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## Legislation

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## II

*(Non-legislative acts)*

## INTERNATIONAL AGREEMENTS

**Information concerning the entry into force of the Agreement in the form of an exchange of letters between the European Union and Ukraine amending the trade preferences for poultry meat and poultry meat preparations provided for by the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part**

The Agreement in the form of an exchange of letters between the European Union and Ukraine amending the trade preferences for poultry meat and poultry meat preparations provided for by the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part, signed at Kyiv on 30 July 2019 <sup>(1)</sup>, enters into force on 1 February 2020, as provided for in the said Agreement in the form of an exchange of letters, as the last notification of the Parties was received on 9 January 2020.

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<sup>(1)</sup> OJ L 206, 6.8.2019, p.3.

**Information concerning the entry into force of the Agreement between the European Community  
and the Government of Nepal on certain aspects of air services**

The Agreement between the European Community and the Government of Nepal on certain aspects of air services, signed in Brussels on 23 January 2009, entered into force on 25 June 2015, in accordance with Article 9(1) of the Agreement, as the last notification was deposited on 25 June 2015.

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**Information concerning the entry into force of the Agreement between the European Community  
and New Zealand on certain aspects of air services**

The Agreement between the European Community and New Zealand on certain aspects of air services, signed in Brussels on 21 June 2006, entered into force on 25 October 2007, in accordance with Article 8(1) of the Agreement, as the last notification was deposited on 25 October 2007.

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**Information concerning the entry into force of the Agreement between the European Community  
and the Islamic Republic of Pakistan on certain aspects of air services**

The Agreement between the European Community and the Islamic Republic of Pakistan on certain aspects of air services, signed in Brussels on 24 February 2009, entered into force on 5 May 2015, in accordance with Article 8(1) of the Agreement, as the last notification was deposited on 5 May 2015.

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**Information concerning the entry into force of the Agreement between the European Community  
and the Republic of Panama on certain aspects of air services**

The Agreement between the European Community and the Republic of Panama on certain aspects of air services, signed in Panama City on 1 October 2007, entered into force on 3 March 2009, in accordance with Article 9 of the Agreement, as the last notification was deposited on 3 March 2009.

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**Information concerning the entry into force of the agreement between the European Community  
and the Republic of Paraguay on certain aspects of air services**

The Agreement between the European Community and the Republic of Paraguay on certain aspects of air services, signed in Brussels on 22 February 2007, entered into force on 14 December 2012, in accordance with Article 9(1) of the Agreement, as the last notification was deposited on 14 December 2012.

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**Information concerning the entry into force of the Agreement between the European Community  
and the Government of the Republic of Singapore on certain aspects of air services**

The Agreement between the European Community and the Government of the Republic of Singapore on certain aspects of air services, signed in Luxembourg on 9 June 2006, entered into force on 30 September 2016, in accordance with Article 7 (1) of the Agreement, as the last notification was deposited on 30 September 2016.

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**Information concerning the entry into force of the Agreement between the European Union and the Government of the Democratic Socialist Republic of Sri Lanka on certain aspects of air services**

The Agreement between the European Union and the Government of the Democratic Socialist Republic of Sri Lanka on certain aspects of air services, signed in Brussels on 27 September 2012, entered into force on 4 March 2013, in accordance with Article 7(1) of the Agreement, as the last notification was deposited on 4 March 2013.

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**Information concerning the entry into force of the Agreement between the European Community  
and the United Arab Emirates on certain aspects of air services**

Agreement between the European Community and the United Arab Emirates on certain aspects of air services, signed in Brussels on 30 November 2007, entered into force on 22 April 2013, in accordance with Article 9(1) of the Agreement, as the last notification was deposited on 22 April 2013.

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**Information concerning the entry into force of the Agreement between the European Community  
and the West African Economic and Monetary Union on certain aspects of air services**

The Agreement between the European Community and the West African Economic and Monetary Union on certain aspects of air services, signed in Brussels on 30 November 2009, entered into force on 21 February 2011, in accordance with Article 9(1) of the Agreement, as the last notification was deposited on 21 February 2011.

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**Information concerning the entry into force of the Agreement between the European Community  
and Ukraine on certain aspects of air services**

The Agreement between the European Community and Ukraine on certain aspects of air services, signed in Kyiv on 1 December 2005, entered into force on 13 October 2006, in accordance with Article 9(1) of the Agreement, as the last notification was deposited on 13 October 2006.

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**Information concerning the entry into force of the Agreement between the European Union and the Government of the Socialist Republic of Viet Nam on certain aspects of air services**

The Agreement between the European Union and the Government of the Socialist Republic of Viet Nam on certain aspects of air services, signed in Brussels on 4 October 2010, entered into force on 31 May 2011, in accordance with Article 7(1) of the Agreement, as the last notification was deposited on 31 May 2011.

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# REGULATIONS

## COMMISSION IMPLEMENTING REGULATION (EU) 2020/37

of 16 January 2020

### amending Council Regulation (EC) No 1210/2003 concerning certain specific restrictions on economic and financial relations with Iraq

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1210/2003 of 7 July 2003 concerning certain specific restrictions on economic and financial relations with Iraq and repealing Regulation (EC) No 2465/96 <sup>(1)</sup>, and in particular Article 11(b) thereof,

Whereas:

- (1) Annex III to Regulation (EC) No 1210/2003 lists public bodies, corporations and agencies and natural and legal persons, bodies and entities of the previous government of Iraq covered by the freezing of funds and economic resources that were located outside Iraq on 22 May 2003 under that Regulation.
- (2) On 2 January 2020, the Sanctions Committee of the United Nations Security Council decided to remove fifteen entries from the list of persons or entities to whom the freezing of funds and economic resources should apply.
- (3) Annex III to Regulation (EC) No 1210/2003 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

Annex III to Regulation (EC) No 1210/2003 is amended as set out in the Annex to this Regulation.

#### *Article 2*

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

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

Done at Brussels, 16 January 2020.

*For the Commission*  
*The President*  
Ursula VON DER LEYEN

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<sup>(1)</sup> OJ L 169, 8.7.2003, p. 6.

## ANNEX

In Annex III to Regulation (EC) No 1210/2003, the following entries are deleted:

- '21. BAGHDAD MUNICIPALITY. Address: Khulafa Street, Khulafa Square, Baghdad, Iraq.'
  - '24. CHEMICAL, PETROCHEMICAL, MECHANICAL AND METALURGICAL TRAINING CENTRE. Address: P.O. Box 274, Ashar, Basrah, Iraq.'
  - '31. DIRECTORATE-GENERAL OF MINOR PROJECTS AND RURAL ELECTRIFICATION. Address: P.O. Box 788, Al-Karradah Al-Sharkiya, Arasat Al-Hindiya no. 81, Building No 137/327, Baghdad, Iraq.'
  - '32. DIRECTORATE OF TRAINING CENTRE FOR IRON AND STEEL. Address: P.O. Box 421, Basrah Khor Al-Zubair, Basrah, Iraq.'
  - '77. MECHANICAL TRAINING CENTRE/NASSIRIYA. Address: P.O. Box 65, Nassiriyah, Nassiriyah, Iraq.'
  - '144. STATE ENTERPRISE FOR MECHANICAL INDUSTRIES. Addresses: (a) P.O. Box 5763, Iskandariya, Iraq; (b) P.O. Box 367, Iskandariyah-Babylon Governate, Iraq.'
  - '146. STATE ENTERPRISE FOR PHOSPHATES. Addresses: (a) P.O. Box 5954, East Gate, Sadoon St., Baghdad, Iraq; (b) P.O. Box 5954, South Gate, Al-Kaim, Anbar, Baghdad, Iraq.'
  - '156. STATE ESTABLISHMENT FOR AGRICULTURAL MARKETING. Address: Eastern Karrda, Baghdad, Iraq.'
  - '172. STATE ORGANISATION FOR AGRICULTURAL MARKETING. Address: Karkh, Nisoor Square, Baghdad, Iraq.'
  - '173. STATE ORGANISATION FOR AGRICULTURAL MECHANISATION AND AGRICULTURAL SUPPLIES (alias (a) STATE ORGANISATION FOR AGRICULTURAL MECHANISATION, (b) STATE ESTABLISHMENT FOR AGRICULTURAL MECHANISATION, (c) CENTRE FOR AGRICULTURAL MECHANISATION, (d) STATE ESTABLISHMENT FOR AGRICULTURAL SUPPLIES). Addresses: (a) P.O. Box 26028, Waziriya, opp Al Bakr University, Baghdad, Iraq; (b) P.O. Box 96101, Abu Nuvas St., Baghdad, Iraq; (c) P.O. Box 26061, Al Wazeria, Baghdad, Iraq; Swaira-Hafria, Wasst Muhafadha, Iraq; (d) P.O. Box 1045, Waziriyah, Baghdad, Iraq.'
  - '178. STATE ORGANISATION FOR ELECTRICITY (alias (a) STATE ORGANISATION OF ELECTRICITY, SOUTHERN ELECTRICAL REGION; (b) STATE ORGANISATION OF ELECTRICITY / DEPARTMENT OF COMPUTING AND STATISTICS). Addresses: (a) Off Jumhuriya St/Building 166, Nafoora Square, P.O. Box 5796, Baghdad, Iraq; (b) P.O. Box 230, Basrah, Iraq; (c) P.O. Box 14171 Jumhuriya St., Maidan Building No. 9, Baghdad, Iraq.'
  - '181. STATE ORGANISATION FOR FOOD INDUSTRIES. Address: P.O. Box 2301, Alwiya, Camp Sarah Khatoon, Baghdad, Iraq.'
  - '190. STATE ORGANISATION OF HOUSING. Address: P.O. Box 5824, Jumhuriya Street, Baghdad, Iraq.'
  - '199. STEEL AND TIMBER STATE ENTERPRISE (alias STATE TRADING ENTERPRISE FOR STEEL AND TIMBER). Address: Arasat Al Hindiya St., Salman Daoud Al Haydar Building, P.O. Box 602, Baghdad, Iraq.'
  - '202. VOCATIONAL TRAINING CENTRE FOR ENGINEERING AND METALLIC INDUSTRIES (alias VOCATIONAL TRAINING CENTRE FOR ENGINEERING). Address: Iskandariya-Babil, Iraq.'
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**COMMISSION IMPLEMENTING REGULATION (EU) 2020/38****of 16 January 2020****establishing technical operational requirements for the recording, formatting and transmission of information pursuant to Regulation (EU) 2017/2403 of the European Parliament and of the Council on the sustainable management of external fishing fleets**

THE EUROPEAN COMMISSION,

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

Having regard to the Regulation (EU) 2017/2403 of the European Parliament and of the Council of 12 December 2017 on the sustainable management of external fishing fleets, and repealing Council Regulation (EC) No 1006/2008 <sup>(1)</sup> (the 'SMEFF Regulation'), and in particular Article 40(2) thereof,

Whereas:

- (1) The 'SMEFF Regulation' provides for the adoption of implementing acts establishing technical operational requirements for the recording, formatting and transmission of the information referred to in Titles II, III and IV of that Regulation.
- (2) Article 40 of the SMEFF Regulation stipulates that the exchange of information referred to in Titles II, III and IV of that Regulation is to be carried out in an electronic format. It is appropriate to establish the requirements for the electronic completion and transmission of these data and to specify their format, as well as to set out the procedure for changes to the format.
- (3) Commission Implementing Regulation (EU) 2017/218 <sup>(2)</sup> requires the Member States to submit to the Commission information on ownership, on vessel and gear characteristics and on the activity of Union fishing vessels flying their flag. Information available in this database should be used in information exchanges on fishing authorisations as required by the SMEFF Regulation.
- (4) The information included in the Union fishing authorisations database, set up in accordance with Article 39 of the SMEFF Regulation, may contain personal data, including vessel identifiers and names and contact details of vessel owners. The processing of such personal data is necessary for the effective management of the data and information exchange as required by the SMEFF Regulation. It should be ensured at all times and at all levels that the obligations relating to the protection of personal data set out in Regulations (EU) 2018/1725 <sup>(3)</sup> and (EU) 2016/679 <sup>(4)</sup> of the European Parliament and of the Council are complied with. In order to ensure the sustainable management of the external fishing fleet and of fishing in EU waters by vessels flying the flag of a third country, it is necessary to store the data for a period of 10 years. In certain cases, data should be stored for a period exceeding 10 years.
- (5) Sufficient time should be given to Member States to adapt their national systems to the new data requirements laid down in this Regulation.
- (6) The measures provided for in this Regulation are in accordance with the opinion of the Committee for Fisheries and Aquaculture,

<sup>(1)</sup> OJ L 347, 28.12.2017, p. 81.

<sup>(2)</sup> Commission Implementing Regulation (EU) 2017/218 of 6 February 2017 on the Union fishing fleet register (OJ L 34, 9.2.2017, p. 9).

<sup>(3)</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

<sup>(4)</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) (OJ L 119, 4.5.2016, p. 1).

HAS ADOPTED THIS REGULATION:

## CHAPTER I

### GENERAL PROVISIONS

#### Article 1

##### **Subject matter**

This Regulation establishes technical operational requirements for the recording, formatting and transmission of the information as referred to in Article 40(2) of the SMEFF Regulation.

#### Article 2

##### **Definitions**

1. For the purpose of this Regulation, the definitions set out in Article 3 of the SMEFF Regulation shall apply.
2. For the purpose of this Regulation, the following definition shall also apply:
  - (a) 'Union fishing fleet database' means the register, kept by the Commission, containing information on all Union fishing vessels in accordance with Implementing Regulation (EU) 2017/218 and supplemented by additional vessel details required in the applications for fishing authorisations under the SMEFF Regulation.
  - (b) 'Union fishing authorisations database' means the database set up in accordance with Article 39 of the SMEFF Regulation in order to ensure the exchange of information referred to in Titles II and III of that Regulation.

## CHAPTER II

### INFORMATION IN THE UNION FISHING AUTHORISATIONS DATABASE

#### Article 3

##### **Applications for authorisation**

1. When submitting applications for fishing authorisations in accordance with Article 39(3) of the SMEFF Regulation, Member States and third countries shall file one application per vessel, per agreement, per fishing category and per period.
2. The vessel information available in the Union fishing fleet database shall be used by the Union fishing authorisations database to ensure data exchanges on fishing authorisations as required by the SMEFF Regulation.

#### Article 4

##### **Format of the information exchanged**

1. The format of the information exchanged between Member States, third countries and the Commission in accordance with Articles 11, 18, 22 and 25 of the SMEFF Regulation shall be the Fishing License Authorization & Permit (FLAP) Domain XML Schema Definition based on the United Nations Fisheries Language for Universal Exchange (UN/FLUX) P1000-9 standard.
2. Data fields, core components and well-formatted Extensible Markup Language (XML) messages shall comply with the XML Schema Definition (XSD) based on the UN/FLUX standardisation libraries.
3. The XSD and codes on the Master Data Register page of the European Commission Fisheries website shall be used.

4. Member States shall use the FLAP implementation document available on the European Commission fisheries website to ensure that the correct messages are communicated and the correct procedures are followed for the Union fishing authorisations database.

#### *Article 5*

##### **Transmission of messages**

1. The transmission of messages shall be fully automated and immediate, using the transportation layer for fisheries data exchanges as made available by the Commission.
2. The sender shall be responsible for communicating the messages in line with the agreed validation and verification rules set out in the FLAP implementation document.
3. The receiver of the message shall inform the sender of the reception and of the validation and verification results of the message by transmitting a response message.

#### *Article 6*

##### **Changes to XML formats and implementation documents**

1. Amendments to the UN/FLUX FLAP domain XML format and the FLAP implementation document shall be decided by the Commission services in concert with Member States.
2. The amendments referred to in paragraph 1 shall not come into effect earlier than 6 months and no later than 18 months after they have been decided. The timing shall be decided by the Commission services in concert with Member States.

#### *Article 7*

##### **Personal data**

Personal data contained in the Union fishing authorisations database shall not be stored for a period longer than 10 years, except if the personal data is necessary to allow the follow up of an infringement, an inspection, or judicial or administrative procedures. In these cases, the personal data may be stored for 20 years. If personal data is retained for a longer period, the data shall be anonymised.

#### CHAPTER III

#### **FINAL PROVISIONS**

#### *Article 8*

##### **Entry into force**

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

It shall apply from 1 December 2020.

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

Done at Brussels, 16 January 2020.

*For the Commission*  
*The President*  
Ursula VON DER LEYEN

**COMMISSION IMPLEMENTING REGULATION (EU) 2020/39****of 16 January 2020****imposing a definitive anti-dumping duty on imports of peroxosulphates (persulphates) originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union <sup>(1)</sup> ('the basic Regulation'), and in particular Article 11(2) thereof,

Whereas:

**1. PROCEDURE****1.1. Measures in force**

- (1) In October 2007, the Council imposed a definitive anti-dumping duty on imports of peroxosulphates originating in the People's Republic of China ('the PRC' or 'China') by Council Regulation (EC) No 1184/2007 <sup>(2)</sup> ('the original measures'). Two companies were granted market economy treatment (MET), one of which received individual dumping duties of 24,5 %. The other company was found not to be dumping and excluded from measures. All other companies are subject to a duty rate of 71,8 %. In December 2013, the Council, following an expiry review, extended the anti-dumping measures by Council Implementing Regulation (EU) No 1343/2013 <sup>(3)</sup> ('the measures in force').

