%.	The Ministry of Finance in the case of joint-stock companies; the Ministry of Industry and Trade in the case of statutory corporations <sup>a</sup>	61 (of which 19 joint-stock companies) (2018)	<a href="https://www.mfcr.cz/cs/verejny-sektor/majetek-statu/majetkove-ucasti">https://www.mfcr.cz/cs/verejny-sektor/majetek-statu/majetkove-ucasti</a>
Denmark	Stakeholder in joint-stock companies, public companies, or international or investment funds (majority and minority state-owned)	The Ministry of Finance exercises ownership functions for the majority of SOEs, but several line ministries also exercise ownership <sup>a</sup>	29 (2017)	<a href="https://www.fm.dk/arb-ejdsomraader/statens-selskaber">https://www.fm.dk/arb-ejdsomraader/statens-selskaber</a> ; <a href="https://www.fm.dk/publikationer/2018/statens-selskaber-2018">https://www.fm.dk/publikationer/2018/statens-selskaber-2018</a>
Estonia	State as sole owner or having an exclusive or majority stake; for non-profits, where the Government exercises rights as an appointed member	Basic ownership functions and governance on SOEs are divided between seven ministries. The Ministry of Finance controls ownership rights of SOEs under its control, and appoints half of the board members of SOEs governed by other ministries <sup>a</sup>	29 private companies, 49 foundations (as at September 2019)	<a href="https://www.eesti.ee/enng/contacts/riigi_osalu_sega_ariuhingud_1">https://www.eesti.ee/enng/contacts/riigi_osalu_sega_ariuhingud_1</a>
Finland	A state majority-owned company is one in which the State holds the majority of the aggregate of votes; a state associated company is one in which the State holds a minimum of 10% and a maximum of 50% of the aggregate votes	The Ownership Steering Department of the Prime Minister's Office is responsible for preparing and implementing ownership policies. It prepares and implements state ownership policy, and exercises ownership steering in companies. Responsibility for ownership steering in respect of special-assignment companies rests mostly with other ministries	50 (2018)	<a href="https://vnk.fi/en/ownership-policy-and-steering">https://vnk.fi/en/ownership-policy-and-steering</a> ; <a href="https://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/161720/Report_on_State_Annual_Accounts_2018_Annex_4.pdf?sequence=1&amp;isAllowed=y">https://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/161720/Report_on_State_Annual_Accounts_2018_Annex_4.pdf?sequence=1&amp;isAllowed=y</a>
France	List of companies per Decree No. 2004-963 of 9 September 2004 on the establishment of the national-owned service. Plus, shareholdings in companies in which the Government	L'Agence des participations de l'État (APE), as a part of the Ministry of Economy and Finance and under the responsibility of all ministries. It has a portfolio of 88 strategic and centrally-owned public sector holdings. The APE centralizes the	88 (2018)	<a href="https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT00000440880&amp;categorieLien=cid">https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT00000440880&amp;categorieLien=cid</a> ; <a href="https://www.economie.gouv.fr/agence-participations-etat/Les-">https://www.economie.gouv.fr/agence-participations-etat/Les-</a>

Country	Definition of SOE by the member State providing statistics	Main responsible government institutions	No. of SOEs (year) (indicative)	References
	holds less than 1% of the capital	shareholding responsibilities with respect to numerous companies subject to whole or partial ownership by the State. Every October, it submits a report on the economic situation of majority-owned public sector holdings to Parliament		<a href="#">participations-publiques</a> ; <a href="https://www.economie.gouv.fr/files/2019-10/COR_021019_RA_APE-web.pdf">https://www.economie.gouv.fr/files/2019-10/COR_021019_RA_APE-web.pdf</a> ; <a href="https://ec.europa.eu/info/sites/info/files/economy-finance/dp089_en_public_assets.pdf">https://ec.europa.eu/info/sites/info/files/economy-finance/dp089_en_public_assets.pdf</a>
Germany	Where the federal Government has a direct or indirect investment of 25% or EUR 50,000 capital; for others, where the Government has more than 50% of the capital or voting rights	The framework for managing state holdings is set out by the Finance Ministry. It is undertaken by the individual government departments/ministries according to their responsibility. <sup>a</sup>	553 (Federal) (2017)	<a href="https://www.bundesfinanzministerium.de/Content/DE/Downloads/Broschueren_Bestellservice/2019-05-23-beteiligungsbericht-des-bundes-2018.pdf?blob=publicationFile&amp;v=2">https://www.bundesfinanzministerium.de/Content/DE/Downloads/Broschueren_Bestellservice/2019-05-23-beteiligungsbericht-des-bundes-2018.pdf?blob=publicationFile&amp;v=2</a>
Greece	SOEs defined by law	Public Holdings Company (HCAP-EDIS) manages SOEs as part of Hellenic Corporation of Assets and Participations (HCAP)	29 under Chapter A of Law 342/2005 and 57 of the general government with a budget over EUR 10 million (2018)	<a href="http://www.hcap.gr/en/">http://www.hcap.gr/en/</a> ; <a href="https://ec.europa.eu/info/sites/info/files/economy-finance/ip064_en.pdf">https://ec.europa.eu/info/sites/info/files/economy-finance/ip064_en.pdf</a> ; <a href="https://www.minfin.gr/web/quest/d.e.k.o">https://www.minfin.gr/web/quest/d.e.k.o</a>
Hungary	State-owned business enterprises in which it has a majority or minority ownership or exercises ownership rights	Hungarian National Asset Management Inc. (MNV Zrt.) is entrusted to exercise ownership rights in terms of all state assets, unless a law or ministerial order provides otherwise	Over 350 (as at September 2019)	<a href="http://www.mnvzrt.hu/en">http://www.mnvzrt.hu/en</a>
Ireland	State-sponsored bodies are financial and non-financial bodies that are directly or indirectly controlled by a government office, or lack autonomy	The minister and/or the department has statutory responsibility for each state-sponsored body	81 majority-owned by the state (>50%), 62 minority-owned (10%-50%) (2015)	<a href="https://www.gov.ie/en/publication/0918ef-code-of-practice-for-the-governance-of-state-bodies/">https://www.gov.ie/en/publication/0918ef-code-of-practice-for-the-governance-of-state-bodies/</a> ; and information provided by the authorities.
Italy	For the Department of Treasury under the Ministry of Economy and Finance (MEF), listed and non-listed companies where the state has majority or controlling shareholding; the total is companies where there is public participation	The MEF and individual line ministries share the ownership function. For example, the Agenzia del Demanio (AdD), the Italian Public Property Agency, is responsible for the management, rationalization and development of all state-owned properties; AdD's operations are overseen by the MEF	30 under the MEF (2019) 9,240 in total (general government) (2016)	<a href="http://www.dt.mef.gov.it/en/attivita_istituzionali/partecipazioni/elenco_partecipazioni/">http://www.dt.mef.gov.it/en/attivita_istituzionali/partecipazioni/elenco_partecipazioni/</a> ; <a href="https://www.istat.it/en/archivio/225442">https://www.istat.it/en/archivio/225442</a> ; <a href="https://ec.europa.eu/info/sites/info/files/economy-finance/dp089_en_public_assets.pdf">https://ec.europa.eu/info/sites/info/files/economy-finance/dp089_en_public_assets.pdf</a>
Latvia	SOEs, state-owned equity shares, equity shares belonging to the SOEs, and SOEs effectively controlled by the State	From 1 June 2015, SOE operational and strategic governance is implemented through the Cross-Sectoral Coordination Centre and sectoral ministries	182 enterprises (2017)	<a href="https://www.pkc.gov.lv/en/state-owned-enterprises">https://www.pkc.gov.lv/en/state-owned-enterprises</a> ; <a href="http://www.valstskapitals.gov.lv/images/userfiles/parskats_web_pa2.pdf">http://www.valstskapitals.gov.lv/images/userfiles/parskats_web_pa2.pdf</a> ;

