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Contents

[1] Text with EEA relevance.

EN

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

The titles of all other acts are printed in bold type and preceded by an asterisk.

([1]) Text with EEA relevance.

I

(Legislative acts)

REGULATIONS

REGULATION (EU) 2022/111 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 25 January 2022

amending Regulation (EU) 2019/216 as regards the Union tariff rate quota for high-quality beef from Paraguay

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207(2) thereof,

Having regard to the proposal from the European Commission,

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

Acting in accordance with the ordinary legislative procedure ([1]),

Whereas:

(1) Following the withdrawal of the United Kingdom of Great Britain and Northern Ireland (the 'United Kingdom') from the Union, the Union and the United Kingdom notified the other Members of the World Trade Organization (WTO) that their current market access levels will be maintained by apportioning the Union's tariff rate quotas between the Union and the United Kingdom. The methodology for that apportionment, as well as the EU-27 volumes, are laid down in Regulation (EU) 2019/216 of the European Parliament and of the Council ([2]).

(2) The Union's tariff rate quotas that are not part of the Union's schedule of concessions and commitments should not be apportioned.

(3) Council Regulation (EC) No 1149/2002 ([3]) opened an import tariff quota of 1 000 tonnes, expressed in product weight, of high-quality fresh, chilled or frozen beef. Despite not being part of the WTO schedule of the Union, that tariff quota was incorrectly apportioned by Regulation (EU) 2019/216, thus reducing its volume with application as of 1 January 2021. The original volume of that tariff quota should therefore be restored.

(4) Regulation (EU) 2019/216 should therefore be amended accordingly,

([1]) Position of the European Parliament of 14 December 2021 (not yet published in the Official Journal) and decision of the Council of 11 January 2022.

([2]) Regulation (EU) 2019/216 of the European Parliament and of the Council of 30 January 2019 on the apportionment of tariff rate quotas included in the WTO schedule of the Union following the withdrawal of the United Kingdom from the Union, and amending Council Regulation (EC) No 32/2000 (OJ L 38, 8.2.2019, p. 1).

([3]) Council Regulation (EC) No 1149/2002 of 27 June 2002 opening an autonomous quota for imports of high-quality beef (OJ L 170, 29.6.2002, p. 13).

HAVE ADOPTED THIS REGULATION:

Article 1

In Part A of the Annex to Regulation (EU) 2019/216, the following row is deleted:

'High quality meat of bovine animals, fresh, chilled or frozen	t		PAR	094455	71,1 %	711'

Article 2

This Regulation shall enter into force on the seventh 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, 25 January 2022.

For the European Parliament
The President
R. METSOLA

For the Council
The President
C. BEAUNE

REGULATION (EU) 2022/112 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 25 January 2022

amending Regulation (EU) 2017/746 as regards transitional provisions for certain *in vitro* diagnostic medical devices and the deferred application of conditions for in-house devices

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

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

After consulting the Committee of the Regions,

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

Whereas:

(1) Regulation (EU) 2017/746 of the European Parliament and of the Council ([3]) establishes a new regulatory framework to ensure the smooth functioning of the internal market as regards *in vitro* diagnostic medical devices covered by that Regulation, taking as a base a high level of protection of health for patients and users, and taking into account the small and medium-sized enterprises that are active in this sector. At the same time, Regulation (EU) 2017/746 sets high standards of quality and safety for *in vitro* diagnostic medical devices in order to meet common safety concerns as regards such devices. Furthermore, Regulation (EU) 2017/746 significantly reinforces key elements of the existing regulatory approach in Directive 98/79/EC of the European Parliament and of the Council ([4]), such as the supervision of notified bodies, risk classification, conformity assessment procedures, performance evaluation and performance studies, vigilance and market surveillance, whilst introducing provisions ensuring transparency and traceability regarding *in vitro* diagnostic medical devices.

(2) The COVID-19 pandemic and the associated public health crisis presented and continues to present an unprecedented challenge to Member States and constitutes an immense burden for national authorities, health institutions, Union citizens, notified bodies and economic operators. The public health crisis has created extraordinary circumstances that demand substantial additional resources, as well as the increased availability of vitally important *in vitro* diagnostic medical devices, which could not reasonably have been anticipated at the time of adoption of Regulation (EU) 2017/746. Those extraordinary circumstances have a significant impact on various areas covered by that Regulation, such as the designation and work of notified bodies and the placing on the market and making available on the market of *in vitro* diagnostic medical devices in the Union.

(3) *In vitro* diagnostic medical devices are essential to the health and safety of Union citizens, and SARS-CoV-2 tests, in particular, are vital in the fight against the pandemic. Therefore, it is necessary to ensure that there is an uninterrupted market supply of such devices in the Union.

([1]) Opinion of 8 December 2021 (not yet published in the Official Journal).

([2]) Position of the European Parliament of 15 December 2021 (not yet published in the Official Journal) and decision of the Council of 20 December 2021.