**1.2. Initiation of an expiry review**

- (2) Following the publication of a notice of impending expiry of the measure in force <sup>(4)</sup>, RheinPerChemie GmbH and United Initiators GmbH ('the applicants'), representing 100 % of the total Union production of peroxosulphates, requested the initiation of an expiry review. They argued that the expiry of the measures would likely result in continuation or recurrence of dumping and injury to the Union industry.
- (3) On 17 December 2018 the Commission announced, by a notice published in the *Official Journal of the European Union* <sup>(5)</sup> ('the Notice of Initiation'), the initiation of an expiry review of the measures in force pursuant to Article 11(2) of the basic Regulation.
- (4) On 26 September 2019 the Commission initiated, on its own initiative, an investigation concerning the possible circumvention of the anti-dumping measures in force by the company ABC Chemicals (Shanghai) Co. Ltd, a company which was found not to be dumping in the original investigation, and made imports of the product under review by that company subject to registration <sup>(6)</sup>. The outcome of this expiry review investigation in no way prejudices the outcome of the anti-circumvention investigation.

<sup>(1)</sup> OJ L 176, 30.6.2016, p. 21, as last amended by Regulation (EU) 2018/825 (OJ L 143, 7.6.2018, p. 1).

<sup>(2)</sup> OJ L 265, 11.10.2007, p. 1.

<sup>(3)</sup> OJ L 338, 17.12.2013, p. 11.

<sup>(4)</sup> OJ C 110, 23.3.2018, p. 29.

<sup>(5)</sup> OJ C 454, 17.12.2018, p. 7.

<sup>(6)</sup> Commission Implementing Regulation (EU) 2019/1584 of 25 September 2019 initiating an investigation concerning possible circumvention of anti-dumping measures imposed by Council Implementing Regulation (EU) No 1343/2013 on imports of peroxosulphates (persulphates) originating in the People's Republic of China, and making such imports subject to registration (OJ L 246, 26.9.2019, p. 19).

### 1.3. Investigation

#### 1.3.1. Review investigation period and period considered

- (5) The investigation of a continuation or recurrence of dumping covered the period from 1 October 2017 to 30 September 2018 ('the review investigation period'). The examination of trends relevant for the assessment of the likelihood of a continuation or recurrence of injury covered the period from 1 January 2015 to the end of the review investigation period ('the period considered').

#### 1.3.2. Interested parties

- (6) In the Notice of Initiation, the Commission invited all interested parties to participate in the investigation. In particular, it contacted the applicants, the known exporting producers in the PRC, the known unrelated importers in the Union and the authorities of the PRC.
- (7) All interested parties were invited to make their views known, submit information and provide supporting evidence within the time limits set out in the Notice of Initiation. Interested parties were also granted the opportunity to request a hearing with the Commission investigation services and/or the Hearing Officer in trade proceedings.

#### 1.3.3. Sampling

- (8) In the Notice of Initiation, the Commission stated that it might sample exporting producers in the PRC and unrelated importers in accordance with Article 17 of the basic Regulation. Only one exporting producer — United Initiators (Hefei) Co. Ltd and its parent company United Initiators (Shanghai) Co., Ltd, came forward and provided the required information. Therefore, it was not necessary to select a sample of exporting producers.
- (9) Several importers made themselves known at initiation of the investigation but none of them were importing significant amounts of the product under review during the review investigation period. Therefore, the Commission did not sample the importers.

#### 1.3.4. Questionnaires and verification visits

- (10) The Commission made available the questionnaires for all exporters and sent the questionnaires to the Union producers and users. The Commission also sent a questionnaire to the government of the PRC ('GOC'). Replies were received from two Union producers and one exporting producer in the PRC.
- (11) The Commission verified all the information it deemed necessary for a determination of the likelihood of continuation or recurrence of dumping and injury and of the Union interest. Verification visits were carried out at the premises of the following interested parties:
- (a) Chinese exporting producer:
- United Initiators (Hefei) Co., Ltd. and its related sales company United Initiators (Shanghai) Co., Ltd.
- (b) Union producers:
- RheinPerChemie GmbH & Co. KG, Germany,
  - United Initiators GmbH & Co. KG, Germany.

#### 1.3.5. Procedure for the determination of the normal value under Article 2(6a) of the basic Regulation

- (12) In view of the sufficient evidence available in the request for review pointing to the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation, the Commission considered it appropriate to initiate the review having regard to Article 2(6a) of the basic Regulation.

- (13) Consequently, in order to collect the necessary data for the possible application of Article 2(6a) of the basic Regulation, the Commission invited in the Notice of Initiation all known producers in the PRC to provide the information requested in Annex III to the Notice regarding the inputs used for producing the product under review. The only producer that sent a sampling reply also submitted the information requested in Annex III.
- (14) Moreover, in order to obtain information the Commission deemed necessary for its investigation with regard to the alleged significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation, it also sent a questionnaire to the GOC. In that questionnaire, the GOC was invited to provide its views on the evidence contained in the applicants' request, on any other evidence on the file concerning the existence of significant distortions, including the evidence set out in the 'Commission Staff Working Document on Significant Distortions in the Economy of the People's Republic of China for the Purposes of Trade Defence Investigations' ('the Report') <sup>(7)</sup>, as well as on the appropriateness of the application of Article 2(6a) of the basic Regulation in the case at hand. The Commission did not receive any reply from the GOC.
- (15) The Commission also invited all interested parties to make their views known, submit information and provide supporting evidence regarding the appropriateness of the application of Article 2(6a) of the basic Regulation within a deadline provided for in the Notice of Initiation.
- (16) In the Notice of Initiation the Commission also specified that, in view of the evidence available, it might need to select an appropriate representative country pursuant to Article 2(6a)(a) of the basic Regulation for the purpose of determining the normal value based on undistorted prices or benchmarks.
- (17) On 15 January 2019, the Commission informed all interested parties by way of a first note to the file <sup>(8)</sup> ('the Note of 15 January') of the relevant sources that the Commission might use for the determination of the normal value, in accordance with Article 2(6a)(e) second paragraph of the basic Regulation. Based on the replies to Annex III to the Notice of Initiation, the Commission provided a list of all factors of production such as materials, energy and labour used in the production of peroxosulphates. In addition, based on the criteria guiding the choice of undistorted prices or benchmarks, the Commission identified Turkey as the most appropriate representative country at that stage.
- (18) The Commission gave the opportunity to all interested parties to comment. The Commission received comments from the applicants.
- (19) The Commission addressed those comments in a second note <sup>(9)</sup> on the sources for the determination of the normal value, dated 6 May 2019 ('the Note of 6 May'). In the Note of 6 May, the Commission further specified the list of factors of production and reiterated the conclusion that Turkey was the most appropriate representative country under Article 2(6a)(a), first indent of the basic Regulation. The Commission invited interested parties to comment. No comments were received.

## 2. PRODUCT UNDER REVIEW AND LIKE PRODUCT

### 2.1. Product under review

- (20) The product under review is peroxosulphates (persulphates), including potassium peroxymonosulphate sulphate, originating in the PRC, currently falling under CN codes 2833 40 00 and ex 2842 90 80 (TARIC code 2842 90 80 20) ('the product under review').
- (21) Peroxosulphates are used as an initiator or as an oxidising agent in a number of processes. Some examples include their use as polymerisation initiator in the production of polymers, as an etching agent in the production of printed circuit boards, or as a bleaching agent in hair cosmetics.

### 2.2. Like product

- (22) As established in the original investigation, peroxosulphates sold by the Union industry in the Union and peroxosulphates produced and sold on the domestic market of the PRC and peroxosulphates imported into the Union from the PRC share the same basic physical and chemical characteristics and the same end uses. They are therefore considered to be like products within the meaning of Article 1(4) of the basic Regulation.

<sup>(7)</sup> Brussels, 20.12.2017 SWD(2017) 483 final/2; accessible at: [http://trade.ec.europa.eu/doclib/docs/2017/december/tradoc\\_156474.pdf](http://trade.ec.europa.eu/doclib/docs/2017/december/tradoc_156474.pdf)

<sup>(8)</sup> Note to the file of 15 January, Sherlock number No t19.000129 (available in the open file).

<sup>(9)</sup> Note to the file of 6 May, Sherlock number No t19.002077 (available in the open file).

### 3. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF DUMPING

- (23) In accordance with Article 11(2) of the basic Regulation, the Commission examined whether the expiry of the measures in force would be likely to lead to a continuation or recurrence of dumping from the PRC.

#### 3.1. Continuation of dumping of imports during the review investigation period

##### 3.1.1. Normal value

- (24) According to Article 2(1) of the basic Regulation, *'the normal value shall normally be based on the prices paid or payable, in the ordinary course of trade, by independent customers in the exporting country'*.
- (25) However, according to Article 2(6a)(a) of the basic Regulation, *'in case it is determined [...] that it is not appropriate to use domestic prices and costs in the exporting country due to the existence in that country of significant distortions within the meaning of point (b), the normal value shall be constructed exclusively on the basis of costs of production and sale reflecting undistorted prices or benchmarks', and 'shall include an undistorted and reasonable amount of administrative, selling and general costs and for profits'* (administrative, selling and general costs' is referred hereinafter as 'SG&A'). As further explained below, the Commission concluded in the present investigation that, based on the evidence available, and in view of the lack of cooperation of the GOC and absence of any claims from the exporting producers, the application of Article 2(6a) of the basic Regulation was appropriate.

##### 3.1.2. Existence of significant distortions

###### 3.1.2.1. Introduction

- (26) Article 2(6a)(b) of the basic Regulation states the following. *Significant distortions are those distortions which occur when reported prices or costs, including the costs of raw materials and energy, are not the result of free market forces as they are affected by substantial government intervention. In assessing the existence of significant distortions regard shall be had, inter alia, to the potential impact of one or more of the following elements:*
- *the market in question being served to a significant extent by enterprises which operate under the ownership, control or policy supervision or guidance of the authorities of the exporting country;*
  - *state presence in firms allowing the state to interfere with respect to prices or costs;*
  - *public policies or measures discriminating in favour of domestic suppliers or otherwise influencing free market forces;*
  - *the lack, discriminatory application or inadequate enforcement of bankruptcy, corporate or property laws;*
  - *wage costs being distorted;*
  - *access to finance granted by institutions which implement public policy objectives or otherwise not acting independently of the state.*
- (27) It follows that in assessing the existence of significant distortions pursuant to Article 2(6a)(b) of the basic Regulation, regard shall be had to the potential impact of one or more of these elements on prices and costs in the exporting country of the product under review. However, as that list is non-cumulative, not all the elements need to be given regard to for a finding of significant distortions. Moreover, the same factual circumstances may be used to demonstrate the existence of one or more of the elements of the list. Any conclusion on significant distortions within the meaning of Article 2(6a)(a) must be made on the basis of all the evidence at hand. The overall assessment of the existence of distortions may also take into account the general context and situation in the exporting country.
- (28) Article 2(6a)(c) of the basic Regulation provides that *'[w]here the Commission has well-founded indications of the possible existence of significant distortions as referred to in point (b) in a certain country or a certain sector in that country, and where appropriate for the effective application of this Regulation, the Commission shall produce, make public and regularly update a report describing the market circumstances referred to in point (b) in that country or sector'*.

- (29) Pursuant to this provision, the Commission has issued the Report (see recital 14), which points to the existence of substantial government intervention at many levels of the economy in the PRC, including specific distortions in many key factors of production (such as land, energy, capital, raw materials and labour) as well as in specific sectors, including the peroxosulphates sector. The Report was placed on the investigation file at the initiation stage.
- (30) The application for an Expiry Review ('the Application') provided additional evidence on significant distortions in the peroxosulphates sector within the meaning of Article 2(6a)(b), complementing the Report. The applicants provided evidence that the production and sale of the product under review is affected (at least potentially) by the distortions mentioned in the Report, in particular high levels of state interference in the peroxosulphates sector.

### 3.1.2.2. Significant distortions affecting the domestic prices and costs in the PRC: general economic context

- (31) The Chinese economic system is based on the concept of a 'socialist market economy'. That concept is enshrined in the Chinese Constitution and determines the economic governance of the PRC. The core principle is the '*socialist public ownership of the means of production, namely, ownership by the whole people and collective ownership by the working people*'. The State-owned economy is the '*leading force of the national economy*' and the State has the mandate '*to ensure its consolidation and growth*'<sup>(10)</sup>. Consequently, the overall setup of the Chinese economy not only allows for substantial government interventions into the economy, but such interventions are expressly mandated. The notion of supremacy of public ownership over the private one permeates the entire legal system and is emphasised as a general principle in all central pieces of legislation. The Chinese property law is a prime example: it refers to the primary stage of socialism and entrusts the State with upholding the basic economic system under which the public ownership plays a dominant role. Other forms of ownership are tolerated, with the law permitting them to develop side by side with the State ownership<sup>(11)</sup>.
- (32) In addition, under Chinese law, the socialist market economy is developed under the leadership of the Chinese Communist Party ('CCP'). The structures of the Chinese State and of the CCP are intertwined at every level (legal, institutional, personal), forming a superstructure in which the roles of CCP and the State are indistinguishable. Following an amendment to the Chinese Constitution in March 2018, the leading role of the CCP was given an even greater prominence by being reaffirmed in the text of Article 1 of the Constitution. Following the existing first sentence of the provision: '*[t]he socialist system is the basic system of the People's Republic of China*' a new second sentence was inserted which reads: '*[t]he defining feature of socialism with Chinese characteristics is the leadership of the Communist Party of China*'<sup>(12)</sup>. This illustrates the control of the CCP over the economic system of the PRC. This control is inherent to the Chinese system and goes beyond the situation customary in other countries where the governments exercise broad macroeconomic control within the boundaries of which free market forces are at play.
- (33) First, on the level of overall administrative control, the direction of the Chinese economy is governed by a complex system of industrial planning which affects all economic activities within the country. The totality of these plans cover a comprehensive and complex matrix of sectors and crosscutting policies and is present on all levels of government. Plans at provincial level are detailed while national plans set broader targets. Plans also specify the means to support the relevant industries/sectors as well as the timeframes in which the objectives need to be achieved. Some plans contain explicit output targets. Under the plans, individual industrial sectors and/or projects are singled out as (positive or negative) priorities in line with the government priorities and specific development goals are attributed to them (industrial upgrade, international expansion, etc.). The economic operators, private and State-owned alike, must effectively adjust their business activities according to the realities imposed by the planning system. Not only because of the binding nature of the plans but also because the relevant Chinese authorities at all level of government adhere to the system of plans and use their vested powers accordingly, economic operators are induced to comply with the priorities set out in the plans<sup>(13)</sup>.

<sup>(10)</sup> The Report p. 6-7.

<sup>(11)</sup> The Report p. 10.

<sup>(12)</sup> See <http://en.pkulaw.cn/display.aspx?cgid=311950&lib=law>

<sup>(13)</sup> The Report, p. 41, 73-74.



- (34) Second, on the level of allocation of financial resources, the financial system of China is dominated by the State-owned commercial banks. Those banks, when setting up and implementing their lending policy need to align themselves with the government's industrial policy objectives rather than primarily assessing the economic merits of a given project (see also section 3.3.2.9 below) <sup>(14)</sup>. The same applies to the other components of the Chinese financial system, such as the stock markets, bond markets, private equity markets etc. Even though of lesser significance than the banking sector, these parts of the financial sector are institutionally and operationally set up in a manner not geared towards maximising the efficient functioning of the financial markets but towards ensuring control and allowing intervention by the State and the CCP <sup>(15)</sup>.
- (35) Third, on the level of regulatory environment, the interventions by the State into the economy take a number of forms. For instance, the public procurement rules are regularly used in pursuit of policy goals other than economic efficiency, thereby undermining market based principles in the area. The applicable legislation specifically provides that public procurement shall be conducted in order to facilitate the achievement of goals designed by State policies. However, the nature of these goals remains undefined, thereby leaving broad margin of appreciation to the decision-making bodies <sup>(16)</sup>. Similarly, in the area of investment, the GOC maintains significant control and influence over destination and magnitude of both State and private investment. Investment screening as well as various incentives, restrictions, and prohibitions related to investment are used by authorities as an important tool for supporting industrial policy goals, such as maintaining State control over key sectors or bolstering domestic industry <sup>(17)</sup>.
- (36) In sum, the Chinese economic model is based on certain basic axioms which provide for and encourage manifold government interventions. Such substantial government interventions are at odds with free play of market forces, resulting in distorting the effective allocation of resources in line with market principles <sup>(18)</sup>.

3.1.2.3. Significant distortions according to Article 2(6a)(b), first indent of the basic Regulation: the market in question being served to a significant extent by enterprises which operate under the ownership, control or policy supervision or guidance of the authorities of the exporting country

- (37) In the PRC, enterprises operating under the ownership, control and policy supervision or guidance by the State represent an essential part of the economy.
- (38) The only one Chinese manufacturer of peroxosulphates that cooperated with the Commission in this investigation is privately owned. The Commission does not have precise information concerning the ownership structure of other companies active in the peroxosulphates sector in the PRC.
- (39) With regard to control, policy supervision or guidance by the State, the government and the CCP maintain structures that ensure their continued influence over enterprises. The State (and in many respects also the CCP) not only actively formulates and oversees the implementation of general economic policies by individual enterprises, but it also claims its rights to participate in their operational decision making. The elements that point to the existence of government control over enterprises in the peroxosulphates sector are further developed in section 3.1.2.4 below. With the high level of government control and intervention in the chemical sector as described below, even privately owned peroxosulphates producers are prevented from operating under market conditions.

3.1.2.4. Significant distortions according to Article 2(6a)(b), second indent of the basic Regulation: State presence in firms allowing the state to interfere with respect to prices or costs

- (40) The GOC is in position to interfere with prices and costs through State presence in firms. As provided for in the Chinese legislation, CCP cells in enterprises, state-owned and private alike, represent another channel through which the State can interfere with business decisions. According to China's company law, a CCP organisation is to be established in every company (with at least three CCP members as specified in the CCP Constitution) <sup>(19)</sup> and the company is to provide the necessary conditions for the activities of the party organisation. The CCP is also reported

<sup>(14)</sup> The Report, p. 120-121.