Country	Definition of SOE by the member State providing statistics	Main responsible government institutions	No. of SOEs (year) (indicative)	References
Lithuania	State as full or majority-share owner (more than 50% of all votes at the general meeting of the company). SOE engaged in commercial activities, public limited liability companies and private limited companies.	The Governance Coordination Centre is a centralized managing state property manager which is the responsible coordinating institution for the implementation of SOE management policy. Lithuanian SOEs often perform both commercial activities and special activities and functions assigned by the Government, according to standards issued by the Ministry of Economy	108 (2017)	<a href="http://www.valstskapitals.gov.lv/images/userfiles/SOE_Review_LV_Final_report.pdf">http://www.valstskapitals.gov.lv/images/userfiles/SOE_Review_LV_Final_report.pdf</a> <a href="https://vkc.sipa.lt/wp-content/uploads/2018/09/SOE_Report_2018_EN_WEB.pdf">https://vkc.sipa.lt/wp-content/uploads/2018/09/SOE_Report_2018_EN_WEB.pdf</a>
Luxembourg	Direct state holdings in private companies (both listed and non-listed); institutions, foundations, and economic interest groups; or international financial institutions	Some SOEs are owned by the central Government, others by local governments. The main body for strategic decisions is the Ministry of Finance, through the Treasury Department. It is also responsible for managing the financial assets in the Government's equity portfolio	45 (as at 31 August 2019)	<a href="https://te.public.lu/fr/p/ participations.html">https://te.public.lu/fr/p/ participations.html</a> ; and information provided by the authorities.
Malta	The portfolio of investments held by Government	Malta Investment Management Company Limited provides consultancy and advice to SOEs. It falls under the responsibility of the Ministry for the Economy, Investment and Small Business	17 companies under Malta Government Investments	<a href="https://mgismalta.com/portfolio-2/">https://mgismalta.com/portfolio-2/</a> ; <a href="http://mimcol.com.mt/">http://mimcol.com.mt/</a> ; and information provided by the authorities.
Netherlands	Where the Dutch State owns shares	In 2001, the Netherlands centralized the management of state participations with the Ministry of Finance <sup>a</sup>	14 (2017)	<a href="https://www.rijksoverheid.nl/documenten/kamerstukken/2019/06/25/bijlage-jaarverslag-beheer-staatsdeelnemingen-2018">https://www.rijksoverheid.nl/documenten/kamerstukken/2019/06/25/bijlage-jaarverslag-beheer-staatsdeelnemingen-2018</a> ; <a href="https://english.rekenkamer.nl/publications/reports/2015/04/07/the-state-as-public-shareholder">https://english.rekenkamer.nl/publications/reports/2015/04/07/the-state-as-public-shareholder</a>
Poland	Where the state treasury holds a majority or minority interest	The Ministry of Treasury is responsible for ownership functions for the majority of SOEs, but several sector ministries also exercise ownership for SOEs with public policy objectives <sup>a</sup>	Several hundred companies in public ownership (of which, 30 SOEs considered as being of strategic importance under Ministry of Treasury special surveillance) (2014)	<a href="https://ec.europa.eu/info/sites/info/files/2017-european-semester-country-report-poland-en.pdf">https://ec.europa.eu/info/sites/info/files/2017-european-semester-country-report-poland-en.pdf</a>
Portugal	Companies in which the State can directly or indirectly exercise a dominant influence	The General Directorate of the Treasury and Finance plays a role in ensuring the effectiveness of the operations of financial	121 (2018)	<a href="http://www.dgtrf.pt/Homemepage">http://www.dgtrf.pt/Homemepage</a> ; <a href="http://www.dgtrf.pt/sector-empresarial-do-estado-see/o-que-e-o-">http://www.dgtrf.pt/sector-empresarial-do-estado-see/o-que-e-o-</a>