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

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

(4) Given the unprecedented magnitude of the current challenges, the additional resources needed by Member States, health institutions, notified bodies, economic operators and other relevant parties in order to fight the COVID-19 pandemic and the currently limited capacity of notified bodies, and taking into account the complexity of Regulation (EU) 2017/746, it is very likely that Member States, health institutions, notified bodies, economic operators and other relevant parties will not be in a position to ensure the proper implementation and full application of that Regulation from 26 May 2022 as laid down therein.

(5) Moreover, the current transitional period provided for in Regulation (EU) 2017/746 regarding the validity of certificates issued by notified bodies for *in vitro* diagnostic medical devices under Directive 98/79/EC will end on the same date as the transitional period provided for in Regulation (EU) 2017/745 of the European Parliament and of the Council ([5]) regarding the validity of certain EC declarations of conformity and certificates issued by notified bodies for medical devices under Council Directives 90/385/EEC ([6]) and 93/42/EEC ([7]), that is on 26 May 2024. This puts a strain on actors who deal with both medical devices and *in vitro* diagnostic medical devices.

(6) In order to ensure the smooth functioning of the internal market and a high level of protection of public health and patient safety, as well as to provide legal certainty and avoid potential market disruption, it is necessary to extend the transitional periods laid down in Regulation (EU) 2017/746 for devices covered by certificates issued by notified bodies in accordance with Directive 98/79/EC. For the same reasons, it is also necessary to provide a sufficient transitional period for devices which are to undergo conformity assessment involving a notified body for the first time under Regulation (EU) 2017/746.

(7) As regards the period of time needed to expand the capacity of notified bodies, a balance should be struck between the limited available capacity of such bodies and ensuring a high level of public health protection. Therefore, the transitional periods for *in vitro* diagnostic medical devices that are to undergo conformity assessment involving a notified body for the first time under Regulation (EU) 2017/746 should be such as to allow differentiation between higher-risk and lower-risk devices. The length of the transitional period should depend on the risk class of the device concerned, so that the period is shorter for devices belonging to a higher risk class and longer for devices belonging to a lower risk class.

(8) In order to allow *in vitro* diagnostic medical devices which have been lawfully placed on the market in accordance with the transitional provisions laid down in this Regulation sufficient time to continue to be made available on the market, including to be supplied to end users, or to be put into service, the sell-off date of 27 May 2025 provided for in Regulation (EU) 2017/746 should be adapted to take into account the additional transitional periods provided for in this Regulation.

(9) Having regard to the resources required by health institutions in the fight against the COVID-19 pandemic, those institutions should be given additional time to prepare to meet the specific conditions for the manufacture and use of devices within the same health institution ('in-house devices') laid down in Regulation (EU) 2017/746. The application of those conditions should therefore be deferred. As the health institutions need a complete overview of CE-marked *in vitro* diagnostic medical devices available on the market, the condition obliging the health institution to justify that the target patient group's specific needs cannot be met, or cannot be met at the appropriate level of performance, by an equivalent device available on the market should not become applicable until the transitional periods laid down in this Regulation have ended.

(10) Regulation (EU) 2017/746 should therefore be amended accordingly.

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

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

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

(11) Since the objectives of this Regulation, namely to extend the transitional periods set out in Regulation (EU) 2017/746, to introduce additional transitional provisions in that Regulation and to defer the application of the provisions of that Regulation concerning in-house devices, cannot be sufficiently achieved by the Member States but can rather, by reason of their scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union ('TEU'). In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

(12) The adoption of this Regulation takes place under exceptional circumstances arising from the COVID-19 pandemic and the associated public health crisis. To attain the intended effect of amending Regulation (EU) 2017/746 as regards the transitional periods, the additional transitional provisions and the application of the provisions concerning in-house devices, in particular with a view to providing legal certainty for economic operators, it is necessary for this Regulation to enter into force before 26 May 2022. It is therefore considered to be appropriate to provide for an exception to the eight-week period referred to in Article 4 of Protocol No 1 on the role of national Parliaments in the European Union, annexed to the TEU, to the Treaty on the Functioning of the European Union and to the Treaty establishing the European Atomic Energy Community.

(13) In light of the overriding need to immediately address the public health crisis associated with the COVID-19 pandemic, this Regulation should enter into force as a matter of urgency on the day of its publication in the *Official Journal of the European Union*,

HAVE ADOPTED THIS REGULATION:

Article 1

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

(1) Article 110 is amended as follows:

(a) paragraph 2 is amended as follows:

(i) in the first subparagraph, the date '27 May 2024' is replaced by '27 May 2025';

(ii) in the second subparagraph, the date '27 May 2024' is replaced by '27 May 2025';

(b) paragraphs 3 and 4 are replaced by the following:

'3. By way of derogation from Article 5 of this Regulation, the devices referred to in the second and third subparagraphs of this paragraph may be placed on the market or put into service until the dates set out in those subparagraphs, provided that, from the date of application of this Regulation, those devices continue to comply with Directive 98/79/EC, and provided that there are no significant changes in the design and intended purpose of those devices.

Devices with a certificate that was issued in accordance with Directive 98/79/EC and which is valid by virtue of paragraph 2 of this Article may be placed on the market or put into service until 26 May 2025.