<sup>(15)</sup> The Report, p. 122-135.

<sup>(16)</sup> The Report, p. 167-168.

<sup>(17)</sup> The Report, p. 169-170, 200-201.

<sup>(18)</sup> The Report, p. 15-16, p. 50, p. 84, p. 108-109.

<sup>(19)</sup> The Report, p. 26.

to exercise pressure on private companies to put 'patriotism' first and to follow party discipline <sup>(20)</sup>. In 2017, it was reported that party cells existed in 70 % of some 1,86 million privately owned companies, with growing pressure for the CCP organisations to have final say over the business decisions within their respective companies <sup>(21)</sup>. These rules are of general application throughout the Chinese economy. The Commission found that these rules also apply to the producers of peroxosulphates and the suppliers of their inputs.

- (41) Specifically, in the original investigation concerning peroxosulphates it was established for one company that the majority of the Directors on the Board, including the Chairman, who owned a significant share in the company, remained the same as before privatisation and had been appointed by the State. They were also found to be members of the CCP. Moreover, the company was unable to prove payment for the shares during the privatisation process <sup>(22)</sup>.
- (42) In another company, which was founded as a State owned enterprise and privatised in 2000, the original investigation showed that three members of the staff that held management post prior to the privatisation conducted the privatisation and retained control over the main decision-making bodies of the company. Those three persons were found to be members of the CCP <sup>(23)</sup>. As to a third company investigated in the original investigation, it was found that the capital used to start the company was obtained from collectively-owned enterprises managed by the current Chairman of the company <sup>(24)</sup>.
- (43) The State's presence and intervention in the financial markets (see also section 3.3.2.8 below) as well as in the provision of raw materials and inputs further have a distorting effect on the market <sup>(25)</sup>.
- (44) Based on all of the above, and in the absence of information opposing the above considerations, the Commission concluded that the State presence in firms in the peroxosulphates sector, as well as in the financial sector and other input sectors, combined with the framework described in section 3.3.2.3 and in the subsequent sections, allows the GOC to interfere with respect to prices and costs.

3.1.2.5. Significant distortions according to Article 2(6a)(b), third indent of the basic Regulation: public policies or measures discriminating in favour of domestic suppliers or otherwise influencing free market forces

- (45) The direction of the Chinese economy is to a significant degree determined by an elaborate system of planning, which sets out priorities and prescribes the goals the central and local governments must focus on. Relevant plans exist on all levels of government and cover virtually all economic sectors, the objectives set by the planning instruments are of binding nature and the authorities at each administrative level monitor the implementation of the plans by the corresponding lower level of government. Overall, the system of planning in the PRC results in resources being driven to sectors designated as strategic or otherwise politically important by the government, rather than being allocated in line with market forces <sup>(26)</sup>.
- (46) The most comprehensive and detailed policy document concerning the Chinese chemical sector is the 13th FYP for the Petrochemical and Chemical Industry (2016-2020) ('the Plan'). For instance, regarding ammonia, the key raw material for peroxosulphates the Plan calls for focus on fostering the building of the second phase of the Cangzhou Zhengyuan 600 000 tonne ammonia facility <sup>(27)</sup>. The Plan provides that, in principle, no new synthetic ammonia facility using smokeless lump coal and natural gas as raw material shall be built. Instead reliance should be on the development of an industry competitive advantage to create new links in the industry chain, such as the carbon-chemical industry <sup>(28)</sup>. The Plan also promotes sets of technology and equipment ensuring a yearly production exceeding one million tonnes of synthetic ammonia and synthetic methanol <sup>(29)</sup>.

<sup>(20)</sup> The Report, p. 31-32.

<sup>(21)</sup> <https://www.reuters.com/article/us-china-congress-companies-idUSKCN1B40JU>

<sup>(22)</sup> The Report, p. 431.

<sup>(23)</sup> The Report, p. 431.

<sup>(24)</sup> The Report, p. 431.

<sup>(25)</sup> The Report, p. 111-150.

<sup>(26)</sup> The Report, p. 41-42, 83.

<sup>(27)</sup> The Report, p. 69.

<sup>(28)</sup> The Report, p. 409.

<sup>(29)</sup> The Report, p. 411.

- (47) Regarding another key raw material — sulphuric acid — the Hebei province Petrochemical 13th Five Year Plan ('FYP') provides an example of how the policy objective and targets are passed from the national level onto the next level of administration. Following a review of the achievements under the 12th FYP, the plan identifies the main problems for the upcoming five-year period, such as the need to improve the product structure <sup>(30)</sup>.
- (48) Regarding another raw material — potassium hydroxide — potassium salts are mentioned in the 13th FYP for mineral resources. The Plan identifies a number of problems in the mining sector: government interventions in resource allocation are still relatively numerous, market principles applicable to mining rights are not comprehensive, the modern mining market system is not yet complete <sup>(31)</sup>. Potassium salt is one of the minerals identified as 'strategic'. One of the explicit objectives of the Plan is to consolidate potassium salt bases in Qinghai Chaerhan and Xinjiang Lopnur, to maintain the rate of domestic self-sufficiency at 55 % to 60 % and to control potassium salt mining intensity and new increases of production capacities <sup>(32)</sup>.
- (49) Moreover, other various State interventions affect the supply chain throughout China for the main raw materials and for energy. There is high level of State interference in the electricity sector, over-capacity, differential and/or preferential pricing for electricity aiming at reducing the electricity bills for the peroxosulphates sector in China <sup>(33)</sup>. Regarding ammonium sulphate there are subsidy schemes, in particular tax programmes, provision of land, loan programmes, grants as well as other programmes <sup>(34)</sup>. Regrading sodium hydroxide (caustic soda): there is provision of electricity at cheaper rates <sup>(35)</sup>.
- (50) It is therefore established that the GOC has a number of public policies in place influencing free market forces concerning the production of raw materials used in the peroxosulphates sector. Such measures impede market forces from operating normally.

3.1.2.6. Significant distortions according to Article 2(6a)(b), fourth indent of the basic Regulation: the lack, discriminatory application or inadequate enforcement of bankruptcy, corporate or property laws

- (51) According to the information on file, the Chinese bankruptcy system appears inadequate to deliver on its own main objectives such as to fairly settle claims and debts and to safeguard the lawful rights and interests of creditors and debtors. This appears to be rooted in the fact that while the Chinese bankruptcy law formally rests on similar principles as corresponding laws in other countries, the Chinese system is characterised by systematic under-enforcement. The number of bankruptcies remains notoriously low in relation to the size of the country's economy, not least because the insolvency proceedings suffer from a number of shortcomings, which effectively function as a disincentive for bankruptcy filings. Moreover, the role of the State in the insolvency proceedings remains strong and active, often having direct influence on the outcome of the proceedings <sup>(36)</sup>.
- (52) In addition, the shortcomings of the system of property rights are particularly obvious in relation to ownership of land and land-use rights in the PRC <sup>(37)</sup>. All land is owned by the Chinese State (collectively owned rural land and State-owned urban land). Its allocation remains solely dependent on the State. There are legal provisions that aim at allocating land-use rights in a transparent manner and at market prices, for instance by introducing bidding procedures. However, these provisions are regularly not respected, with certain buyers obtaining their land for free or below market rates <sup>(38)</sup>. Moreover, authorities often pursue specific political goals including the implementation of the economic plans when allocating land <sup>(39)</sup>.
- (53) Therefore, the Chinese bankruptcy and property laws do not appear to properly work, resulting in distortions when maintaining insolvent firms afloat and in relation to the land provision and acquisition in the PRC. These laws also apply with respect to the peroxosulphates sector and its suppliers of raw materials. With respect to two

<sup>(30)</sup> The Report, p. 66.

<sup>(31)</sup> The Report, p. 267-268.

<sup>(32)</sup> The Report, p. 271.

<sup>(33)</sup> The Report, p. 217-234.

<sup>(34)</sup> The Report, p. 431.

<sup>(35)</sup> The Report, p. 223, 231, 408 and 412.

<sup>(36)</sup> The Report, p. 138-149.

<sup>(37)</sup> The Report, p. 216.

<sup>(38)</sup> The Report, p. 213-215.

<sup>(39)</sup> The Report, p. 209-211.

peroxosulphates producers the Commission found that distortions were carried over from the non-market economy, in particular with regard to cost of the land-use rights acquired <sup>(40)</sup>. Recent investigations into other sectors also confirmed provision of land-use rights for less than adequate remuneration <sup>(41)</sup>.

- (54) In light of the above, and absent cooperation in this case, the Commission concluded that there was discriminatory application or inadequate enforcement of bankruptcy and property laws in the peroxosulphates sector.

3.1.2.7. Significant distortions according to Article 2(6a)(b), fifth indent of the basic Regulation: wage costs being distorted

- (55) A system of market-based wages cannot fully develop in the PRC as workers and employers are impeded in their rights to collective organisation. The PRC has not ratified a number of essential conventions of the International Labour Organisation ('ILO'), in particular those on freedom of association and on collective bargaining <sup>(42)</sup>. Under national law, only one trade union organisation is active. However, this organisation lacks independence from the State authorities and its engagement in collective bargaining and protection of workers' rights remains rudimentary <sup>(43)</sup>. Moreover, the mobility of the Chinese workforce is restricted by the household registration system, which limits access to the full range of social security and other benefits to local residents of a given administrative area. This typically results in workers who are not in possession of the local residence registration finding themselves in a vulnerable employment position and receiving lower income than the holders of the residence registration <sup>(44)</sup>. Those findings lead to the distortion of wages costs in the PRC.

- (56) Nothing in the file of this investigation has revealed that the peroxosulphates sector is not subject to the Chinese labour law system. In fact, this sector appears to be equally affected by the distortions of wage costs both directly (when making the product under review) as well as indirectly (when having access to capital or inputs from companies subject to the same labour system in the PRC).

- (57) On the basis of the above, the Commission concluded that wage costs were distorted in the peroxosulphates sector, including with respect to the product under review.

3.1.2.8. Significant distortions according to Article 2(6a)(b), sixth indent of the basic Regulation: access to finance granted by institutions which implement public policy objectives or otherwise not acting independently of the State

- (58) Access to capital for corporate actors in the PRC is subject to various distortions.

- (59) First, the Chinese financial system is characterised by strong position of State-owned banks <sup>(45)</sup>, which, when granting access to finance, take into consideration criteria other than economic viability of a project. Similarly to non-financial SOEs, the banks remain connected to the State not only through ownership but also via personal relations (the top executives of the large State-owned financial institutions are ultimately appointed by the CCP) <sup>(46)</sup> and, again just like non-financial SOEs, the banks regularly implement public policies designed by the government. In doing so, the banks comply with an explicit legal obligation to conduct their business in accordance with the needs of the national economic and social development and under the guidance of the industrial policies of the State <sup>(47)</sup>. This is compounded by additional existing rules, which direct finances into sectors designated by the government as encouraged or otherwise important <sup>(48)</sup>.

<sup>(40)</sup> See recital (58) of the Commission Regulation (EC) No 390/2007 (OJ L 97, 12.4.2007, p. 6).

<sup>(41)</sup> See recitals 478-493 of Commission Implementing Regulation (EU) 2018/1690 (OJ L 283, 12.11.2018, p. 1).

<sup>(42)</sup> The Report, p. 332-337.

<sup>(43)</sup> The Report, p. 336.

<sup>(44)</sup> The Report, p. 337-341.

<sup>(45)</sup> The Report, p. 114-117.

<sup>(46)</sup> The Report, p. 119.

<sup>(47)</sup> The Report, p. 120.

<sup>(48)</sup> The Report, p. 121-122, 126-128, 133-135.

- (60) While it is acknowledged that there might be various legal instruments referring to the need to respect normal banking behaviour and prudential rules such as the need to examine the creditworthiness of the borrower, the relevant evidence shows that these provisions play only a secondary role in the application of the various legal instruments <sup>(49)</sup>. Findings made in previous trade defence investigations also reached the same conclusion <sup>(50)</sup>.
- (61) Furthermore, bond and credit ratings are often distorted for a variety of reasons including the fact that the risk assessment is influenced by the firm's strategic importance to the GOC and the strength of any implicit guarantee by the government. Estimates strongly suggest that Chinese credit ratings systematically correspond to lower international ratings <sup>(51)</sup>.
- (62) This results in a bias for lending to SOEs, large well-connected private firms and firms in key industrial sectors, which implies that the availability and cost of capital is not equal for all players on the market.
- (63) Second, borrowing costs have been kept artificially low to stimulate investment growth. This has led to the excessive use of capital investment with ever lower returns on investment. This is illustrated by the recent growth in corporate leverage in the State sector despite a sharp fall in profitability, which suggests that the mechanisms at work in the banking system do not follow normal commercial responses.
- (64) Third, although nominal interest rate liberalisation was achieved in October 2015, price signals are still not the result of free market forces, but are influenced by government induced distortions. Indeed, the share of lending at or below the benchmark rate still represents 45 % of all lending and recourse to targeted credit appears to have been stepped up, since this share has increased markedly since 2015 in spite of worsening economic conditions <sup>(52)</sup>. Artificially low interest rates result in under-pricing, and consequently, the excessive utilisation of capital.
- (65) Overall credit growth in the PRC indicates a worsening efficiency of capital allocation without any signs of credit tightening that would be expected in an undistorted market environment. As a result, non-performing loans have increased rapidly in recent years. Faced with a situation of increasing debt-at-risk, the GOC has opted to avoid defaults. Consequently, bad debt issues have been handled by rolling over debt, thus creating so called 'zombie' companies, or by transferring the ownership of the debt (e.g. via mergers or debt-to-equity swaps), without necessarily removing the overall debt problem or addressing its root causes <sup>(53)</sup>.
- (66) In essence, despite the recent steps that have been taken to liberalise the market, the corporate credit system in the PRC is affected by significant systemic issues and distortions resulting from the continuing pervasive role of the state in the capital markets.
- (67) Nothing in the file of this investigation has revealed that peroxosulphates producers and/or the suppliers of raw materials and other inputs do not benefit from this financial system.
- (68) In light of the above, the Commission concluded that the producers of peroxosulphates had access to finance granted by institutions which implement public policy objectives or otherwise not acting independently from the state.

#### 3.1.2.9. Systemic nature of the distortions described

- (69) The Commission noted that the distortions described in the Report are not limited to any particular industry sector. On the contrary, the evidence available shows that the facts and features of the Chinese system as described above in Sections 3.1.2.1-3.1.2.8 as well as in Parts A and B of the Report apply throughout the country and across the sectors of the economy.

<sup>(49)</sup> The Report, p. 121-122, 126-128, 133-135.

<sup>(50)</sup> The Report, p. 362-363.

<sup>(51)</sup> The Report, p. 127.

<sup>(52)</sup> OECD *Economic Surveys: China 2017*, OECD Publishing, Paris, p. 22. Detailed figures can also be found in the China Quarterly Monetary Policy Report issued by the PBOC. The Report, p. 241.

<sup>(53)</sup> The Report, p. 252-255.

- (70) In order to produce peroxosulphates key raw materials are needed. When the producers purchase/contract these inputs the prices they pay (and which are recorded as their costs) are clearly exposed to the same systemic distortions mentioned before. For instance, suppliers of inputs employ labour that is subject to the distortions. They may borrow money that is subject to the distortions on the financial sector/capital allocation. In addition, they are subject to the planning system which applies across all levels of government and sectors.
- (71) As a consequence, not only the domestic sales prices of peroxosulphates cannot be used but all the input costs (including raw materials, energy, land, financing, labour, etc.) are also tainted because their price formation is affected by substantial government intervention, as described above. Indeed, the government interventions described in relation to the allocation of capital, land, labour, energy and raw materials are present throughout the PRC. This means, for instance, that an input that in itself was produced in the PRC by combining a range of factors of production is exposed to significant distortions.

#### 3.1.2.10. Conclusion

- (72) The analysis laid out in sections 3.1.2.2 to 3.1.2.9, which includes an examination of all the available evidence relating to the PRC's intervention in its economy in general as well as in the peroxosulphates sector (including the product under review) showed that prices or costs, including the costs of raw materials, energy and labour, are not the result of free market forces because they are affected by substantial government intervention within the meaning of Article 2(6a)(b) of the basic Regulation. On that basis, and in the absence of any cooperation from the GOC and the limited information on these issues provided by the exporting producers in the PRC, the Commission concluded that it is not appropriate to use domestic prices and costs to establish normal value in this case.
- (73) Consequently, the Commission proceeded to construct the normal value exclusively on the basis of costs of production and sale reflecting undistorted prices or benchmarks, that is, in this case, on the basis of corresponding costs of production and sale in an appropriate representative country, in accordance with Article 2(6a)(a) of the basic Regulation, as discussed in the following section. The Commission recalled that no claim was presented that some domestic costs would be undistorted under the third indent of Article 2(6a)(a) of the basic Regulation.

#### 3.1.3. Representative country

- (74) The Commission based its choice of the representative country on the following criteria:
- (a) A level of economic development similar to the PRC. For this purpose, the Commission assessed countries with a gross national income per capita similar to the PRC on the basis of the database of the World Bank <sup>(54)</sup>;
  - (b) Production of the product under review in that country;
  - (c) Availability of relevant public data in that country;
  - (d) Where there is more than one possible representative country, preference shall be given, where appropriate, to the country with an adequate level of social and environmental protection.
- (75) Based on the data available to the Commission, the product under review is produced in a limited number of countries and by a limited number of producers. The main production was located in the People's Republic of China, India, the EU, Turkey, Japan and the USA.
- (76) Out of the countries where production is taking place, only Turkey has a level of economic development similar to the People's Republic of China as per the World Bank index.

Therefore, on the basis of the above-mentioned criteria, Turkey has been identified as the only possible representative country.