Country	Definition of SOE by the member State providing statistics	Main responsible government institutions	No. of SOEs (year) (indicative)	References
Romania	Companies in which the state or administrative territory are sole shareholders or have a participation rate that provides control; where the state has guardianship; or where the state exercises control in terms of voting rights, members of the management, or influence by clause, contract or association	intervention of the State with respect to the management of the State's assets Some SOEs are owned by the central Government, others by local governments. There is no unique body responsible for strategic and investment decisions regarding financial assets. In fact, each Ministry is responsible for the decisions related to public sector holdings (PSHs) operating in the fields under its jurisdiction and, in addition, the Ministry of Public Finance is responsible for supervising and monitoring PSH activities	385 central and 1,402 local (2018)	<a href="#">sector-empresarial-do-estado-see-</a> <a href="http://discutii.mfinante.ro/static/10/Mfp/quvernanta/rapactivintreppub2018_120920198.pdf">http://discutii.mfinante.ro/static/10/Mfp/quvernanta/rapactivintreppub2018_120920198.pdf</a> ; and information provided by the authorities.
Slovak Republic	Majority or minority ownership by the state	Some SOEs are owned by the central Government, others by local government. The main body for strategic decisions is the Ministry of Finance, which is responsible for strategic decisions around financial assets owned by the central Government. Ministries, central and local public authorities, and other bodies owning a majority stake in PSHs are responsible for operational decisions. Currently, many of the financial assets are owned by MH Manažment, which is an SOE fully owned by the Slovak Ministry of Economy. It is the legal successor to the National Property Fund of the Slovak Republic, and its main aim is to exercise the State's shareholder rights in companies assigned to it	65 SOEs under 11 ministries and two governmental agencies (2015)	<a href="https://en.llri.it/wp-content/uploads/2018/01/SOE-in-CEE.pdf">https://en.llri.it/wp-content/uploads/2018/01/SOE-in-CEE.pdf</a> ; and information provided by the authorities
Slovenia	Direct and indirect holdings of the Republic of Slovenia	The Slovenian Sovereign Holding manages direct or indirect holdings owned by the State	84 (as at 30 June 2019)	<a href="https://www.sdh.si/en-gb/">https://www.sdh.si/en-gb/</a>
Spain	State majority or minority shareholdings in companies; and indirect shareholdings. Public companies where the public administration has the capacity to control the policy	The Ministry of Finance and Public Administrations exercises ownership functions for the majority of SOEs, but several line ministries also exercise ownership <sup>a</sup>	15 (majority), 9 (minority), plus indirect in over 100 (as at September 2019)	<a href="http://www.sepi.es/en/get-know-sepi/who-we-are">http://www.sepi.es/en/get-know-sepi/who-we-are</a>
Sweden	State wholly-owned and partially-owned companies actively managed by the Government. SOEs are primarily governed by the	The Minister for Enterprise and Innovation is responsible for a unified ownership policy for SOEs. Other responsible ministries include: Ministry of Finance, Ministry of Culture, Ministry of Health and Social	47 (2017)	<a href="https://www.government.se/reports/2018/09/annual-report-for-state-owned-enterprises-2017/">https://www.government.se/reports/2018/09/annual-report-for-state-owned-enterprises-2017/</a>



Country	Definition of SOE by the member State providing statistics	Main responsible government institutions	No. of SOEs (year) (indicative)	References
	Swedish Companies Act, supported by the Swedish Code of Corporate Governance	Affairs, and Ministry for Foreign Affairs		
United Kingdom	Companies in government include private limited, unlimited, community-interest companies, royal charters, statutory entities, trading funds, registered societies, and industrial and provident societies. Public corporations refer to market entities that are controlled by central or local governments and derive more than 50% of production costs from the sale of goods or services at economically significant prices. The public sector can set up and own companies in the same way as the private sector. Depending on circumstances (e.g. financial crisis), the government can directly buy existing companies	Some SOEs are owned by the central Government, others by the local governments. The main bodies involved in strategic decisions regarding financial assets are (i) the central and local governments, which are responsible for decisions related to the dismissal/acquisition of their stakes in companies; and (ii) HM Treasury, which is responsible for monitoring the performance of PSHs and of the government policy on privatization	303 companies that are jointly-, majority- or fully-owned by the public sector (i.e. with direct shareholding by the public sector of at least 50%) (2017)	<a href="https://researchbriefings.files.parliament.uk/documents/CBP-8325/CBP-8325.pdf">https://researchbriefings.files.parliament.uk/documents/CBP-8325/CBP-8325.pdf</a> ; <a href="https://www.nao.org.uk/wp-content/uploads/2015/12/Companies-in-Government_updated.pdf">https://www.nao.org.uk/wp-content/uploads/2015/12/Companies-in-Government_updated.pdf</a> ; and information provided by the authorities.

a Information taken from OECD (2018), *Ownership and Governance of State-Owned Enterprises: A Compendium of National Practices*.

Source: Information compiled by the WTO Secretariat from sources listed in the table; WTO document WT/TPR/S/357/Rev.1, 13 October 2017, Table A3.5; OECD (2018), *Ownership and Governance of State-Owned Enterprises: A Compendium of National Practices*; and information provided by the authorities.

**Table A3.5 Summary of main legislative measures on IPRs, 2019**

Legislative measure	Notification to Council for TRIPS pursuant to Article 63.2 TRIPS
<b>Copyright and Related Rights</b>	
Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission.	IP/N/1/EU/C/5
Directive 96/9/EC of 11 March 1996 on the legal protection of databases.	IP/N/1/EEC/C/2
Council Decision 2000/278/EC of 16 March 2000 on the approval, on behalf of the European Community, of the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty.	IP/N/1/EU/C/8
Directive 2001/29/EC of 22 May 2001 on the harmonization of certain aspects of copyright and related rights in the information society (Information Society Directive)	IP/N/1/EU/C/1
Directive 2001/84/EC of 27 September 2001 on the resale right for the benefit of the author of an original work of art.	IP/N/1/EU/C/6
Directive 2006/115/EC of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property.	IP/N/1/EU/C/3
Directive 2006/116/EC of 12 December 2006 on the term of protection of copyright and certain related rights.	IP/N/1/EU/C/10
Directive 2009/24/EC of 23 April 2009 on the legal protection of computer programs.	IP/N/1/EU/C/7
Directive 2011/77/EU of 27 September 2011 amending Directive 2006/116/EC of 12 December 2006 on the term of protection of copyright and certain related rights.	IP/N/1/EU/C/4
Directive 2012/28/EU of 25 October 2012 on certain permitted uses of orphan works.	IP/N/1/EU/C/2
Directive 2014/26/EU of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market.	IP/N/1/EU/C/9
Regulation (EU) 2017/1128 of 14 June 2017 on cross-border portability of online content services in the internal market.	IP/N/1/EU/C/11
Directive (EU) 2017/1564 of 13 September 2017 on certain permitted uses of certain works and other subject matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print-disabled and amending Directive 2001/29/EC on the harmonization of certain aspects of copyright and related rights in the information society.	IP/N/1/EU/C/12
Directive (EU) 2019/789 of 17 April 2019 laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes, and amending Council Directive 93/83/EEC.	IP/N/1/EU/C/13
Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC.	IP/N/1/EU/C/14
<b>Trade Marks</b>	
Council Regulation (EC) No. 207/2009 of 26 February 2009 on the Community trade mark.	IP/N/1/EU/T/2
Regulation (EU) 2015/2424 of 16 December 2015 amending Council Regulation (EC) No. 207/2009 on the Community trade mark and Commission Regulation (EC) No. 2868/95 implementing Council Regulation (EC) No. 40/94 on the Community trade mark, and repealing Commission Regulation (EC) No. 2869/95 on the fees payable to the Office for Harmonization in the Internal Market (Trade Marks and Designs).	IP/N/1/EU/T/6
Directive 2008/95/EC of 22 October 2008 to approximate the laws of the member States relating to trade marks.	IP/N/1/EU/T/1
Directive (EU) 2015/2436 of the European Parliament and of the Council of 16 December 2015 to approximate the laws of the member States relating to trade marks.	IP/N/1/EU/T/5
Commission Regulation (EC) No. 2868/95 of 13 December 1995 implementing Council Regulation (EC) No. 40/94 on the Community trade mark, as amended by Commission Regulation (EC) No. 782/2004 of 26 April 2004, Commission Regulation (EC) No. 1041/2005 of 29 June 2005, and Commission Regulation (EC) No. 355/2009 of 31 March 2009.	IP/N/1/EU/T/7, IP/N/1/EU/T/8 and IP/N/1/EU/T/4

Legislative measure	Notification to Council for TRIPS pursuant to Article 63.2 TRIPS
Commission Regulation (EC) No. 216/96 of 5 February 1996 laying down the procedures of the Boards of Appeal of the Office for Harmonization in the Internal Market (Trade marks and Designs).	IP/N/1/EU/T/9
Commission Regulation (EC) No. 2082/2004 of 6 December 2004, amending Regulation (EC) No. 216/96 laying down the rules of procedure of the Boards of Appeal of the Office for Harmonization in the Internal Market (Trade marks and Designs).	IP/N/1/EU/T/3
Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark.	IP/N/1/EU/T/10
Commission Delegated Regulation (EU) 2017/1430 of 18 May 2017 supplementing Council Regulation 207/2009 on the European Union Trade mark and repealing Commission Regulations 2868/95 and 216/96.	IP/N/1/EU/T/11
Commission Implementing Regulation EU 2017/1431 of 18 May 2017 laying down rules for implementing certain provisions of Council Regulation (EC) 207/2009 on the European Union Trade mark.	IP/N/1/EU/T/12
Commission Delegated Regulation (EU) 2018/625 of 5 March 2018 supplementing Regulation (EU) 2017/1001 of the European Parliament and of the Council on the European Union trade mark, and repealing Delegated Regulation (EU) 2017/1430.	Not yet notified
Commission Implementing Regulation (EU) 2018/626 of 5 March 2018 laying down detailed rules for implementing certain provisions of Regulation (EU) 2017/1001 of the European Parliament and of the Council on the European Union trade mark, and repealing Implementing Regulation (EU) 2017/1431.	Not yet notified
<b>Geographical Indications</b>	
<u>Wines</u> : Regulation (EU) No. 1308/2013 of 17 December 2013 establishing a common organization of the markets in agricultural products.	IP/N/1/EU/G/4
Commission Regulation (EC) No. 607/2009 of 14 July 2009, laying down certain detailed rules regarding protected designations of origin and geographical indications, traditional terms, labelling and presentation of certain wine sector products.	IP/N/1/EEC/4 and IP/N/1/EEC/G/5
<u>Aromatized Wines</u> : Regulation (EU) No. 251/2014 of 26 February 2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatized wine products and repealing Council Regulation (EEC) No. 1601/91.	IP/N/1/EU/G/5
<u>Spirit Drinks</u> : Regulation (EC) No. 110/2008 of 15 January 2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks.	IP/N/1/EEC/4 and IP/N/1/EEC/G/6
Commission Implementing Regulation (EU) No. 716/2013 of 25 July 2013 laying down rules for the application of Regulation (EC) No. 110/2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks.	IP/N/1/EU/G/6
<u>Agricultural products and foodstuffs</u> : Council Regulation (EU) No. 1151/2012 of 21 November 2012 on quality schemes for agricultural products and foodstuffs.	IP/N/1/EU/G/3
Commission Delegated Regulation (EU) No. 664/2014 of 18 December 2013 supplementing Regulation (EU) No. 1151/2012 with regard to the establishment of the Union symbols for protected designations of origin, protected geographical indications and traditional specialities guaranteed and with regard to certain rules on sourcing, certain procedural rules and certain additional transitional rules.	IP/N/1/EU/G/7
Commission Implementing Regulation (EU) No. 668/2014 of 13 June 2014 laying down rules for the application of Regulation (EU) No. 1151/2012 on quality schemes for agricultural products and foodstuffs.	IP/N/1/EU/G/8
Commission Delegated Regulation (EU) 2019/33 of 17 October 2018 supplementing Regulation (EU) No. 1308/2013 of the European Parliament and of the Council as regards applications for protection of designations of origin, geographical indications and traditional terms in the wine sector, the objection procedure, restrictions of use, amendments to product specifications, cancellation of protection, and labelling and presentation.	IP/N/1/EU/G/9
Commission Implementing Regulation (EU) 2019/34 of 17 October 2018 laying down rules for the application of Regulation (EU) No. 1308/2013 of the European Parliament and of the Council as regards applications for protection of designations of origin, geographical indications and traditional terms in the wine sector, the objection procedure, amendments to product specifications, the register of protected names, cancellation of protection and use of symbols, and of Regulation (EU) No. 1306/2013 of the European Parliament and of the Council as regards an appropriate system of checks.	IP/N/1/EU/G/10