- (77) The only party that commented — the applicants — supported this choice. In the absence of any comments contrary to the use of Turkey as the representative country, the Commission confirmed its findings in relation to the representative country and construct the normal value on the basis of data from Turkey.

<sup>(54)</sup> World Bank Open Data — Upper Middle Income, <https://data.worldbank.org/income-level/upper-middle-income> (accessed on 27 March 2019)

### 3.1.4. Calculation methodology

- (78) In order to establish the constructed normal value, the Commission applied the following methodology. First, it established the undistorted manufacturing costs. It then multiplied the usage factors as observed at the level of the cooperating exporting producer's production process for materials, labour and electricity by the undistorted costs per unit observed in the representative country, Turkey.
- (79) Second, the Commission added to the manufacturing costs identified above the SG&A and profit of the Turkish company Ak-Kim Kimya Sanayi Ve Ticaret Anonim Sirketi's ('Ak-kim'). Ak-kim was the only company manufacturing peroxosulphates in the representative country for which publicly available data was available in accordance with Article 2(6a)(a) of the basic Regulation. Therefore, in the absence of any comments by interested parties, Ak-kim was considered an appropriate company to determine an undistorted and reasonable amount of SG&A and profit for the calculation of normal value.
- (80) On the basis of the above, for the cooperating exporting producer, the Commission constructed the normal value per product type on an ex-works basis in accordance with Article 2(6a)(a) of the basic Regulation.

#### 3.1.4.1. Data used for the construction of normal value

- (81) In the Notes of 15 January and 6 May, the Commission stated that, in order to construct the normal value in accordance with Article 2(6a)(a) of the basic Regulation, it intended to use the following sources:
- (a) the Global Trade Atlas ('GTA') <sup>(55)</sup> for raw materials;
  - (b) the Turkish Statistical Institute ('Turkstat') <sup>(56)</sup> for labour and electricity;
  - (c) Orbis <sup>(57)</sup> for the financial data of a Turkish company (Ak-Kim Kimya Sanayi Ve Ticaret Anonim Sirketi) with regard to SG&A and profit.
- (82) The following table summarises the factors of production used in the calculations with their corresponding HS codes and unit values from the GTA or the Turkish databases, including import duties and transport cost.

Table 1

#### Factors of Production

Factor of Production	HS Code <sup>(58)</sup>	Price in RMB/unit
Raw Materials		
Sulfuric Acid; Oleum	2807 00	371,86/ton
Anhydrous Ammonia	2814 10	2 099,05/ton
Ammonium Sulphate	3102 21	1 079,46/ton
Sodium Hydroxide (Caustic Soda)	2815 12	2 601,91/ton
Potassium Hydroxide	2815 20	4 063,65/ton
Labour		
Labour costs in manufacturing sector	N/A	43,96/hour
Energy		
Electricity	N/A	0,485/kWh

<sup>(55)</sup> <https://connect.ihs.com/gta/standardreports>

<sup>(56)</sup> Turkish Statistical Institute, <http://www.turkstat.gov.tr>

<sup>(57)</sup> <https://orbis4.bvdinfo.com/version-201866/orbis/Companies>

<sup>(58)</sup> In the course of the investigation, the Commission noted that two raw materials were broken down in Turkey at a 12-digit level, namely sulphuric acid and potassium hydroxide. Almost all imports into Turkey were reported under one code i.e. under 28 07 00 00 00 19 for sulphuric acid and under 28 15 20 00 00 00 for potassium hydroxide. As stated in the Note of 15 January 2019, the Commission used the six digits (HS) code level.

#### 3.1.4.2. Raw Materials

- (83) In order to establish the undistorted price of raw materials as delivered at the gate of a representative country producer, the Commission used as a basis the weighted average import price to the representative country as reported in the GTA to which import duties and transport costs were added. Imports from the PRC were excluded given the existing significant distortions in this country, as established in section 3.1.2 above. After excluding PRC, the imports from other third countries remained representative ranging from 48 % to 100 % of total volumes imported into Turkey.
- (84) With regard to import duties the Commission noted that Turkey imported relevant raw materials from more than 70 countries with a varying level of import duty rates and significant differences in volumes. Therefore, and given that in an expiry review it is not necessary to calculate an exact margin of dumping, but rather to establish the likelihood of continuation or recurrence of dumping, the Commission calculated import duties for each raw material on the basis of representative volumes of imports from a limited number of countries, which for most raw materials accounted for almost the totality of all imports and never less than 90 % of total imports.
- (85) The Commission expressed the transport cost incurred by the cooperating exporting producer for the supply of raw materials as a percentage of the actual cost of such raw materials and then applied the same percentage to the undistorted cost of the same raw materials in order to obtain the undistorted transport cost. The Commission considered that, in the context of this investigation, the ratio between the exporting producer's raw material and the reported transport costs could be reasonably used as an indication to estimate the undistorted costs of raw materials when delivered to the company's factory.

#### 3.1.4.3. Labour

- (86) The Turkish Statistical Institute publishes detailed information on wages in different economic sectors in Turkey. The Commission used the wages reported in the manufacturing sector for 2016, for the economic activity C.20 (Manufacturing of chemicals and chemical products)<sup>(59)</sup> according to NACE Rev.2 classification<sup>(60)</sup>. The 2016 average monthly value was duly adjusted for inflation using the domestic producer price index<sup>(61)</sup> as published by the Turkish Statistical Institute.

#### 3.1.4.4. Electricity

- (87) The price of electricity for industrial users in Turkey is published by the Turkish Statistical Institute in its regular press releases. The Commission used the data on the industrial electricity prices in the corresponding consumption band in Kuruş/kWh<sup>(62)</sup> as published on 26 March 2019 (covering the review investigation period)<sup>(63)</sup>.

#### 3.1.4.5. Steam and other direct costs

- (88) Steam is not traded across borders and does not have an HS-code. Therefore, in order to establish the undistorted value of steam, the Commission first calculated the percentage that steam represents in the total of the remaining factors of production and then applied this percentage to the undistorted total cost of the same factors of production.
- (89) The Commission followed the same methodology for other direct costs accounting together for around 2 % of the total value of the factors of production reported by the exporting producer.

#### 3.1.4.6. Manufacturing overhead costs

- (90) In order to establish an undistorted value of manufacturing overheads, the Commission used the proportion that manufacturing overheads represent of the cost of manufacturing in the cost structure of the cooperating exporting producer. More precisely, it first expressed the actual manufacturing overheads cost of the cooperating exporting producer as a percentage of the total actual cost of manufacturing. It then applied the same percentage on the undistorted value of the cost of manufacturing to obtain the undistorted value of the manufacturing overheads. The Commission considered this approach to be reasonable in this case since no publicly available data concerning

<sup>(59)</sup> [http://www.turkstat.gov.tr/PrelstatistikTablo.do?istab\\_id=2090](http://www.turkstat.gov.tr/PrelstatistikTablo.do?istab_id=2090), as last accessed on 12 August 2019.

<sup>(60)</sup> This is a statistical classification of economic activities used by Eurostat, <https://ec.europa.eu/eurostat/web/nace-rev2> as last accessed on 12 August 2019.

<sup>(61)</sup> [http://www.turkstat.gov.tr/PrelstatistikTablo.do?istab\\_id=2104](http://www.turkstat.gov.tr/PrelstatistikTablo.do?istab_id=2104) as last accessed on 12 August 2019.

<sup>(62)</sup> <http://www.turkstat.gov.tr/PreHaberBultenleri.do?id=30608> as last accessed on 12 August 2019. 100 Kuruş = 1 Turkish Lira.

<sup>(63)</sup> The data is available by half year periods. The Commission calculated the average price in the review investigation period as 25 % of 2<sup>nd</sup> half of 2017, 50 % of 1<sup>st</sup> half of 2018 and 25 % of the 2<sup>nd</sup> half of 2018.



manufacturing overhead costs borne by the Turkish producer selected for SG&A and profits (see at recital (91)) was available and the amount so calculated reflects the actual factors of production used by each exporting producer but is then multiplied by the undistorted cost of production using the appropriate representative country.

#### 3.1.4.7. SG&A and profits

- (91) According to Article 2(6a)(a), fourth paragraph of the basic Regulation, 'the constructed normal value shall include an undistorted and reasonable amount for administrative, selling and general costs and for profits'.
- (92) In order to establish an undistorted value for SG&A and for profit, the Commission used the financial data from the only Turkish company producing the product under review — Ak-Kim Kimya Sanayi Ve Ticaret Anonim Sirketi — as reported in Orbis database <sup>(64)</sup>. Based on available company information, the majority of the business activity concerned the product under review and based on the information from the financial statements, no extraordinary events occurred during this period necessitating an adjustment to the reported data.
- (93) As a result, the following items were added to the undistorted cost of manufacturing:
- (a) SG&A of 19,34 % expressed on the cost of goods sold applied to the sum of costs of manufacturing;
  - (b) A profit of 27,81 % expressed on the cost of goods sold applied to the costs of manufacturing.

### 3.2. Export price and dumping margin

- (94) During the review investigation period, the cooperating exporting producer sold only insignificant volumes in the Union. For this reason, prices were found to be unrepresentative. Thus, the Commission did not consider those sales a reliable basis for establishing an export price for the purpose of a dumping calculation.

### 3.3. Likelihood of recurrence of dumping

- (95) According to the data reported by Comext, virtually all imports to the Union from the PRC during the review investigation period were from the exporter who was found not to be dumping in the original investigation <sup>(65)</sup> and is not subject to the current review.
- (96) Thus, in line with the methodology used in the previous expiry review, the Commission made the comparison between the cooperating exporting producer's export price to third countries <sup>(66)</sup> and the normal value for analysing the likelihood of recurrence of dumping should the measures be allowed to lapse.

#### 3.3.1. Comparison between the normal value and export price to the rest of the world

- (97) For the purpose of ensuring a fair comparison between the normal value and the export prices to the rest of the world, the Commission made due allowance in the form of adjustments for differences affecting prices and price comparability in accordance with Article 2(10) of the basic Regulation. It adjusted FOB export sales prices for inland freight, handling and loading costs, packaging, bank charges and credit costs, whereas the CIF sales prices, in addition, adjusted for ocean insurance and freight.
- (98) Since the exporting producer paid full VAT on its export sales the Commission adjusted the constructed normal value with full VAT.
- (99) The Commission thus established that the cooperating producer sold to all third countries at prices that are more than 20 % below the normal value.

<sup>(64)</sup> <https://orbis4.bvdinfo.com/version-201988/orbis/1/Companies/report/Index?format=114678F1-A093-E711-8A1A-2C44FD99A5A0&BookSection=GLOBALSTANDARDFORMAT&seq=0>

<sup>(65)</sup> As noted in recital (5), the Commission initiated an anti-circumvention investigation on these imports on 26 September 2019. The investigation concerns the company ABC Chemicals (Shanghai) Co. Ltd.

<sup>(66)</sup> The exporting producer sold to 25 countries in Asia, the Americas, Africa and European countries, not members of the Union.

### 3.3.2. Production capacity and spare capacity in the PRC

- (100) There are 15 producers of the product under review in the PRC. In the review request, on the basis of an internal intelligence <sup>(67)</sup>, the applicants estimated that China has a significant over-capacity of at least 75 000 tonnes per annum <sup>(68)</sup>. Production capacity of such magnitude means that China alone could cover the total Union consumption that was estimated at between 35 000 to 45 000 tonnes during the review investigation period.
- (101) Based on the above, the Commission concluded that China was among the largest producers of peroxosulphates in the world and had significant spare capacity, which could be easily exported to the Union if measures were repealed.
- (102) In addition, the Union market, because of its relatively large size and steadily-increasing consumption, as set out in section 5.2, remains attractive for Chinese exporting producers.

### 3.4. Conclusion on the likelihood of recurrence of dumping

- (103) In view of the above, the Commission concluded that there is a likelihood that dumping would recur if the current measures were allowed to lapse. In particular the level of the normal values established in China, the level of export prices of the cooperating producer to third country markets, the attractiveness of the Union market and the availability of significant production capacity in the PRC point to a strong likelihood of recurrence of dumping in case the current measures are repealed.

## 4. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF INJURY

### 4.1. Union production and Union industry

- (104) Peroxosulphates are manufactured by two producers in the Union. They constitute 100 % of total Union production during the RIP. Both producers supported the review request and cooperated with the investigation.
- (105) These two companies thus constitute the Union industry within the meaning of Article 4(1) of the basic Regulation and will hereafter be referred to as the 'Union industry'.

### 4.2. Preliminary remark

- (106) In order to protect confidentiality under Article 19 of the basic Regulation the data relating to the two Union producers is presented in indexed form or in ranges.
- (107) Information on imports have been analysed at CN code level for the three main types of the like product, ammonium persulphate, sodium persulphate, potassium persulphate, on TARIC code level for the fourth type, potassium peroxy monosulphate. The analysis of imports was supplemented by data collected under Article 14(6) of the basic Regulation.

### 4.3. Consumption in the Union

- (108) Union consumption was established on the basis of the sales volume of the Union industry on the Union market, and import data from Eurostat, at CN code and TARIC code level. These sales volumes were cross-checked and updated when necessary as regards verified information from the Union producers.
- (109) During the period considered the Union consumption developed as follows:

Table 2

#### Consumption

	2015	2016	2017	RIP
Consumption (tonnes)	37 000-43 000	37 000-43 000	37 000-43 000	37 000-43 000

<sup>(67)</sup> In the open Annex 4.2.2(b) of the Application the applicants set out a list of Chinese production capacities based on company websites.

<sup>(68)</sup> The applicants reported the overcapacity in the open version of the request, section 4.1.2, p. 18.

	2015	2016	2017	RIP
<i>Index (2009 = 100)</i>	100	100	106	108

Sources: Questionnaire replies, Eurostat, Article 14(6) database.

- (110) Union consumption increased by 8 % over the period considered.

#### 4.4. Imports into the Union from the PRC

##### 4.4.1. Volume and market share

- (111) As mentioned in recital (95) above, almost all imports from the PRC originate from the one company which was found not to be dumping in the original investigation. Given that the imports covered by measures are insignificant (less than 1 % market share), the Commission found that prices were unrepresentative. As a consequence, the Commission concluded that prices evolution of the dumped imports cannot be analysed. For the same reason, it was not possible to calculate their price undercutting.

#### 4.5. Imports from other third countries

- (112) The volume of imports, prices and market share from other countries, as well as for non-dumped imports from China, during the period considered is shown in the table below. Due to confidentiality as explained in recital (106) above the market share figures and the non-dumped import volumes from China are disclosed in an indexed form.

Table 3

#### Imports from other third countries and non-dumped imports from China

	2015	2016	2017	RIP
<b>China</b>				
Volume of imports (in tonnes)	3 000-3 500	2 500-3 000	3 500-4 000	4 000-4 500
Volume of non-dumped imports <i>Index (2015 = 100)</i>	100	84	114	135
Price EUR/tonne	1 100-1 300	1 100-1 200	1 000-1 100	1 000-1 100
Market share <i>Index (2015 = 100)</i>	100	84	108	125
<b>Turkey</b>				
Volume of imports (tonnes)	2 328	2 522	2 008	2 303
<i>Index (2015 = 100)</i>	100	108	86	99
Price EUR/tonne	1 177	1 216	1 240	1 344
<i>Index (2015 = 100)</i>	100	103	105	114
Market share <i>Index</i>	100	108	82	92
<b>USA</b>				
Volume of imports (tonnes)	4 520	4 828	5 019	5 364
<i>Index (2015 = 100)</i>	100	107	111	119
Price EUR/tonne	1 104	1 588	1 204	1 275
<i>Index (2015 = 100)</i>	100	144	109	116
Market share <i>Index</i>	100	107	105	110

	2015	2016	2017	RIP
<b>India</b>				
Volume of imports (tonnes)	934	956	1 299	1 668
<i>Index (2015 = 100)</i>	100	102	139	179
Price EUR/tonne	1 537	1 514	1 487	1 545
<i>Index (2015 = 100)</i>	100	99	97	101
Market share <i>Index</i>	100	102	132	165
<b>Other third countries</b>				
Volume of imports (tonnes)	819	1 042	1 223	1 088
<i>Index (2009 = 100)</i>	100	127	149	133
Price EUR/tonne	1 148	1 397	1 305	1 411
<i>Index (2009 = 100)</i>	100	122	114	123
Market share <i>Index</i>	100	127	141	123
<b>Total third countries</b>				
Volume of imports (tonnes)	9 000-12 000	10 000-13 000	11 000-14 000	12 000-15 000
<i>Index (2009 = 100)</i>	100	102	112	125
Price EUR/tonne	1 000-1 200	1 200-1 400	1 200-1 400	1 200-1 400
<i>Index (2009 = 100)</i>	100	117	102	106
Market share <i>Index</i>	100	102	106	116

Sources: Eurostat, Article 14(6) database.

- (113) Import volumes from other third countries (including the non-dumped imports from China) into the Union market increased by around 25 % during the period considered, and the average price increased by around 6 % over the same period. The market share of other third countries (including the non-dumped imports from China) also increased by around 16 % during the same period. At the same time the Union industry increased its prices on average by 5 % as stated in recital (124) below.

#### 4.6. Economic situation of the Union industry

- (114) Pursuant to Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports on the Union industry included an evaluation of all economic factors and indices having a bearing on the state of the Union industry during the period considered.

##### 4.6.1. Production, production capacity and capacity utilisation

- (115) Over the period considered the production, the production capacity and the capacity utilisation of the Union industry developed as follows:

Table 4

	2015	2016	2017	RIP
Production volume (tonnes)	30 000-40 000	30 000-40 000	30 000-40 000	30 000-40 000
<i>Index (2015 = 100)</i>	100	100	104	101
Production capacity (tonnes)	40 000-45 000	40 000-45 000	40 000-45 000	40 000-45 000
<i>Index (2015 = 100)</i>	100	104	103	103

	2015	2016	2017	RIP
Capacity utilisation (%)	80-90	80-90	80-90	80-90
<i>Index (2015 = 100)</i>	100	96	101	99

Source: Questionnaire replies

- (116) It follows that there was a modest increase in production capacity (by 2-4 %) but production volume and capacity utilisation remained stable.