Legislative measure	Notification to Council for TRIPS pursuant to Article 63.2 TRIPS
<b>Industrial designs</b>	
Directive 98/71/EC of 13 October 1998 on the legal protection of designs.	IP/N/1/EU/D/1
Council Regulation (EC) No. 6/2002 of 12 December 2001 on Community designs, as amended by Council Regulation (EC) No. 1891/2006 of 18 December 2006.	IP/N/1/EU/D/2
Commission Regulation (EC) No. 2245/2002 of 21 October 2002 implementing Council Regulation (EC) No. 6/2002, as amended by Commission Regulation (EC) No. 876/2007 of 24 July 2007.	IP/N/1/EU/D/3
Commission Regulation (EC) No. 2246/2002 of 16 December 2002 on the fees payable to the Office for Harmonization in the Internal Market (Trademarks and Designs) in respect of the registration of Community designs, as amended by Commission Regulation (EC) No. 877/2007 of 24 July 2007.	IP/N/1/EU/D/4
Council Decision 2006/954/EC of 18 December 2006 approving the accession of the EC to the Geneva Act of the Hague Agreement concerning the international registration of industrial designs, adopted in Geneva on 2 July 1999.	IP/N/1/EU/D/5
<b>Patents</b>	
Directive 98/44/EC of 6 July 1998 on the legal protection of biotechnological inventions.	IP/N/1/EEC/P/4
Regulation (EC) No. 1901/2006 of 12 December 2006 on medicinal products for paediatric use and amending Regulation (EEC) No. 1768/92, Directive 2001/20/EC, Directive 2001/83/EC and Regulation (EC) No. 726/2004.	IP/N/1/EU/P/2
Regulation (EC) No. 816/2006 of 17 May 2006 on compulsory licensing of patents relating to the manufacture of pharmaceutical products for export to countries with public health problems.	IP/N/1/EEC/P/5
Regulation (EU) No. 1257/2012 of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection.	IP/N/1/EU/P/1
Regulation (EU) No. 1260/2012 of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable translation arrangements.	IP/N/1/EU/P/8
Regulation (EC) No. 2470/96 of 17 December 1996 providing for an extension of the terms of a community plant variety right in respect of potatoes.	IP/N/1/EU/P/9
Regulation (EU) 2019/933 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EC) 469/2009 concerning the supplementary protection certificate for medicinal products.	IP/N/1/EU/P/10
<b>Supplementary Protection Certificates</b>	
Regulation (EC) No. 1610/96 of 23 July 1996 concerning the creation of a supplementary protection certificate for plant protection products.	IP/N/1/EU/P/4
Regulation (EC) No. 469/2009 of 6 May 2009 concerning the supplementary protection certificate for medicinal products.	IP/N/1/EU/P/3
Regulation (EU) 2019/933 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EC) No 469/2009 concerning the supplementary protection certificate for medicinal products.	Not yet notified
<b>Plant varieties</b>	
Council Regulation (EC) No. 2100/94 of 27 July 1994 on Community plant variety rights, as amended by Council Regulation (EC) No. 2506/95 of 25 October 1995, Council Regulation (EC) No. 807/2003 of 14 April 2003, Council Regulation (EC) No. 1650/2003 of 18 June 2003, Council Regulation (EC) No. 873/2004 of 29 April 2004 and Council Regulation (EC) No. 15/2008 of 20 December 2007.	IP/N/1/EEC/P/3
Council Regulation (EC) No. 2470/96 of 17 December 1996 providing for an extension of the terms of a Community plant variety right in respect of potatoes.	IP/N/1/EU/P/9
Commission Regulation (EC) No. 874/2009 of 17 September 2009, establishing implementing rules for the application of Council Regulation (EC) No. 2100/94 as regards proceedings before the Community Plant Variety Office, as amended by Commission Implementing Regulation (EU) 2016/1448 of 1 September 2016.	IP/N/1/EU/P/5
Commission Regulation (EC) No. 1238/95 of 31 May 1995 establishing implementing rules for the application of Council Regulation (EC) No. 2100/94 as regards the fees payable to the Community Plant Variety Office, as amended by Commission Regulation (EC) No. 329/2000 of 11 February 2000, Commission Regulation (EC) No. 569/2003 of 28 March 2003, Commission Regulation (EC) No. 1177/2005 of 20 July 2005, Commission Regulation (EC) No. 2039/2005 of 14 December 2005, Commission Regulation (EC) No. 572/2008 of 19 June 2008, Commission Implementing Regulation (EU) No. 510/2012 of 15 June 2012, Commission Implementing Regulation (EU) No. 623/2013 of 27 June 2013,	IP/N/1/EU/P/6

Legislative measure	Notification to Council for TRIPS pursuant to Article 63.2 TRIPS
Commission Implementing Regulation (EU) No. 1294/2014 of 4 December 2014, Commission Implementing Regulation (EU) No. 2015/2206 of 30 November 2015 and Commission Implementing Regulation (EU) 2016/2141 of 6 December 2016.	
Commission Regulation (EC) No. 1768/95 of 24 July 1995, establishing implementing rules on the agricultural exemption provided for in Article 14(3) of Council Regulation (EC) No. 2100/94, as amended by Commission Regulation (EC) No. 2605/98 of 3 December 1998.	IP/N/1/EU/P/7
<b>Protection of layout designs</b>	
Council Directive 87/54/EEC of 16 December 1986 on the legal protection of topographies of semiconductor products.	IP/N/1/EEC/L/1
Council Decision 94/824/EC of 22 December 1994 on the extension of the legal protection of semiconductor products to persons from a Member of the WTO.	IP/N/1/EEC/L/2
<b>Undisclosed information and clinical trial data</b>	
Directive 2001/83/EC of 6 November 2001 on the Community code relating to medicinal products for human use, as amended by Directive 2004/27/EC of 31 March 2004.	IP/N/1/EU/U/1
Directive 2004/27/EC of 31 March 2004 amending Directive 2001/83/EC on the Community code relating to medicinal products for human use.	IP/N/1/EU/U/4
Regulation No. 726/2004 of 31 March 2004 laying down Community procedures for the authorization and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency.	IP/N/1/EU/U/2
Directive (EU) 2016/943 of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure.	IP/N/1/EU/U/3
Regulation No. 536/2014 of 16 April 2014 on clinical trials on medicinal products for human use, and repealing Directive 2001/20/EC.	IP/N/1/EU/U/5
<b>Enforcement</b>	
Directive 2000/31/EC of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the internal market (E-Commerce Directive).	IP/N/1/EU/E/2
Directive 2004/48/EC of 29 April 2004 on the enforcement of IPRs.	IP/N/1/EEC/E/4
Regulation (EU) No. 386/2012 of 19 April 2012 on entrusting the Office for Harmonization in the Internal Market (Trade Marks and Designs) with tasks related to the enforcement of intellectual property rights, including the assembling of public and private-sector representatives as a European Observatory on Infringements of Intellectual Property Rights.	IP/N/1/EU/E/3
Regulation (EU) No. 608/2013 of 12 June 2013 concerning customs enforcement of IPRs.	IP/N/1/EU/E/1
Commission Implementing Regulation (EU) No. 1352/2013 of 4 December 2013 establishing the form provided for in Regulation (EU) No. 608/2013 of the European Parliament and of the Council concerning customs enforcement of intellectual property rights.	IP/N/1/EU/E/4

Source: WTO Secretariat.

**Table A3.6 Term of protection of major IPRs, 2019**

Type of right	Term of protection	Competent agency at the EU level
<b>Copyright</b>		
<ul style="list-style-type: none"> <li>• Authors' rights</li> </ul>	Life of the author plus 70 years, irrespective of the date the work was lawfully made available to the public. In the case of joint authorship, the term should be calculated after the death of the last surviving author. In the case of anonymous or pseudonymous works, 70 years after the work is lawfully made available to the public. If the pseudonym does not leave any doubt as to the identity of the author, then protection is for the life of the author plus 70 years, irrespective of the date the work was lawfully made available to the public	Copyright is protected without registration
<ul style="list-style-type: none"> <li>• Work published in volumes</li> </ul>	Protection runs from the time the work was lawfully made available to the public	
<ul style="list-style-type: none"> <li>• Cinematographic or audiovisual works<sup>a</sup></li> </ul>	Protection expires 70 years after the death of the last of the following persons to survive, whether or not these persons are designated as co-authors: principal director (who is always considered an author), author of the screenplay, author of the dialogue, and composer of the original music	
<ul style="list-style-type: none"> <li>• Performers</li> </ul>	Protection expires 50 years after the date of the performance. However, if a fixation of the performance otherwise than in a phonogram is lawfully published or lawfully communicated to the public within this period, the rights expire 50 years from the date of the first such publication or the first such communication to the public, whichever is the earlier; in the case of a fixation of the performance in a phonogram, the rights shall expire after 70 years	
<ul style="list-style-type: none"> <li>• Producers of phonograms</li> </ul>	Protection expires 50 years after the fixation is made. However, if the phonogram has been lawfully published within this period, the rights expire 70 years from the date of the first lawful publication. If no lawful publication has taken place, and the phonogram has been lawfully communicated to the public within this period, the rights will expire 70 years from the date of the first lawful communication to the public	
<ul style="list-style-type: none"> <li>• Producers of a film<sup>b</sup></li> </ul>	Protection expires 50 years after the fixation is made. However, if the film is lawfully published or lawfully communicated to the public during this period, the rights will expire 50 years from the date of the first such publication or the first such communication to the public, whichever is the earlier	
<ul style="list-style-type: none"> <li>• Broadcasting organizations</li> </ul>	Protection expires 50 years after the first transmission of a broadcast, whether transmitted by wire or over the air, including by cable or satellite	
<ul style="list-style-type: none"> <li>• Photographs<sup>c</sup></li> </ul>	Life of the author plus 70 years, no matter when it was lawfully made available to the public. In the case of joint authorship, the term should be calculated after the death of the last author. In the case of anonymous or pseudonymous works, 70 years after the work is lawfully made available to the public. If the pseudonym does not leave any doubt as to the identity of the author, then protection is for the life of the author plus 70 years no matter when the work was lawfully made available to the public	
<b>Patents</b>		
Any inventions, in all fields of technology, that are new, involve an inventive step, and are susceptible of industrial application	20 years from the date of filing; under an SPC, an additional period of market exclusivity of up to five years may be granted for medicinal and plant protection products; an extension of another six months is available under paediatric legislation	EPO for European patents
<b>Plant varieties</b>		
Plant varieties which are distinct, uniform, stable, and new	Plant varieties for 25 years. Protection may be extended for 5 years. Varieties of vine, tree and potato species for 30 years	CPVO