#### 4.6.2. Sales volume and market share in the Union

- (117) Over the period considered sales in the Union by the Union industry developed as follows:

Table 5

	2015	2016	2017	RIP
Sales volume in the Union (tonnes)	20 000-30 000	20 000-30 000	20 000-30 000	20 000-30 000
<i>Index (2015 = 100)</i>	100	99	103	101
Market share <i>Index (2015 = 100)</i>	100	99	98	93

Sources: Questionnaire replies, Eurostat, Article 14(6) database.

- (118) The sales by the Union industry on the Union market remained stable during the period considered. However, the Union industry gradually lost market share during the same period by 7 % while the Union consumption increased by 8 %.

#### 4.6.3. Employment and productivity

- (119) Over the period considered the employment level and productivity within the Union industry developed as follows:

Table 6

	2015	2016	2017	RIP
<i>Index of employees (2015 = 100)</i>	100	103	102	103
<i>Index of productivity (2015 = 100)</i>	100	97	102	99

Source: Questionnaire replies.

- (120) Employment increased throughout the period considered and rose by 3 %. Productivity of the Union producers' workforce, measured as output (tonnes) per person employed per year, remained stable during the period considered. This is partly due to the efforts of Union industry in the previous years to respond to the pressure derived from dumped imports from the PRC at that time, already increasing productivity to high levels before the period considered.

#### 4.6.4. Growth

- (121) The growth in consumption in the Union was 8 percentage points during the period considered. However, the Union industry could not benefit from this modest increase in consumption as it continued to lose market share during the period considered.

## 4.6.5. Stocks

(122) Over the period considered stocks levels of the sampled Union producers developed as follows:

Table 7

	2015	2016	2017	RIP
Stocks (tonnes)	2 000-3 000	2 000-3 000	2 000-3 000	2 000-3 000
Index (2015 = 100)	100	113	101	108

Source: Questionnaire replies.

(123) Although the level of closing stocks of the Union industry increased between 2015 and the RIP its level remains relatively low with regard to production level.

## 4.6.6. Average unit sales prices in the Union and cost of production

(124) Over the period considered average unit sales prices to unrelated customers in the Union and average unit cost of production of the sampled Union producers developed as follows:

Table 8

	2015	2016	2017	RIP
Average unit sales price in the Union Index (2015 = 100)	100	101	101	105
Unit cost of production Index (2015 = 100)	100	102	99	104

Source: Questionnaire replies.

(125) Over the period considered, the cost of the Union industry increased by 3-5 %. At same time its prices increased by 4-6 % so the Union industry was able to cover the cost increase by raising its prices.

## 4.6.7. Profitability, cash flow, investments, return on investment, ability to raise capital and wages

Table 9

	2015	2016	2017	RIP
Profitability Index (2015 = 100)	100	86	123	110
Cash flow Index (2015 = 100)	100	79	117	103
Investments Index (2015 = 100)	100	60	91	99
Return on investment Index (2015 = 100)	100	88	128	110
Annual labour costs per employee Index (2015 = 100)	100	97	102	103

Source: Questionnaire replies.

- (126) The Commission established the profitability of the sampled Union producers by expressing the pre-tax net profit of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of those sales. During the period considered the profitability of the Union industry fluctuated between its lowest point at 6-8 % in 2016 and its highest point of 8-10 % in 2017 and below the target profit established in the original investigation (i.e. 12,0 %).
- (127) During the period considered the cash flow of the Union industry increased by 3 %, while the level of investments remained stable.
- (128) Between 2015 and the review investigation period, the return on investment, defined as the profit in percentage of the net book value of investments, increased by 10 %. During the same period the average wage levels increased slightly following the same trend as the unit cost of production.

#### 4.6.8. *Magnitude of dumping and recovery from past dumping*

- (129) As explained above there were no dumped imports from the PRC during the period considered, therefore the magnitude of dumping margin could not be assessed.
- (130) During the period considered, the Union industry showed signs of recovery from the effects of past dumping. Union production, capacity utilisation, sales, and investment remained stable, while cash-flow and return on investment developed positively. The Union industry even slightly increased employment during the period considered. Thus, even though the sales volumes did not follow the increase in demand on the Union market as they remained stable over the period considered, the Commission concluded that the Union industry recovered from the past dumping.

#### 4.7. **Conclusion**

- (131) The situation of the Union industry improved in the period considered. Most of the injury indicators showed a positive or stable trend. The fact that the Union industry benefited from the measures is illustrated, among others, by the high level of capacity utilisation, and the increase in cash-flow and return on investment. The imports from the PRC present on the Union market originate from the sole Chinese producer found not to be dumping in the original investigation. On the basis of the above, the Commission concluded that the Union industry did not suffer material injury within the meaning of Article 3(5) of the basic Regulation during the review investigation period.

### 5. **LIKELIHOOD OF RECURRENCE OF INJURY**

- (132) In accordance with Article 11(2) of the basic Regulation, the Commission examined next the likelihood of material injury to recur should measures against the PRC be allowed to lapse.
- (133) The following elements were analysed: the production capacity and spare capacities in the PRC, the attractiveness of the Union market, including considerations on the existence of anti-dumping or countervailing measures on peroxosulphate in other third countries, the price behaviour of Chinese exporting producers in other third country markets, and the effect on the Union industry's situation.

#### 5.1. **Production capacity and spare capacities in the PRC**

- (134) The PRC is by far the largest global exporter of the product under review in the world. The EU was the third most important export market of the PRC, based on total value exported during the review investigation period <sup>(69)</sup>.
- (135) As explained in recitals (100) to (101) above, producers in the PRC have significant production capacities and significant estimated spare capacity which largely exceeds the total Union consumption during the review investigation period.

<sup>(69)</sup> Based on statistics extracted from GTA.

## 5.2. The attractiveness of the Union market

- (136) The Union market is worldwide the largest importer of the product under review <sup>(70)</sup>. Furthermore, as shown in Table 1 above, Union consumption of the product concerned increased 8 % between 2015 and the RIP. This shows that Union consumption remains strong and is increasing. The Union market, because of its relatively large size and steadily-increasing consumption, remains attractive for Chinese exporting producers.
- (137) In addition, trade defence measures against the export of the product under review are in place in other third countries such as the USA and India making it more difficult for Chinese exporting producers to export to these markets and further increasing the attractiveness of the Union market where these exports may be redirected.

## 5.3. Price behaviour of Chinese exporting producers

- (138) Another element demonstrating the attractiveness of the Union market is the pricing strategy of Chinese exporting producers. In this context an analysis was performed on the basis of a comparison between the sales prices of the Union producers and the ex-works prices charged by the Chinese cooperating producer to third countries, brought to CIF level by adding transport and insurance costs to the Union, and adjusted to for post importation costs and conventional duties. These calculations showed that the Chinese export prices are 26 % below the selling prices of the Union producers when comparing at the same level. The same analysis was performed on the basis of all Chinese export prices as reported to third countries (Union excluded) in the Global Trade Atlas. These calculations showed that the Chinese export prices are 18 % below the selling prices of the Union producers when comparing at the same level. Therefore, it can be reasonably expected that the Chinese imports will enter the Union market at prices lower than the ones charged by the Union industry should the measures be allowed to lapse.
- (139) Given the high spare capacities in the PRC, the attractiveness of the Union market and the pricing behaviour of Chinese exporting producers as summarised above in recitals (134) to (138), it is likely that significant volumes of low-priced peroxosulphates would be available for sale/redirection to the Union already in the short term in case the measures were allowed to lapse.
- (140) As a consequence, the Union industry, which is currently capable of satisfying the Union demand, is likely to lose sales volume as well as market shares on the Union market.

## 5.4. Effect on the Union industry situation

- (141) In order to assess the likely impact on the Union industry if measures were allowed to lapse, the Commission analysed what would be likely to happen to the Union industry's sales prices, sales volume and profitability if low priced Chinese imports would enter the Union market in significant volumes.
- (142) In this respect, it is recalled that when measures lapsed between 2002 and 2007, the Chinese dumped imports surged from 200 tons in 2001 to almost 9 000 tonnes in 2006 which led to prices decrease, loss of market share and significant profitability decrease of the Union industry.
- (143) On the basis of the past experience and the current competitive situation of the Union industry, the Commission examined how injury indicators would likely be impacted if measures were allowed to lapse. The Commission therefore performed a simulation based on the following assumptions:
- (a) The estimated evolution of sales volumes was based on a combination of historical increase in volumes when the measures lapsed for the first time (i.e. when Chinese dumped imports reached 9 000 tonnes in 2006), and the current competitive situation of the Union industry per product type, taking into account competitive advantages of the Union industry on the various product types (such as for e.g. better quality or shorter lead times), and the fact that increased imports would not only take market share from the Union industry but from other third countries as well.

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<sup>(70)</sup> Based on statistics extracted from GTA.



- (b) The expected price evolution of the Union industry is based on the Chinese export prices as reported to the Union during the review investigation period minus a fraction of the differences in price level observed in recital (99) above, taking into account different product types.
  - (c) The resulting estimated revenues were then applied to the cost structure of the Union industry during the review investigation period, as verified on spot, to recalculate profitability figures.
- (144) The simulation showed that a lapse of the measures would result in around 13 % decrease of sales volume of the Union industry after 1 year, and 20 % after 2 years, as well as a decrease in Union industry sales price of approximately 15 %. As a result, profitability figures would change from the current levels to a near loss-making situation for the Union industry after 1 year, and a loss-making situation after 2 years.

### 5.5. Conclusion

- (145) On the basis of the above, the Commission concluded that the repeal of the measures on the imports from the PRC would likely result in a recurrence of material injury to the Union industry in a short period of time.

## 6. INTEREST OF THE UNION INDUSTRY

- (146) It was concluded in recital (144) above that the Union industry would be likely to experience a serious deterioration of its situation in case the anti-dumping measures were allowed to lapse. Therefore, the continuation of measures would benefit the Union industry because the Union producers should be able to maintain its sales volumes, market share, profitability and its overall positive economic situation. By contrast, the discontinuation of the measures could threaten the viability of the Union industry because there are reasons to expect a shift of the Chinese imports to the Union market at dumped prices and in considerable volumes that would cause recurrence of injury.

## 7. INTEREST OF USERS

- (147) None of the contacted users provided a questionnaire reply. Nevertheless, one user, Wacker Chemie AG, provided a submission in which it claimed that the measures should be terminated for various reasons, which are addressed below.
- (148) First, the user claimed that the Union industry developed positively notwithstanding significant imports from China and high imports from other sources at comparable prices/often declining prices. Therefore, the Union industry should be able to withstand further competition from Chinese imports. Second, Wacker Chemie stated that the Union producers have been able to raise prices in the EU market regardless of production cost declines. Finally, elimination of the measures would enhance competition on the market and the ability to procure peroxosulphates at competitive prices from all sources.
- (149) As mentioned in section 4.7 above, the Commission concluded that the Union industry did not suffer material injury during the review investigation period, and that the Union industry increased its sales prices over the period considered. However, this increase in sales price was linked to an equivalent increase in the cost of production (see recital (125)). Concerning import prices and volumes from the PRC, the Commission recalled that virtually all imports to the Union from the PRC originated from the exporter that was found not to be dumping in the original investigation, and which is not subject to the current review. In addition, imports from other third countries were made at prices comparable to the Union industry prices, and showed an increasing rather than a declining trend. The investigation also revealed that due to the nature of the product as well as the several sources of supplies available on the market users can easily switch suppliers. Therefore, the Commission rejected the user's claims.
- (150) In addition, the original investigation revealed that the impact of the product under review on the costs of downstream products is rather marginal and the effect of the anti-dumping duty was negligible<sup>(71)</sup>. The users provided no information which would invalidate the conclusions reached in previous investigations that the impact of the duty on their business would be marginal.

<sup>(71)</sup> OJ L 97, 12.4.2007, p. 6.

## 8. INTEREST OF IMPORTERS

- (151) None of the contacted importers imported the product under review in significant volumes and therefore were not required to provide questionnaire replies. None of the importers which made themselves known to the Commission at the beginning of the review provided comments.
- (152) The investigation confirmed that importers can easily buy from different sources that are currently available on the market, in particular from the Union industry, US exporters and Chinese exporter selling at non-dumped prices. The Commission found in the original investigation that the proportion of peroxosulphates imports represented between 0,03 % and 1,3 % of importers' total turnover <sup>(72)</sup>. Therefore, in the absence of any evidence that would invalidate this finding and considering that imports of the product under review were insignificant during the review investigation period, the Commission concluded that importers would not be disproportionately affected by measures.

## 9. CONCLUSION

- (153) In line with Article 21 of the basic Regulation the Commission weighed the various competing interests and gave special consideration to the need to protect the Union industry against the a likely recurrence of injury. In absence of any evidence that would invalidate the findings of the original investigation, the Commission concluded that importers and users are not concerned in such a significant way that maintaining the measures would be clearly disproportionate. In view of the above, the Commission concluded that there are no compelling reasons of Union interest against the maintenance of the current anti-dumping measures.

## 10. SUBSEQUENT PROCEDURE

- (154) On 8 November 2019, the Commission disclosed the essential facts and considerations on the basis of which it intended to maintain the anti-dumping duties ('final disclosure') and invited parties to comment. The Commission did not receive any comments by interested parties objecting to the disclosed findings.
- (155) The comments made by interested parties were considered by the Commission and taken into account, where appropriate.

## 11. ANTI-DUMPING MEASURES

- (156) It follows from the above that the anti-dumping measures applicable to peroxosulphates originating in China should be maintained.
- (157) To minimise the risks of circumvention due to the high difference in duty rates, special measures are needed to ensure the proper application of the individual anti-dumping duties. The companies with individual anti-dumping duties must present a valid commercial invoice to the customs authorities of the Member States. The invoice must conform to the requirements set out in Article 1(3) of this regulation. Imports not accompanied by that invoice should be subject to the anti-dumping duty applicable to 'all other companies'.
- (158) While presentation of this invoice is necessary for the customs authorities of the Member States to apply the individual rates of anti-dumping duty to imports, it should not be the only element to be taken into account by the customs authorities. Indeed, even if presented with an invoice meeting all the requirements set out in Article 1(3) of this Regulation, the customs authorities of Member States should carry out their usual checks and may, like in all other cases, require additional documents (shipping documents, etc.) for the purpose of verifying the accuracy of the particulars contained in the declaration and ensure that the subsequent application of the rate of duty is justified, in compliance with customs law.
- (159) Should the exports by one of the companies benefiting from lower individual duty rates increase significantly in volume, in particular after the imposition of the measures concerned, such an increase in volume could be considered as constituting in itself a change in the pattern of trade due to the imposition of measures within the meaning of Article 13(1) of the basic Regulation. In such circumstances, an anti-circumvention investigation may be initiated, provided the conditions for so doing are met. This investigation may, inter alia, examine the need for the removal of individual duty rate(s) and the consequent imposition of a country-wide duty.

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<sup>(72)</sup> OJ L 97, 12.4.2007, p. 6.

- (160) If a company with an individual anti-dumping rate subsequently changes the name of its entity, it may request the continued application of this rate. The request must be addressed to the Commission <sup>(73)</sup>. The request must contain all the relevant information enabling to demonstrate that the change does not affect the right of the company to benefit from the duty rate which applies to it. If the change of name of the company does not affect its right to benefit from the duty rate which applies to it, a notice informing about the change of name will be published in the *Official Journal of the European Union*.
- (161) In view of Article 109 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council <sup>(74)</sup>, when an amount is to be reimbursed following a judgment of the Court of Justice of the European Union, the interest to be paid should be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the *Official Journal of the European Union* on the first calendar day of each month.
- (162) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 15(1) of Regulation (EU) 2016/1036,

HAS ADOPTED THIS REGULATION:

#### Article 1

1. A definitive anti-dumping duty is imposed on imports of peroxosulphates (persulphates), including potassium peroxymonosulphate sulphate, currently falling under CN codes 2833 40 00 and ex 2842 90 80 (TARIC code 2842 90 80 20) and originating in the People's Republic of China.

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

Company	Duty (%)	TARIC Additional Code
ABC Chemicals (Shanghai) Co., Ltd, Shanghai	0,0	A820
United Initiators Shanghai Co., Ltd	24,5	A821
All other companies	71,8	A999

3. The application of the individual duty rate specified for the companies mentioned in paragraph 2 shall be conditional upon presentation to the customs authorities of the Member States of a valid commercial invoice, on which shall appear a declaration dated and signed by an official of the entity issuing such invoice, identified by his/her name and function, drafted as follows: 'I, the undersigned, certify that the (volume) of [product concerned] sold for export to the European Union covered by this invoice was manufactured by [company name and address] [TARIC additional code] in [country concerned]. I declare that the information provided in this invoice is complete and correct.' If no such invoice is presented, the duty rate applicable to 'all other companies' shall apply.

4. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

#### Article 2

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

<sup>(73)</sup> European Commission, Directorate-General for Trade, Directorate H, Rue de la Loi 170, 1040 Brussels, Belgium.

<sup>(74)</sup> Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

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

Done at Brussels, 16 January 2020.