Type of right	Term of protection	Competent agency at the EU level
<b>Trademarks</b> Any signs, particularly words, including personal names, designs, letters, numerals, colours, the shape of goods or their packaging, or sounds, provided that such signs are capable of distinguishing the goods or services of one undertaking from those of other undertakings, and being represented on the Register of EUTMs in a manner which enables the competent authorities and the public to determine the clear and precise subject matter of the protection afforded to its proprietor	10 years from the date of filing of application, may be renewed for an indefinite number of 10-year periods	EUIPO for EUTMss
<b>GIs</b> Indications which identify a good as originating in the territory of a Member or a region or locality in that territory, where a given quality, reputation or other characteristic of the good are essentially attributable to its geographical origin	For GIs protected as PDO/PGI, the term of protection is indefinite, unless the GI ceases to be protected	European Commission DG AGRI
<b>Industrial designs</b> Designs that are new and have individual character. A design is considered new if no identical design (i.e. one whose features differ only in immaterial details) has been made available to the public. It has individual character if the overall impression it produces on the informed user differs from the overall impression produced on such a user by any design which has been made available to the public	Registered design: one or more periods of 5 years, up to a maximum of 25 years from the date of filing. Unregistered design: 3 years after publication	EUIPO for Community designs
<b>Undisclosed test or other data</b> Data, the origination of which involves considerable effort and which must be submitted to regulatory authorities in order to obtain marketing approval of pharmaceutical or of agricultural chemical products which utilize new chemical entities	8-11 years of data and marketing protection	The EMA grants marketing authorization

- a The principal director of a cinematographic or audiovisual work is considered the author. The author of the screenplay and/or the author of a dialogue are designated as co-authors.
- b The term "film" designates a cinematographic or audiovisual work or moving images, whether or not accompanied by sound.
- c Photographs are protected under Community law only if they are the author's own intellectual creation. Member States may provide protection for other photographs.

Source: WTO Secretariat.

**Table A4.1 Regulatory restrictions in construction services, by selected member State, 2018**

	AUT	BEL	CZE	DNK	EST	FIN	FRA	DEU	GRC	HUN	IRL	ITA	LVA	LTU	LUX	NLD	POL	PRT	SVK	SVN	ESP	SWE	GBR
Foreign equity restrictions: maximum foreign equity share allowed (%)	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
There are limits to the proportion of shares that can be acquired by foreign investors in publicly-controlled firms	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	yes	no
Legal form: only joint ventures are allowed	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no
Legal form: foreign branches are prohibited	no	no	no	yes	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no
Legal form: other restrictions	no	no	no	yes	no	yes	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	yes	no
Board of directors: majority must be nationals	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no
Board of directors: majority must be residents	no	yes	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	yes	no
Board of directors: at least one must be a national	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no
Board of directors: at least one must be a resident	no	no	no	no	no	yes	no	no	no	no	yes	no	no	no	no	no	no	no	no	no	no	yes	no
Managers must be national	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no
Managers must be resident	no	no	no	no	no	yes	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	yes	no
Screening explicitly considers economic interests	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no
Screening exists without exclusion of economic interests	no	no	no	no	no	yes	no	yes	yes	no	no	no	no	no	no	no	no	no	no	no	no	no	yes
Memo: thresholds for screening projects	no	no	no	no	no	yes	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no
Acquisition and use of land and real estate by foreigners is restricted	yes	no	no	yes	yes	no	no	no	yes	yes	no	yes	yes	yes	no	no	yes	no	yes	yes	yes	no	no
Restrictions on the type of shares or bonds held by foreign investors	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no
Conditions on subsequent transfer of capital and investments	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no



	AUT	BEL	CZE	DNK	EST	FIN	FRA	DEU	GRC	HUN	IRL	ITA	LVA	LTU	LUX	NLD	POL	PRT	SVK	SVN	ESP	SWE	GBR
Restrictions on cross-border mergers and acquisitions	no	no	no	no	no	no	no	no	no	no	no	yes	no	no	no	no	no	no	no	no	no	no	no
Performance requirements	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no
Discriminatory qualification requirements for building permits to undertake construction work	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	yes	no	no	no
Commercial presence is required in order to provide cross-border services	no	no	no	no	yes	no	no	no	no	no	no	no	no	no	yes	no	no	yes	no	no	no	no	no
Local presence is required for cross-border supply	no	no	yes	no	yes	no	yes	yes	yes	no	no	no	yes	yes	no	no	no	no	no	yes	no	no	no
Memo: free cross-border transfer of personal data or application of the accountability principle	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no
Cross-border transfer of personal data is possible when certain private-sector safeguards are in place	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
Cross-border data flows: cross-border transfer of personal data is possible to countries with substantially similar privacy protection laws	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
Cross-border data flows: cross-border transfer is subject to approval on a case-by-case basis	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no
Cross-border data flows: certain data must be stored locally	no	no	no	yes	no	no	no	yes	no	no	no	no	no	no	no	no	yes	no	no	no	no	yes	no
Cross-border data flows: transfer of data is prohibited	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no
Other restrictions on foreign entry	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	yes	no	yes	no	no	no	no
Quotas: intra-corporate transferees	yes	no	no	no	yes	no	no	no	no	yes	no	no	no	no	no	no	no	no	no	yes	no	no	no
Quotas: contractual services suppliers	no	no	no	no	yes	no	no	no	no	yes	no	no	no	no	no	no	no	no	no	yes	no	no	yes
Quotas: independent services suppliers	no	no	no	yes	yes	no	no	no	no	yes	no	yes	no	no	no	no	no	no	no	yes	no	no	yes