*For the Commission*  
*The President*  
Ursula VON DER LEYEN

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## ACTS ADOPTED BY BODIES CREATED BY INTERNATIONAL AGREEMENTS

### DECISION No 2/2019 OF THE COMMUNITY/SWITZERLAND INLAND TRANSPORT COMMITTEE of 13 December 2019 on transitory measures to maintain smooth rail traffic between Switzerland and the European Union [2020/40]

THE COMMITTEE,

Having regard to the Agreement of 21 June 1999 between the European Community and the Swiss Confederation on the carriage of goods and passengers by rail and road ('the Agreement'), and in particular Article 52(4) thereof,

Whereas:

- (1) Under Article 51(2) of the Agreement, the Community/Switzerland Inland Transport Committee ('the Joint Committee') shall be responsible for monitoring and applying the provisions of the Agreement, and shall implement the adaptation and revision clauses referred to in Articles 52 and 55 thereof.
- (2) Under Article 52(4) of the Agreement, the Joint Committee shall, among other things, adopt decisions revising Annex 1 so as to incorporate into it, if necessary and on a basis of reciprocity, the amendments to the legislation in question or decide on any other measures to safeguard the proper functioning of the Agreement.
- (3) Joint Committee Decision No 1/2013 <sup>(1)</sup> provides for the recognition, on the basis of reciprocity, of the safety certificates for railway undertakings issued by the national safety authorities of a Member State or Switzerland in accordance with Directive 2004/49/EC of the European Parliament and of the Council <sup>(2)</sup>. It also provides for the recognition, on the basis of reciprocity, of the 'EC' declarations of conformity, suitability for use and verification, 'EC' certificates of verification, authorisations for placing in service of subsystems and vehicles and type authorisations, as well as of the notified bodies laid down in Directive 2008/57/EC of the European Parliament and of the Council <sup>(3)</sup>.
- (4) Directive (EU) 2016/797 of the European Parliament and of the Council <sup>(4)</sup> lays down new requirements for placing on the market interoperability constituents, subsystems and railway vehicles. Directive (EU) 2016/798 of the European Parliament and of the Council <sup>(5)</sup> lays down new requirements for issuing single safety certificates for railway undertakings. These Directives also confer new functions upon the European Union Agency for Railways ('the Agency'). In particular, the Agency is responsible for issuing authorisations for placing a vehicle on the market and type authorisations of vehicles pursuant to Articles 21 and 24 of Directive (EU) 2016/797 ('EU vehicle authorisations'), as well as for issuing single safety certificates pursuant to Article 10 of Directive (EU) 2016/798 ('single safety certificates'). The Directives are to be transposed by the Member States not later than by 16 June 2019 or, as regards Member States which have notified the Commission and Agency to that effect, by 16 June 2020. Directives 2004/49/EC and 2008/57/EC are repealed and replaced by Directives (EU) 2016/797 and (EU) 2016/798, with effect from 16 June 2020.
- (5) Furthermore, Switzerland plans to apply legal provisions equivalent to Directives (EU) 2016/797 and (EU) 2016/798. It is therefore necessary to incorporate into the Agreement the new substantive provisions of Directives (EU) 2016/797 and (EU) 2016/798 by amending Annex 1 to the Agreement.

<sup>(1)</sup> Decision No 1/2013 of the Community/Switzerland Inland Transport Committee of 6 December 2013 amending Annex 1 to the Agreement between the European Community and the Swiss Confederation on the carriage of goods and passengers by rail and road (OJ L 352, 24.12.2013, p. 79).

<sup>(2)</sup> Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways and amending Council Directive 95/18/EC on the licensing of railway undertakings and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (Railway Safety Directive) (OJ L 164, 30.4.2004, p. 44).

<sup>(3)</sup> Directive 2008/57/EC of the European Parliament and of the Council of 17 June 2008 on the interoperability of the rail system within the Community (OJ L 191, 18.7.2008, p. 1).

<sup>(4)</sup> Directive (EU) 2016/797 of the European Parliament and of the Council of 11 May 2016 on the interoperability of the rail system within the European Union (OJ L 138, 26.5.2016, p. 44).

<sup>(5)</sup> Directive (EU) 2016/798 of the European Parliament and of the Council of 11 May 2016 on railway safety (OJ L 138, 26.5.2016, p. 102).

- (6) In its current form, the Agreement does not provide for the possibility of European Union institutions or bodies to exercise authority in Switzerland, nor does it empower the Joint Committee to amend the Agreement to that effect. Pending amendment of the Agreement under the relevant procedures, it is necessary to lay down transitory provisions to facilitate rail traffic between Switzerland and the European Union. To this effect, it should be specified that compliance with the relevant safety and interoperability requirements in Switzerland may be established by means of a single safety certificate or an EU vehicle authorisation issued by the Agency, on one hand, and the verification by Switzerland of compliance with Swiss national rules. When issuing single safety certificates or EU vehicle authorisations, the Agency should take into account as evidence the assessment carried out by Switzerland, for the purpose of issuing safety certificates or vehicle authorisations for the Swiss rail network, of the requirements in Swiss legislation corresponding to the relevant European Union legislation.
- (7) The 'EC' certificates and 'EC' declarations established pursuant to Directive (EU) 2016/797 should be mutually recognised.
- (8) In order to limit the administrative burden, applicants should be allowed to request at the same time a single security certificate or an EU vehicle authorisation issued by the Agency as well as the verification by Switzerland of compliance with its national rules. For the same purpose, applicants should be allowed to use the one-stop shop referred to in Article 12 of Regulation (EU) 2016/796 of the European Parliament and of the Council<sup>(9)</sup>. Switzerland should be granted access to the one-stop shop, and the Agency and Switzerland should cooperate to the extent necessary to implement this Decision.
- (9) The national rules that are referred to in Article 13(2) of Directive (EU) 2016/797 and Article 8(2) of Directive (EU) 2016/798 and applicable for issuing safety certificates and vehicle authorisations on Swiss territory ('national rules') should be notified for publication by means of the electronic system referred to in Article 27 of Regulation (EU) 2016/796. The areas in which Swiss national rules are applied should be listed in Annex 1 to the Agreement.
- (10) Switzerland and the European Union are committed to removing unnecessary national rules that are an obstacle to interoperability and smooth rail traffic between Switzerland and the European Union. Certain Swiss national rules listed in Annex 1 to the Agreement may be incompatible with the technical specifications for interoperability and should be reviewed before 31 December 2020 to decide whether to remove, amend or keep them.
- (11) Decision No 1/2013 of the Joint Committee should be repealed. However, as certain Member States, in accordance with Directives (EU) 2016/797 and (EU) 2016/798, will not transpose those Directives until 16 June 2020, Articles 2(1) and 3(1) of the Joint Committee decision should continue to apply until that date as regards the Member States concerned.
- (12) The 'EC' declarations of conformity, suitability for use and verification, 'EC' certificates of verification as well as the authorisations for placing in service of subsystems and vehicles and type authorisations and the safety certificates recognised in accordance with Decision No 1/2013 should continue to be recognised under the conditions subject to which they were issued.
- (13) The transitory measures established by this Decision should apply until 31 December 2020 pending the amendment of the Agreement with a view to extending to the Swiss rail network the role of the Agency in the area of safety certificates and vehicle authorisations. The Joint Committee should consider extending the transitory measures beyond 31 December 2020, if it is unlikely that legal provisions equivalent to Regulation (EU) 2016/796 and Directives (EU) 2016/797 and (EU) 2016/798 will be applied by 31 December 2020,

HAS DECIDED AS FOLLOWS:

#### *Article 1*

Annex 1 to the Agreement is replaced by the text of the Annex to this Decision.

<sup>(9)</sup> Regulation (EU) 2016/796 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Railways and repealing Regulation (EC) No 881/2004 (OJ L 138, 26.5.2016, p. 1).

### Article 2

1. Compliance with the requirements applicable to the use of the Swiss railway network by a railway undertaking may be established by means of:

- a single safety certificate issued by the Agency in accordance with Article 10 of Directive (EU) 2016/798, and
- a decision by Switzerland verifying compliance with the Swiss national rules referred to in Article 6(1).

For the purposes of the first subparagraph, Switzerland shall recognise the single safety certificates issued by the Agency in accordance with Article 10 of Directive (EU) 2016/798.

Verification by the Swiss national authorities of compliance with the national rules shall be carried out within the time periods laid down in Article 6 of Commission Implementing Regulation (EU) 2018/763 <sup>(7)</sup>.

2. When issuing a single safety certificate for using the European Union's rail network, the Agency shall take into account as evidence the assessment carried out by Switzerland, for the purpose of issuing a safety certificate for the Swiss rail network, of the requirements of Swiss legislation corresponding to the relevant European Union legislation.

3. An applicant may apply at the same time for a single safety certificate and a decision to verify compliance with the Swiss national rules. In that case, the Agency and Switzerland shall cooperate to ensure that decisions on the application for a single safety certificate and on compliance with Swiss national rules are taken within the time periods laid down in Article 6 of Regulation (EU) 2018/763, and in accordance with the third subparagraph of paragraph 1.

### Article 3

1. Compliance with the requirements for authorisations for the use of a vehicle on the Swiss rail network may be established by means of:

- an EU vehicle authorisation issued by the Agency in accordance with Articles 21 and 24 of Directive (EU) 2016/797, and
- a decision by Switzerland verifying compliance with the Swiss national rules referred to in Article 6(1).

For the purposes of the first subparagraph, Switzerland shall recognise the EU vehicle authorisations issued by the Agency in accordance with Articles 21 and 24 of Directive (EU) 2016/797.

Verification by Switzerland of compliance with the national rules shall be carried out within the time periods laid down in Article 34 of Commission Implementing Regulation (EU) 2018/545 <sup>(8)</sup>.

2. When issuing an EU vehicle authorisation for using a vehicle on the European Union's rail network, the Agency shall take into account as evidence the assessment carried out by Switzerland, for the purpose of issuing a vehicle authorisation for the Swiss rail network, of the requirements of Swiss legislation corresponding to the relevant European Union legislation.

3. An applicant may apply at the same time for an EU vehicle authorisation and a decision to verify compliance with Swiss national rules. In that case, the Agency and Switzerland shall cooperate to ensure that decisions on the application for an EU vehicle authorisation and on verification of compliance with Swiss national rules are taken within the time periods laid down in Article 34 of Implementing Regulation (EU) 2018/545, in accordance with the third subparagraph of paragraph 1.

### Article 4

1. The following shall be recognised on the basis of reciprocity:

- (a) the 'EC' certificates of conformity or of suitability for use referred to in Article 9(2) of Directive (EU) 2016/797 and issued by a notified body;

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<sup>(7)</sup> Commission Implementing Regulation (EU) 2018/763 of 9 April 2018 establishing practical arrangements for issuing single safety certificates to railway undertakings pursuant to Directive (EU) 2016/798 of the European Parliament and of the Council, and repealing Commission Regulation (EC) No 653/2007 (OJ L 129, 25.5.2018, p. 49).

<sup>(8)</sup> Commission Implementing Regulation (EU) 2018/545 of 4 April 2018 establishing practical arrangements for the railway vehicle authorisation and railway vehicle type authorisation process pursuant to Directive (EU) 2016/797 of the European Parliament and of the Council (OJ L 90, 6.4.2018, p. 66).

- (b) the 'EC' declarations of conformity or of suitability for use referred to in Articles 9 and 10(1) of Directive (EU) 2016/797 and drawn up by the manufacturer or its authorised representative;
- (c) the 'EC' certificates of verification referred to in Annex IV to Directive (EU) 2016/797 and issued by a notified body;
- (d) the 'EC' declarations of verification referred to in Article 15(1) of Directive (EU) 2016/797 and drawn up by the applicant;
- (e) the list of Swiss and European Union conformity assessment bodies provided for in Article 38 of Directive (EU) 2016/797.

2. In accordance with Article 37 of Directive (EU) 2016/797, Switzerland shall notify the European Commission and the European Union Member States of the conformity assessment bodies established in Switzerland.

The Swiss notified bodies may carry out their activities under the conditions laid down in Directive (EU) 2016/797 and for as long as they comply with the requirements of Directive (EU) 2016/797.

The Commission shall make publicly available the list of Swiss notified bodies.

#### *Article 5*

1. The applications for decisions verifying compliance with the Swiss national rules referred to in Articles 2(1) and 3(1) shall be made using the one-stop shop referred to in Article 12 of Regulation (EU) 2016/796.
2. The applications referred to in Articles 2(3) and 3(3) shall be submitted through the one-stop shop.
3. Switzerland shall register a copy of the decision verifying compliance with national rules within the one-stop shop.
4. Switzerland shall have access to the one-stop shop for the purposes of this Decision.

#### *Article 6*

1. The Swiss national rules may supplement or derogate from European Union requirements to the extent that the rules concern the technical parameters of subsystems, operational aspects or aspects relating to staff carrying out safety tasks as listed in Annex 1 to the Agreement.
2. Switzerland shall notify the Agency of the national rules referred to in paragraph 1 with a view to their publication using the electronic system referred to in Article 27 of Regulation (EU) 2016/796.

#### *Article 7*

1. Decision No 1/2013 of the Joint Committee is repealed with effect from the date of entry into force of this Decision.
2. Articles 2(1) and 3(1) of Decision No 1/2013 of the Joint Committee shall continue to apply until 16 June 2020 as regards the Member States which have notified the Agency and the Commission pursuant to Article 57(2) of Directive (EU) 2016/797 or Article 33(2) of Directive (EU) 2016/798.
3. 'EC' declarations of conformity or of suitability for use, 'EC' certificates of verification and 'EC' declarations of verification recognised pursuant to Decision No 1/2013 of the Joint Committee shall continue to be recognised under the conditions subject to which they were issued.
4. The safety certificates and the authorisations for placing in service of subsystems and vehicles and type authorisations recognised in accordance with Decision No 1/2013 of the Joint Committee shall continue to be recognised under the conditions subject to which they were issued.

#### *Article 8*

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

Articles 2, 3, 4 and 5 shall apply until 31 December 2020.



Done at Brussels, 13 December 2019.

*For the European Union*  
*The President*  
Elisabeth WERNER

*For the Swiss Confederation*  
*The Head of the Swiss Delegation*  
Peter FÜGLISTALER

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## ANNEX

## ANNEX 1

**APPLICABLE PROVISIONS**

In accordance with Article 52(6) of this Agreement, Switzerland shall apply legal provisions equivalent to the following:

**Relevant provisions of Union law**

## SECTION 1 — ADMISSION TO THE OCCUPATION

- Directive 2006/1/EC of the European Parliament and of the Council of 18 January 2006 on the use of vehicles hired without drivers for the carriage of goods by road (codified version) (OJ L 33, 4.2.2006, p. 82).
- Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC (OJ L 300, 14.11.2009, p. 51), as last amended by Council Regulation (EU) No 517/2013 of 13 May 2013 (OJ L 158, 10.6.2013, p. 1).
- Regulation (EC) No 1072/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international road haulage market (OJ L 300, 14.11.2009, p. 72), as last amended by Council Regulation (EU) No 517/2013 of 13 May 2013 (OJ L 158, 10.6.2013, p. 1).

For the purposes of this Agreement,

- (a) the European Union and the Swiss Confederation shall exempt from the obligation to hold a driver attestation all citizens of the Swiss Confederation, of an EU Member State and of a Member State of the European Economic Area;
  - (b) the Swiss Confederation may not exempt citizens of States other than those mentioned in point (a) above from the obligation to hold a driver attestation without prior consultation with and approval by the European Union;
  - (c) the provisions of Chapter III of Regulation (EC) No 1072/2009 (on cabotage) shall not apply.
- Regulation (EC) No 1073/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international market for coach and bus services, and amending Regulation (EC) No 561/2006 (OJ L 300, 14.11.2009, p. 88), as last amended by Council Regulation (EU) No 517/2013 of 13 May 2013 (OJ L 158, 10.6.2013, p. 1).

For the purposes of this Agreement, the provisions of Chapter V of Regulation (EC) No 1073/2009 (on cabotage) shall not apply.

- Commission Decision 2009/992/EU of 17 December 2009 on minimum requirements for the data to be entered in the national electronic register of road transport undertakings (OJ L 339, 22.12.2009, p. 36).
- Commission Regulation (EU) No 1213/2010 of 16 December 2010 establishing common rules concerning the interconnection of national electronic registers on road transport undertakings (OJ L 335, 18.12.2010, p. 21).
- Commission Regulation (EU) No 361/2014 of 9 April 2014 laying down detailed rules for the application of Regulation (EC) No 1073/2009 of the European Parliament and of the Council as regards documents for the international carriage of passengers by coach and bus and repealing Commission Regulation (EC) No 2121/98 (OJ L 107, 10.4.2014, p. 39).
- Commission Regulation (EU) 2016/403 of 18 March 2016 supplementing Regulation (EC) No 1071/2009 of the European Parliament and of the Council with regard to the classification of serious infringements of the Union rules, which may lead to the loss of good repute by the road transport operator, and amending Annex III to Directive 2006/22/EC of the European Parliament and of the Council (OJ L 74, 19.3.2016, p. 8).

## SECTION 2 — SOCIAL STANDARDS

- Directive 2002/15/EC of the European Parliament and of the Council of 11 March 2002 on the organisation of the working time of persons performing mobile road transport activities (OJ L 80, 23.3.2002, p. 35).