	AUT	BEL	CZE	DNK	EST	FIN	FRA	DEU	GRC	HUN	IRL	ITA	LVA	LTU	LUX	NLD	POL	PRT	SVK	SVN	ESP	SWE	GBR
Labour market tests: intra-corporate transferees	yes	yes	no	yes	yes	yes	yes	no	yes	yes	yes	no	yes	yes	yes	yes	yes	yes	no	yes	yes	yes	yes
Labour market tests: contractual services suppliers	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	no	no	yes	yes	yes	yes	no	yes	no	no	yes	yes
Labour market tests: independent services suppliers	yes	yes	no	yes	yes	yes	yes	yes	no	yes	yes	yes	no	no	yes	yes	yes	no	no	no	no	no	yes
Limitation on duration of stay for intra-corporate transferees (months)	36	12	36	48	36	12	36	36	24	12	24	36	60	36	36	36	36	36	36	36	36	36	61
Limitation on duration of stay for contractual services suppliers (months)	12	12	24	48	12	12	12	3	24	36	24	24	60	12	36	12	36	12	24	3	12	24	61
Limitation on duration of stay for independent services suppliers (months)	12	24	12	24	60	12	12	36	24	36	24	24	12	12	36	12	36	12	36	3	24	24	61
Other restrictions to movement of people	no	no	no	yes	no	no	no	no	no	no	yes	no	no	no	no	yes	no	no	no	yes	no	no	yes
Foreign suppliers are treated less favourably regarding taxes and eligibility to subsidies	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no
Public procurement: explicit preferences for local suppliers	no	yes	no	no	no	no	yes	no	yes	yes	no	yes	no	no	no	no	no	no	no	no	yes	no	no
Public procurement: procurement regulation explicitly prohibits discrimination of foreign suppliers	yes	no	no	no	no	no	no	yes	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no
Memo: thresholds above which tender is mandated	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
Memo: the procurement process below the value thresholds affects the conditions of competition in favour of local firms	yes	no	no	no	no	no	no	no	yes	yes	yes	no	no	no	yes	no	yes	no	no	yes	no	no	no
Public procurement: technical specifications affect the conditions of competition in favour of local providers	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no
Public procurement: discriminatory qualification processes and procedures	no	yes	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no

	AUT	BEL	CZE	DNK	EST	FIN	FRA	DEU	GRC	HUN	IRL	ITA	LVA	LTU	LUX	NLD	POL	PRT	SVK	SVN	ESP	SWE	GBR	
Public procurement: contract award on the basis of non-objective/discriminatory criteria	no	no	no	no	no	no	no	yes	no	no	no	no	yes	no	no	no	no	no	no	no	no	no	no	
Public procurement: procurement laws, regulations and procedures are transparent	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
Public procurement: foreign suppliers are provided the opportunity to challenge the consistency of the conduct of procurement with the laws and regulations	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
Laws or regulations impose national standards that deviate from international standards: building design code standards	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no
Laws or regulations impose national standards that deviate from international standards: construction product standards	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no
Other restrictions in other discriminatory measures	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no
Decisions by the regulatory body can be appealed	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
Firms have redress when business practices restrict competition in a given market	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
National, state or provincial government controls at least one major firm in the sector	no	no	no	no	no	no	no	no	yes	no	no	no	no	no	no	no	no	no	no	no	no	yes	no	
Publicly-controlled firms are exempted from the application of the general competition law	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no
Prices or fees are regulated	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no

	AUT	BEL	CZE	DNK	EST	FIN	FRA	DEU	GRC	HUN	IRL	ITA	LVA	LTU	LUX	NLD	POL	PRT	SVK	SVN	ESP	SWE	GBR
Minimum capital requirements	yes	yes	yes	yes	yes	yes	yes	no	yes	yes	no	yes	yes	yes	yes	no	yes	yes	yes	yes	yes	yes	no
Restrictions on advertising	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no
Other restrictions in barriers to competition	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no
There is a legal obligation to communicate regulations to the public within a reasonable time prior to entry into force	yes	no	yes	no	no	no	no	yes	yes	no	no	yes	no	no	no	yes	yes	no	yes	yes	yes	no	no
There is an adequate public comment procedure open to interested persons, including foreign suppliers	no	no	yes	yes	yes	yes	yes	yes	yes	yes	yes	no	yes	yes	no	yes	yes	yes	yes	yes	yes	yes	yes
Range of visa processing time (days)	15	15	15	15	15	5	5	10	15	15	10	15	10	14	15	15	14	15	15	15	15	15	15
Multiple entry visa for business visitors	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
Cost to obtain a business visa (USD)	179	71	71	70	95	69	71	67	60	67	61	71	67	71	71	71	73	85	71	71	71	71	120
Number of documents needed to obtain a business visa	16	9	7	7	5	11	16	15	14	9	12	8	10	9	13	12	13	14	11	7	14	14	2
Time required to obtain a construction permit (in calendar days)	222	212	246	64	103	65	183	126	124	205	149	227	192	75	157	161	153	160	300	239	208	117	86
Total cost required to obtain a construction permit (% of warehouse value)	1.2	1	0.2	1.4	0.2	0.9	3	1.2	2	0.6	4.6	3.6	0.5	0.3	0.7	3.7	0.3	1.3	0.2	2.9	5.4	2	1
Number of procedures required to obtain a construction permit (number)	11	10	21	7	10	17	9	9	18	20	10	12	14	13	11	13	12	14	14	14	15	8	9
Other restrictions in regulatory transparency	no	no	no	yes	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no	no

Source: OECD. *Intra-EEA Trade Restrictiveness Index*. Viewed at: <http://www.oecd.org/trade/topics/services-trade/>.