- Directive 2003/59/EC of the European Parliament and of the Council of 15 July 2003 on the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods or passengers, amending Council Regulation (EEC) No 3820/85 and Council Directive 91/439/EEC and repealing Council Directive 76/914/EEC (OJ L 226, 10.9.2003, p. 4).
- Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Regulation (EEC) No 3820/85 (OJ L 102, 11.4.2006, p. 1), as last amended by Regulation (EU) No 165/2014 of the European Parliament and of the Council of 4 February 2014 (OJ L 60, 28.2.2014, p. 1).
- Directive 2006/22/EC of the European Parliament and of the Council of 15 March 2006 on minimum conditions for the implementation of Council Regulations (EEC) No 3820/85 and (EEC) No 3821/85 concerning social legislation relating to road transport activities and repealing Council Directive 88/599/EEC (OJ L 102, 11.4.2006, p. 35), as last amended by Regulation (EU) 2016/403 of 18 March 2016 (OJ L 74, 19.3.2016, p. 8).
- Commission Regulation (EU) No 581/2010 of 1 July 2010 on the maximum periods for the downloading of relevant data from vehicle units and from driver cards (OJ L 168, 2.7.2010, p. 16).
- Regulation (EU) No 165/2014 of the European Parliament and of the Council of 4 February 2014 on tachographs in road transport, repealing Council Regulation (EEC) No 3821/85 on recording equipment in road transport and amending Regulation (EC) No 561/2006 of the European Parliament and of the Council on the harmonisation of certain social legislation relating to road transport (OJ L 60, 28.2.2014, p. 1).
- Commission Implementing Regulation (EU) 2016/68 of 21 January 2016 on common procedures and specifications necessary for the interconnection of electronic registers of driver cards (OJ L 15, 22.1.2016, p. 51), as amended by Commission Implementing Regulation (EU) 2017/1503 of 25 August 2017 (OJ L 221, 26.8.2017, p. 10).
- Commission Implementing Regulation (EU) 2016/799 of 18 March 2016 implementing Regulation (EU) No 165/2014 of the European Parliament and of the Council laying down the requirements for the construction, testing, installation, operation and repair of tachographs and their components (OJ L 139, 26.5.2016, p. 1), as amended by Commission Implementing Regulation (EU) 2018/502 of 28 February 2018 (OJ L 85, 28.3.2018, p. 1).
- Commission Implementing Regulation (EU) 2017/548 of 23 March 2017 laying down a standard form for the written statement on the removal or breakage of a tachograph seal (OJ L 79, 24.3.2017, p. 1).
- Commission Implementing Decision (EU) 2017/1013 of 30 March 2017 drawing up the standard reporting form referred to in Article 17 of Regulation (EC) No 561/2006 of the European Parliament and of the Council (OJ L 153, 16.6.2017, p. 28).

### SECTION 3 — TECHNICAL STANDARDS

#### *Motorised vehicles*

- Council Directive 70/157/EEC of 6 February 1970 on the approximation of the laws of the Member States relating to the permissible sound level and the exhaust system of motor vehicles (OJ L 42, 23.2.1970, p. 16), as last amended by Commission Directive 2007/34/EC of 14 June 2007 (OJ L 155, 15.6.2007, p. 49).
- Council Directive 88/77/EEC of 3 December 1987 on the approximation of the laws of the Member States relating to the measures to be taken against the emission of gaseous and particulate pollutants from compression ignition engines for use in vehicles, and the emission of gaseous pollutants from positive ignition engines fuelled with natural gas or liquefied petroleum gas for use in vehicles (OJ L 36, 9.2.1988, p. 33), as last amended by Commission Directive 2001/27/EC of 10 April 2001 (OJ L 107, 18.4.2001, p. 10).
- Council Directive 91/671/EEC of 16 December 1991 on the approximation of the laws of the Member States relating to compulsory use of safety belts in vehicles of less than 3,5 tonnes (OJ L 373, 31.12.1991, p. 26), as last amended by Commission Implementing Directive 2014/37/EU of 27 February 2014 (OJ L 59, 28.2.2014, p. 32).
- Council Directive 92/6/EEC of 10 February 1992 on the installation and use of speed limitation devices for certain categories of motor vehicles in the Community (OJ L 57, 2.3.1992, p. 27), as amended by Directive 2002/85/EC of the European Parliament and of the Council of 5 November 2002 (OJ L 327, 4.12.2002, p. 8).

- Council Directive 96/53/EC of 25 July 1996 laying down for certain road vehicles circulating within the Community the maximum authorised dimensions in national and international traffic and the maximum authorised weights in international traffic (OJ L 235, 17.9.1996, p. 59), as amended by Directive 2002/7/EC of the European Parliament and of the Council of 18 February 2002 (OJ L 67, 9.3.2002, p. 47).
- Council Regulation (EC) No 2411/98 of 3 November 1998 on the recognition in intra-Community traffic of the distinguishing sign of the Member State in which motor vehicles and their trailers are registered (OJ L 299, 10.11.1998, p. 1).
- Directive 2000/30/EC of the European Parliament and of the Council of 6 June 2000 on the technical roadside inspection of the roadworthiness of commercial vehicles circulating in the Community (OJ L 203, 10.8.2000, p. 1), as last amended by Commission Directive 2010/47/EU of 5 July 2010 (OJ L 173, 8.7.2010, p. 33).
- Directive 2005/55/EC of the European Parliament and of the Council of 28 September 2005 on the approximation of the laws of the Member States relating to the measures to be taken against the emission of gaseous and particulate pollutants from compression-ignition engines for use in vehicles, and the emission of gaseous pollutants from positive-ignition engines fuelled with natural gas or liquefied petroleum gas for use in vehicles (OJ L 275, 20.10.2005, p. 1), as last amended by Commission Directive 2008/74/EC of 18 July 2008 (OJ L 192, 19.7.2008, p. 51).
- Regulation (EC) No 595/2009 of the European Parliament and of the Council of 18 June 2009 on type-approval of motor vehicles and engines with respect to emissions from heavy duty vehicles (Euro VI) and on access to vehicle repair and maintenance information and amending Regulation (EC) No 715/2007 and Directive 2007/46/EC and repealing Directives 80/1269/EEC, 2005/55/EC and 2005/78/EC (OJ L 188, 18.7.2009, p. 1), as last amended by Commission Regulation (EU) No 133/2014 of 31 January 2014 (OJ L 47, 18.2.2014, p. 1).
- Regulation (EC) No 661/2009 of the European Parliament and of the Council of 13 July 2009 concerning type-approval requirements for the general safety of motor vehicles, their trailers and systems, components and separate technical units intended therefor (OJ L 200, 31.7.2009, p. 1), as last amended by Commission Regulation (EU) 2016/1004 of 22 June 2016 (OJ L 165, 23.6.2016, p. 1).
- Commission Regulation (EU) No 582/2011 of 25 May 2011 implementing and amending Regulation (EC) No 595/2009 of the European Parliament and of the Council with respect to emissions from heavy duty vehicles (Euro VI) and amending Annexes I and III to Directive 2007/46/EC of the European Parliament and of the Council (OJ L 167, 25.6.2011, p. 1), as last amended by Commission Regulation (EU) No 627/2014 of 12 June 2014 (OJ L 174, 13.6.2014, p. 28).
- Directive 2014/45/EU of the European Parliament and of the Council of 3 April 2014 on periodic roadworthiness tests for motor vehicles and their trailers and repealing Directive 2009/40/EC (OJ L 127, 29.4.2014, p. 51).
- Regulation (EU) No 540/2014 of the European Parliament and of the Council of 16 April 2014 on the sound level of motor vehicles and of replacement silencing systems, and amending Directive 2007/46/EC and repealing Directive 70/157/EEC (OJ L 158, 27.5.2014, p. 131), as amended by Commission Delegated Regulation (EU) 2017/1576 of 26 June 2017 (OJ L 239, 19.9.2017, p. 3).

#### *Transportation of dangerous goods*

- Council Directive 95/50/EC of 6 October 1995 on uniform procedures for checks on the transport of dangerous goods by road (OJ L 249, 17.10.1995, p. 35), as last amended by Council Directive 2008/54/EC of the European Parliament and of the Council of 17 June 2008 (OJ L 162, 21.6.2008, p. 11).
- Directive 2008/68/EC of the European Parliament and of the Council of 24 September 2008 on the inland transport of dangerous goods (OJ L 260, 30.9.2008, p. 13), as last amended by Commission Directive (EU) 2018/1846 of 23 November 2018 (OJ L 299, 26.11.2018, p. 58).

For the purposes of this Agreement the following derogations to Directive 2008/68/EC shall apply in Switzerland:

#### 1. Road transport

Derogations for Switzerland under Article 6(2)(a) of Directive 2008/68/EC of 24 September 2008 on the inland transport of dangerous goods

#### **RO - a - CH - 1**

Subject: Transport of diesel fuel and heating oil with UN number 1202 in tank containers.

Reference to Annex I, Section I.1, to that Directive: points 1.1.3.6 and 6.8.

Content of the Annex to the Directive: Exemptions related to the quantities transported per transport unit; regulations concerning the construction of tanks.

Content of the national legislation: Tank containers which are not constructed according to point 6.8 but according to national legislation, which have a capacity of less than or equal to 1 210 l and which are used to transport heating oil or diesel fuel with UN number 1202 may benefit from the exemptions in point 1.1.3.6 ADR.

Initial reference to the national legislation: Appendix 1, points 1.1.3.6.3(b) and 6.14 of the Ordinance of 29 November 2002 on the carriage of dangerous goods by road (SDR; RS 741.621).

Date of expiry: 1 January 2023.

#### **RO - a - CH - 2**

Subject: Exemption from the requirement to carry a transport document for certain quantities of dangerous goods as defined in point 1.1.3.6.

Reference to Annex I, Section I.1, to that Directive: points 1.1.3.6 and 5.4.1.

Content of the Annex to the Directive: Requirements for transport documentation.

Content of the national legislation: the transport of uncleaned empty containers belonging to Transport Category 4 and filled or empty gas cylinders for breathing apparatuses for use by emergency services or as diving equipment, in quantities not exceeding the limits set in point 1.1.3.6, is not subject to the obligation to carry the transport document provided for in point 5.4.1.

Initial reference to the national legislation: Appendix 1, point 1.1.3.6.3(c) of the Ordinance of 29 November 2002 on the carriage of dangerous goods by road (SDR; RS 741.621).

Date of expiry: 1 January 2023.

#### **RO - a - CH - 3**

Subject: Transport of uncleaned empty tanks by companies servicing storage facilities for liquids hazardous to water.

Reference to Annex I, Section I.1, to that Directive: points 6.5, 6.8, 8.2 and 9.

Content of the Annex to the Directive: Construction, equipping and inspection of tanks and vehicles; driver training.

Content of the national legislation: Vehicles and uncleaned empty tanks/containers used by companies servicing storage facilities for liquids hazardous to water to contain liquids while stationary tanks are being serviced are not subject to the construction, equipping and inspection regulations or to the labelling and orange-plate identification regulations stipulated by the ADR. They are subject to specific labelling and identification regulations, and the driver of the vehicle is not required to have undergone the training described in point 8.2.

Initial reference to the national legislation: Appendix 1, point 1.1.3.6.3.10 of the Ordinance of 29 November 2002 on the carriage of dangerous goods by road (SDR; RS 741.621).

Date of expiry: 1 January 2023.

Derogations for Switzerland under Article 6(2)(b)(i) of Directive 2008/68/EC of 24 September 2008 on the inland transport of dangerous goods

#### **RO - bi - CH - 1**

Subject: Transport of domestic waste containing dangerous goods to waste disposal installations.

Reference to Annex I, Section I.1, to that Directive: points 2, 4.1.10, 5.2 and 5.4.

Content of the Annex to the Directive: Classification, combined packaging, marking and labelling, documentation.

Content of the national legislation: The rules include provisions relating to the simplified classification of domestic waste containing (domestic) dangerous goods by an expert recognised by the competent authority, to the use of appropriate receptacles and to driver training. Domestic waste which cannot be classified by the expert may be transported to a treatment centre in small quantities identified by package and by transport unit.

Initial reference to the national legislation: Appendix 1, point 1.1.3.7 of the Ordinance of 29 November 2002 on the carriage of dangerous goods by road (SDR; RS 741.621).

Comments: These rules may only be applied to the transport of domestic waste containing dangerous goods between public treatment sites and waste disposal installations.

Date of expiry: 1 January 2023.

**RO - bi - CH - 2**

Subject: Return transport of fireworks.

Reference to Annex I, Section I.1, to that Directive: points 2.1.2 and 5.4.

Content of the Annex to the Directive: Classification and documentation.

Content of the national legislation: With the aim of facilitating the return transport of fireworks with UN numbers 0335, 0336 and 0337 from retailers to suppliers, exemptions regarding the indication of the net mass and product classification in the transport document are provided for.

Initial reference to the national legislation: Appendix 1, point 1.1.3.8 of the Ordinance of 29 November 2002 on the carriage of dangerous goods by road (SDR; RS 741.621).

Comments: Detailed checking of the exact contents of each item of unsold product in each package is impossible in practice for products intended for retail trade.

Date of expiry: 1 January 2023.

**RO - bi - CH - 3**

Subject: ADR training certificate for journeys undertaken with the purpose of transporting vehicles which have broken down, journeys related to repairs, journeys made to the examination of tank vehicles/tanks, and journeys with tank vehicles made by experts responsible for the examination of the vehicle in question.

Reference to Annex I, Section I.1, to that Directive: point 8.2.1.

Content of the Annex to the Directive: Drivers of vehicles must attend training courses.

Content of the national legislation: ADR training and certificates are not required for journeys undertaken with the purpose of transporting vehicles that have broken down or test drives related to repairs, journeys with tank vehicles made to the examination of the tank vehicle or its tank, and journeys made by experts responsible for the examination of tank vehicles.

Initial reference to the national legislation: Instructions of 30 September 2008 of the Federal Department of Environment, Transport, Energy and Communication (DETEC) on the carriage of dangerous goods by road.

Comments: In some cases, vehicles which have broken down or are undergoing repairs and tank vehicles being prepared for technical inspection or being checked at the time of the inspection still contain dangerous goods.

The requirements in 1.3 and 8.2.3 are still applicable.

Date of expiry: 1 January 2023.

**2. Railway transport**

Derogations for Switzerland under Article 6(2)(a) of Directive 2008/68/EC of 24 September 2008 on the inland transport of dangerous goods

**RA - a - CH - 1**

Subject: Transport of diesel fuel and heating oil with UN number 1202 in tank containers.

Reference to Annex II, Section II.1, to that Directive: point 6.8.

Content of the Annex to the Directive: Regulations concerning the construction of tanks.

Content of the national legislation: Tank containers which are not constructed according to point 6.8 but according to national legislation, which have a capacity of less than or equal to 1 210 l and which are used to transport heating oil or diesel fuel with UN number 1202 are authorised.

Initial reference to the national legislation: Annex to the DETEC Ordinance of 3 December 1996 relating to the transport of dangerous goods by rail and cableway installation (RSD; RS 742.401.6) and Appendix 1, Chapter 6.14 of the Ordinance of 29 November 2002 relating to the carriage of dangerous goods by road (SDR; RS 741.621).

Date of expiry: 1 January 2023.

**RA - a - CH - 2**

Subject: Transport document.

Reference to Annex II, Section II.1, to that Directive: point 5.4.1.1.1.

Content of the Annex to the Directive: General information required in the transport document.

Content of the national legislation: a collective term may be used in the transport document if a list containing the information prescribed as stipulated above accompanies that document.

Initial reference to the national legislation: Annex to the DETEC Ordinance of 3 December 1996 relating to the transport of dangerous goods by rail and cableway installation (RSD; RS 742.401.6).

Date of expiry: 1 January 2023.

- Directive 2010/35/EU of the European Parliament and of the Council of 16 June 2010 on transportable pressure equipment and repealing Council Directives 76/767/EEC, 84/525/EEC, 84/526/EEC, 84/527/EEC and 1999/36/EC (OJ L 165, 30.6.2010, p. 1).

#### SECTION 4 — ACCESS AND TRANSIT RIGHTS WITH REGARD TO RAILWAYS

- Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways (OJ L 237, 24.8.1991, p. 25).
- Council Directive 95/18/EC of 19 June 1995 on the licensing of railway undertakings (OJ L 143, 27.6.1995, p. 70).
- Council Directive 95/19/EC of 19 June 1995 on the allocation of railway infrastructure capacity and the charging of infrastructure fees (OJ L 143, 27.6.1995, p. 75).
- Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways and amending Council Directive 95/18/EC on the licensing of railway undertakings and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (Railway Safety Directive) (OJ L 164, 30.4.2004, p. 44), as last amended by Commission Directive 2014/88/EU of 9 July 2014 (OJ L 201, 10.7.2014, p. 9).
- Directive 2007/59/EC of the European Parliament and of the Council of 23 October 2007 on the certification of train drivers operating locomotives and trains on the railway system in the Community (OJ L 315, 3.12.2007, p. 51), as last amended by Commission Directive (EU) 2016/882 of 1 June 2016 (OJ L 146, 3.6.2016, p. 22).
- Commission Regulation (EC) No 653/2007 of 13 June 2007 on the use of a common European format for safety certificates and application documents in accordance with Article 10 of Directive 2004/49/EC of the European Parliament and of the Council and on the validity of safety certificates delivered under Directive 2001/14/EC (OJ L 153, 14.6.2007, p. 9), as amended by Commission Regulation (EU) No 445/2011 of 10 May 2011 (OJ L 122, 11.5.2011, p. 22).
- Commission Decision 2007/756/EC of 9 November 2007 adopting a common specification of the national vehicle register provided for under Articles 14(4) and (5) of Directives 96/48/EC and 2001/16/EC (OJ L 305, 23.11.2007, p. 30), as amended by Commission Decision 2011/107/EU of 10 February 2011 (OJ L 43, 17.2.2011, p. 33).
- Directive 2008/57/EC of the European Parliament and of the Council of 17 June 2008 on the interoperability of the rail system within the Community (OJ L 191, 18.7.2008, p. 1), as last amended by Commission Directive 2014/38/EU of 10 March 2014 (OJ L 70, 11.3.2014, p. 20).
- Commission Decision 2009/965/EC of 30 November 2009 on the reference document referred to in Article 27(4) of Directive 2008/57/EC of the European Parliament and of the Council on the interoperability of the rail system within the Community (OJ L 341, 22.12.2009, p. 1), as amended by Commission Implementing Decision (EU) 2015/2299 of 17 November 2015 (OJ L 324, 10.12.2015, p. 15).
- Commission Regulation (EU) No 36/2010 of 3 December 2009 on Community models for train driving licences, complementary certificates, certified copies of complementary certificates and application forms for train driving licences, under Directive 2007/59/EC of the European Parliament and of the Council (OJ L 13, 19.1.2010, p. 1).
- Commission Decision 2010/713/EU of 9 November 2010 on modules for the procedures for assessment of conformity, suitability for use and EC verification to be used in the technical specifications for interoperability adopted under Directive 2008/57/EC of the European Parliament and of the Council (OJ L 319, 4.12.2010, p. 1).
- Commission Regulation (EU) No 1158/2010 of 9 December 2010 on a common safety method for assessing conformity with the requirements for obtaining railway safety certificates (OJ L 326, 10.12.2010, p. 11).
- Commission Regulation (EU) No 1169/2010 of 10 December 2010 on a common safety method for assessing conformity with the requirements for obtaining a railway safety authorisation (OJ L 327, 11.12.2010, p. 13).

- Commission Regulation (EU) No 201/2011 of 1 March 2011 on the model of declaration of conformity to an authorised type of railway vehicle (OJ L 57, 2.3.2011, p. 8).
- Commission Decision 2011/275/EU of 26 April 2011 concerning a technical specification for interoperability relating to the 'infrastructure' subsystem of the trans-European conventional rail system (OJ L 126, 14.5.2011, p. 53), as amended by Commission Decision 2012/464/EU of 23 July 2012 (OJ L 217, 14.8.2012, p. 20).
- Commission Regulation (EU) No 445/2011 of 10 May 2011 on a system of certification of entities in charge of maintenance for freight wagons and amending Regulation (EC) No 653/2007 (OJ L 122, 11.5.2011, p. 22).
- Commission Regulation (EU) No 454/2011 of 5 May 2011 on the technical specification for interoperability relating to the subsystem 'telematics applications for passenger services' of the trans-European rail system (OJ L 123, 12.5.2011, p. 11), as last amended by Commission Implementing Regulation (EU) 2019/775 of 16 May 2019 (OJ L 139, 27.5.2019, p. 103).
- Commission Implementing Decision 2011/665/EU of 4 October 2011 on the European register of authorised types of railway vehicles (OJ L 264, 8.10.2011, p. 32).
- Commission Decision 2011/765/EU of 22 November 2011 on criteria for the recognition of training centres involved in the training of train drivers, on criteria for the recognition of examiners of train drivers and on criteria for the organisation of examinations in accordance with Directive 2007/59/EC of the European Parliament and of the Council (OJ L 314, 29.11.2011, p. 36).
- Commission Decision 2012/88/EU of 25 January 2012 on the technical specification for interoperability relating to the control-command and signalling subsystems of the trans-European rail system (OJ L 51, 23.2.2012, p. 1), as last amended by Commission Decision (EU) 2015/14 of 5 January 2015 (OJ L 3, 7.1.2015, p. 44).
- Commission Decision 2012/757/EU of 14 November 2012 concerning the technical specification for interoperability relating to the 'operation and traffic management' subsystem of the rail system in the European Union and amending Decision 2007/756/EC (OJ L 345, 15.12.2012, p. 1), as amended by Commission Decision 2013/710/EU of 2 December 2013 (OJ L 323, 4.12.2013, p. 35).

The following national rules referred to in Article 6 of Decision No 2/2019 of the Joint Committee shall apply in Switzerland:

- CH-TSI OPE-001: Railway operating procedures: recording oral communication (railway company - infrastructure manager) (*the rule may be incompatible with Decision 2012/757/EU and must be reviewed before 31 December 2020*);
- CH-TSI OPE-002: Railway operating procedures: communications methodology (*the rule may be incompatible with Decision 2012/757/EU and must be reviewed before 31 December 2020*);
- CH-TSI OPE-003: Railway operating procedures: job control language (*the rule may be incompatible with Decision 2012/757/EU and must be reviewed before 31 December 2020*);
- CH-TSI OPE-004: Railway operating procedures: emergency messages (*the rule may be incompatible with Decision 2012/757/EU and must be reviewed before 31 December 2020*).
- Commission Regulation (EU) No 1078/2012 of 16 November 2012 on a common safety method for monitoring to be applied by railway undertakings, infrastructure managers after receiving a safety certificate or safety authorisation and by entities in charge of maintenance (OJ L 320, 17.11.2012, p. 8).
- Commission Regulation (EU) No 321/2013 of 13 March 2013 concerning the technical specification for interoperability relating to the subsystem 'rolling stock — freight wagons' of the rail system in the European Union and repealing Decision 2006/861/EC (OJ L 104, 12.4.2013, p. 1), as last amended by Commission Regulation (EU) 2015/924 of 8 June 2015 (OJ L 150, 17.6.2015, p. 10).
- Commission Implementing Regulation (EU) No 402/2013 of 30 April 2013 on the common safety method for risk evaluation and assessment and repealing Regulation (EC) No 352/2009 (OJ L 121, 3.5.2013, p. 8), as amended by Commission Implementing Regulation (EU) 2015/1136 of 13 July 2015 (OJ L 185, 14.7.2015, p. 6).
- Commission Implementing Decision 2014/880/EU of 26 November 2014 on the common specifications of the register of railway infrastructure and repealing Implementing Decision 2011/633/EU (OJ L 356, 12.12.2014, p. 489).
- Commission Regulation (EU) No 1300/2014 of 18 November 2014 on the technical specifications for interoperability relating to accessibility of the Union's rail system for persons with disabilities and persons with reduced mobility (OJ L 356, 12.12.2014, p. 1), amended by Commission Implementing Regulation (EU) 2019/772 of 16 May 2019 (OJ L 139 I, 27.5.2019, p. 1).



- Commission Regulation (EU) No 1301/2014 of 18 November 2014 on the technical specifications for interoperability relating to the 'energy' subsystem of the rail system in the Union (OJ L 356, 12.12.2014, p. 179), amended by Commission Implementing Regulation (EU) 2018/868 of 13 June 2018 (OJ L 149, 14.6.2018, p. 16).
- Commission Regulation (EU) No 1302/2014 of 18 November 2014 concerning a technical specification for interoperability relating to the 'rolling stock — locomotives and passenger rolling stock' subsystem of the rail system in the European Union (OJ L 356, 12.12.2014, p. 228), as last amended by Commission Implementing Regulation (EU) 2018/868 of 13 June 2018 (OJ L 149, 14.6.2018, p. 16).

The following national rules referred to in Article 6 of Decision No 2/2019 of the Joint Committee shall apply in Switzerland:

- CH-TSI LOC&PAS-001: Pantograph head width;
- CH-TSI LOC&PAS-002: Narrow switches/Test of passage through switches;
- CH-TSI LOC&PAS-003: Tight curves  $r < 250$  m;
- CH-TSI LOC&PAS-004: Track displacement force;
- CH-TSI LOC&PAS 005: Cant deficiency;
- CH-TSI LOC&PAS-006: Authorisation of rolling stock with Series N tilting system;
- CH-TSI LOC&PAS-007: Flange lubrication;
- CH-TSI LOC&PAS-009: Exhaust emissions from thermal vehicles (*the rule may be incompatible with Regulation (EU) No 1302/2014 and must be reviewed before 31 December 2020*);
- CH-TSI LOC&PAS-010: Optical warning signal at front of train: 3 x red;
- CH-TSI LOC&PAS-011: Traction limitation;
- CH-TSI LOC&PAS-012: Admittance;
- CH-TSI LOC&PAS 013: Pantograph/Contact line interaction;
- CH-TSI LOC&PAS-014: Compatibility with track-free announcing devices;
- CH-TSI LOC&PAS-017: Infrastructure gauge: general;
- CH-TSI LOC&PAS-018: Tight track curves;
- CH-TSI LOC&PAS-019: Non-leading input signal (*the rule may be incompatible with Regulation (EU) No 1302/2014 and must be reviewed before 31 December 2020*);
- CH-TSI LOC&PAS-020: Sleeping input signal with multiple-unit control (*the rule may be incompatible with Regulation (EU) No 1302/2014 and must be reviewed before 31 December 2020*);
- CH-TSI LOC&PAS-022: Resetting the emergency brake (*the rule may be incompatible with Regulation (EU) No 1302/2014 and must be reviewed before 31 December 2020*);
- CH-TSI LOC&PAS-025: Inhibited operability to disconnect ETCS on-board unit (*the rule may be incompatible with Regulation (EU) No 1302/2014 and must be reviewed before 31 December 2020*);
- CH-TSI LOC&PAS-026: SIGNUM/ZUB not permitted on vehicles with ERTMS/ETCS Baseline 3;
- CH-TSI LOC&PAS-027: Manual radio remote control in 'Shunting' mode (*the rule may be incompatible with Regulation (EU) No 1302/2014 and must be reviewed before 31 December 2020*);
- CH-TSI LOC&PAS-028: Gauging, door area;
- CH-TSI LOC&PAS-029: Safety against derailment Y/Q;
- CH-TSI LOC&PAS-030: Use of braking systems without static friction;
- CH-TSI LOC&PAS-031: Safe traction cut-off (*the rule may be incompatible with Regulation (EU) No 1302/2014 and must be reviewed before 31 December 2020*);
- CH-TSI LOC&PAS-035: Sufficient braking performance during emergency braking (*the rule may be incompatible with Regulation (EU) No 1302/2014 and must be reviewed before 31 December 2020*);
- CH-TSI LOC&PAS-037: ETCS service brake (*the rule may be incompatible with Regulation (EU) No 1302/2014 and must be reviewed before 31 December 2020*).
- Commission Regulation (EU) No 1303/2014 of 18 November 2014 concerning the technical specification for interoperability relating to 'safety in railway tunnels' of the rail system of the European Union (OJ L 356, 12.12.2014, p. 394).

- Commission Regulation (EU) No 1304/2014 of 26 November 2014 on the technical specification for interoperability relating to the subsystem 'rolling stock — noise' amending Decision 2008/232/EC and repealing Decision 2011/229/EU (OJ L 356, 12.12.2014, p. 421).
- Commission Regulation (EU) No 1305/2014 of 11 December 2014 on the technical specification for interoperability relating to the telematics applications for freight subsystem of the rail system in the European Union and repealing the Regulation (EC) No 62/2006 (OJ L 356, 12.12.2014, p. 438), as last amended by Commission Implementing Regulation (EU) 2019/778 of 16 May 2019 (OJ L 139 I, 27.5.2019, p. 356).
- Commission Implementing Regulation (EU) 2015/171 of 4 February 2015 on certain aspects of the procedure of licensing railway undertakings (OJ L 29, 5.2.2015, p. 3).
- Commission Implementing Regulation (EU) 2015/909 of 12 June 2015 on the modalities for the calculation of the cost that is directly incurred as a result of operating the train service (OJ L 148, 13.6.2015, p. 17).
- Directive (EU) 2016/797 of the European Parliament and of the Council of 11 May 2016 on the interoperability of the rail system within the European Union (OJ L 138, 26.5.2016, p. 44); only the following provisions shall apply in Switzerland: Articles 7 (paragraphs 1 to 3), 8 to 10, 12, 15, 17, 21 (excluding paragraph 7), 22 to 25, 27 to 42, 44, 45 et 49 as well as Annexes II, III and IV.
- Directive (EU) 2016/798 of the European Parliament and of the Council of 11 May 2016 on railway safety (OJ L 138, 26.5.2016, pp. 102-149); only the following provisions shall apply in Switzerland: Articles 9, 10 (excluding paragraph 7), 13, 14 and 17 as well as Annex III.
- Commission Regulation (EU) 2016/919 of 27 May 2016 on the technical specification for interoperability relating to the 'control-command and signalling' subsystems of the rail system in the European Union (OJ L 158, 15.6.2016, p. 1).

The following national rules referred to in Article 6 of Decision No 2/2019 of the Joint Committee shall apply in Switzerland:

- CH-TSI CCS-003: Activation / Deactivation of transfer of Packet 44 to SIGNUM/ZUB;
- CH-TSI CCS-005: Proof of Quality of Service for GSM-R radio transmission (*the rule may be incompatible with Regulation (EU) 2016/919 and must be reviewed before 31 December 2020*);
- CH-TSI CCS-006: Loss of 'Non leading permitted' in 'Non leading' mode (*the rule may be incompatible with Regulation (EU) 2016/919 and must be reviewed before 31 December 2020*);
- CH-TSI CCS-007: Braking curve requirement for ERTMS/ETCS Baseline 2;
- CH-TSI CCS-008: Minimally implemented change requests (*the rule may be incompatible with Regulation (EU) 2016/919 and must be reviewed before 31 December 2020*);
- CH-TSI CCS-011: Euroloop functionality;
- CH-TSI CCS-015: Simultaneous control of two GSM-R data channels;
- CH-TSI CCS-016: Application of country-specific project planning and functions (*the rule may be incompatible with Regulation (EU) 2016/919 and must be reviewed before 31 December 2020*);
- CH-TSI CCS-018: Level STM/NTC prohibited for SIGNUM/ZUB;
- CH-TSI CCS-019: Acceptance and display of train data (*the rule may be incompatible with Regulation (EU) 2016/919 and must be reviewed before 31 December 2020*);
- CH-TSI CCS-022: Reversing in 'Unfitted' mode;
- CH-TSI CCS-023: Text message display;
- CH-TSI CCS-024: Train data: NC\_TRAIN, M\_AXLELOAD, V\_MAXTRAIN (*the rule may be incompatible with Regulation (EU) 2016/919 and must be reviewed before 31 December 2020*);
- CH-TSI CCS-026: Online on-board monitoring of line equipment;
- CH-TSI CCS-032: Unique number for ETCS on-board equipment and GSM-R cab radio (*the rule may be incompatible with Regulation (EU) 2016/919 and must be reviewed before 31 December 2020*);
- CH-TSI CCS-033: GSM-R Voice Functionalities (*the rule may be incompatible with Regulation (EU) 2016/919 and must be reviewed before 31 December 2020*);
- CH-TSI CCS-034: 'Non-leading' mode;
- CH-TSI CCS-035: Text to be displayed at the DMI (*the rule may be incompatible with Regulation (EU) 2016/919 and must be reviewed before 31 December 2020*);

- CH-TSI CCS-038: Disclosure of large odometry confidence interval (*the rule may be incompatible with Regulation (EU) 2016/919 and must be reviewed before 31 December 2020*);
- CH-CSM-RA-001: Proof of safety concept for acquiring ETCS authorisation in Switzerland;
- CH-CSM-RA-002: Requirements at speeds greater than 200 km/h;
- CH-CSM-RA-003: Quality of train data.
- Commission Implementing Regulation (EU) 2018/545 of 4 April 2018 establishing practical arrangements for the railway vehicle authorisation and railway vehicle type authorisation process pursuant to Directive (EU) 2016/797 of the European Parliament and of the Council (OJ L 90, 6.4.2018, p. 66).
- Commission Delegated Regulation (EU) 2018/761 of 16 February 2018 establishing common safety methods for supervision by national safety authorities after the issue of a single safety certificate or a safety authorisation pursuant to Directive (EU) 2016/798 of the European Parliament and of the Council and repealing Commission Regulation (EU) No 1077/2012 (OJ L 129, 25.5.2018, p. 16).
- Commission Delegated Regulation (EU) 2018/762 of 8 March 2018 establishing common safety methods on safety management system requirements pursuant to Directive (EU) 2016/798 of the European Parliament and of the Council and repealing Commission Regulations (EU) No 1158/2010 and (EU) No 1169/2010 (OJ L 129, 25.5.2018, p. 26).
- Commission Implementing Regulation (EU) 2018/763 of 9 April 2018 establishing practical arrangements for issuing single safety certificates to railway undertakings pursuant to Directive (EU) 2016/798 of the European Parliament and of the Council, and repealing Commission Regulation (EC) No 653/2007 (OJ L 129, 25.5.2018, p. 49).
- Commission Implementing Regulation (EU) 2019/250 of 12 February 2019 on the templates for 'EC' declarations and certificates for railway interoperability constituents and subsystems, on the model of declaration of conformity to an authorised railway vehicle type and on the 'EC' verification procedures for subsystems in accordance with Directive (EU) 2016/797 of the European Parliament and of the Council and repealing Commission Regulation (EU) No 201/2011 (OJ L 42, 13.2.2019, p. 9).
- Commission Implementing Regulation (EU) 2019/780 of 16 May 2019 on practical arrangements for issuing safety authorisations to infrastructure managers (OJ L 139, 27.5.2019, p. 390).

#### SECTION 5 — OTHER FIELDS

- Council Directive 92/82/EEC of 19 October 1992 on the approximation of the rates of excise duties on mineral oils (OJ L 316, 31.10.1992, p. 19).
  - Directive 2004/54/EC of the European Parliament and of the Council of 29 April 2004 on minimum safety requirements for tunnels in the Trans-European Road Network (OJ L 167, 30.4.2004, p. 39).
  - Directive 2008/96/EC of the European Parliament and of the Council of 19 November 2008 on road infrastructure safety management (OJ L 319, 29.11.2008, p. 59).'
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**CORRIGENDA****Corrigendum to Commission Implementing Regulation (EU) 2019/1776 of 9 October 2019 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff**

*(Official Journal of the European Union L 280 of 31 October 2019)*

On page 1030, for entry Switzerland, in the fourth column:

*for:* 'Berne',

*read:* 'Delémont'.

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**Corrigendum to Commission Implementing Regulation (EU) 2019/1776 of 9 October 2019 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff**

*(Official Journal of the European Union L 280 of 31 October 2019)*

On page 10, in Summary, for entry Annex 7:

*For:* '(Reserved for possible future use in the Harmonised System)',

*Read:* '(Reserved for possible future use)'.

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