Devices for which the conformity assessment procedure pursuant to Directive 98/79/EC did not require the involvement of a notified body, for which a declaration of conformity was drawn up prior to 26 May 2022 in accordance with that Directive, and for which the conformity assessment procedure pursuant to this Regulation requires the involvement of a notified body, may be placed on the market or put into service until the following dates:

(a) 26 May 2025, for class D devices;

(b) 26 May 2026, for class C devices;

(c) 26 May 2027, for class B devices;

(d) 26 May 2027, for class A devices placed on the market in sterile condition.

By way of derogation from the first subparagraph of this paragraph, the requirements of this Regulation relating to post-market surveillance, market surveillance, vigilance, registration of economic operators and of devices shall apply to devices referred to in the second and third subparagraphs of this paragraph, instead of the corresponding requirements in Directive 98/79/EC.

Without prejudice to Chapter IV and paragraph 1 of this Article, the notified body that issued the certificate referred to in the second subparagraph of this paragraph shall continue to be responsible for the appropriate surveillance in respect of all applicable requirements relating to the devices it has certified.

4. Devices lawfully placed on the market pursuant to Directive 98/79/EC prior to 26 May 2022 may continue to be made available on the market or put into service until 26 May 2025.

Devices lawfully placed on the market from 26 May 2022 pursuant to paragraph 3 of this Article may continue to be made available on the market or put into service until the following dates:

(a) 26 May 2026, for devices referred to in paragraph 3, second subparagraph, or in paragraph 3, third subparagraph, point (a);

(b) 26 May 2027, for devices referred to in paragraph 3, third subparagraph, point (b);

(c) 26 May 2028, for devices referred to in paragraph 3, third subparagraph, points (c) and (d).';

(2) in Article 112, second paragraph, the date '27 May 2025' is replaced by '26 May 2028';

(3) in Article 113(3), the following points are added:

'(i) Article 5(5), points (b) and (c) and (e) to (i), shall apply from 26 May 2024;

(j) Article 5(5), point (d), shall apply from 26 May 2028.'.

Article 2

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

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

Done at Brussels, 25 January 2022.

For the European Parliament	*For the Council*
The President	*The President*
R. METSOLA	C. BEAUNE

II

(Non-legislative acts)

REGULATIONS

COUNCIL IMPLEMENTING REGULATION (EU) 2022/113

of 27 January 2022

implementing Regulation (EU) No 101/2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Tunisia

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Regulation (EU) No 101/2011 of 4 February 2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Tunisia ([1]), and in particular Article 12 thereof,

Having regard to the proposal from the High Representative of the Union for Foreign Affairs and Security Policy,

Whereas:

(1) On 4 February 2011, the Council adopted Regulation (EU) No 101/2011.

(2) On the basis of a review, the information in Annex I to that Regulation regarding the statements of reasons should be amended for three persons, and the information relating to the application of the rights of defence and right to effective judicial protection under Tunisian law should be amended for seven persons.

(3) Annex I to Regulation (EU) No 101/2011 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Annex I to Regulation (EU) No 101/2011 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*.

([1]) OJ L 31, 5.2.2011, p. 1.

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

Done at Brussels, 27 January 2022.

For the Council
The President
J.-Y. LE DRIAN

ANNEX

Annex I to Regulation (EU) No 101/2011 is amended as follows:

(i) the following entries in section 'A. List of persons and entities referred to in Article 2', are replaced by the following:

	Name	Identifying information	Grounds
'7.	Halima Bent Zine El Abidine Ben Haj Hamda BEN ALI	Nationality: Tunisian POB: Tunis, Tunisia DOB: 17 July 1992 Last known address: the Presidential Palace, Tunis, Tunisia ID no: 09006300 Issuing country: Tunisia Gender: female Other information: daughter of Leïla TRABELSI	Person subject to judicial proceedings, or an asset recovery process following a final court ruling, by the Tunisian authorities for complicity in the misappropriation of public monies by a public office-holder, complicity in the misuse of office by a public office-holder to procure an unjustified advantage for a third party and to cause a loss to the administration, exerting wrongful influence over a public office-holder with a view to obtaining directly or indirectly an advantage for another person, and associated with Leila Trabelsi (No 2).
29.	Ghazoua Bent Zine El Abidine Ben Haj Hamda BEN ALI	Nationality: Tunisian POB: Le Bardo DOB: 8 March 1963 Last known address: 49 avenue Habib Bourguiba – Carthage, Tunisia ID no: 00589758 Issuing country: Tunisia Gender: female Other information: medical doctor, daughter of Naïma EL KEFI, married to Slim ZARROUK	Person subject to judicial proceedings, or an asset recovery process following a final court ruling, by the Tunisian authorities for complicity in the misappropriation of public monies by a public office-holder, complicity in the misuse of office by a public office-holder to procure an unjustified advantage for a third party and to cause a loss to the administration, and exerting wrongful influence over a public office-holder with a view to obtaining directly or indirectly an advantage for another person, and associated with Slim Zarrouk (No 30).
42.	Ghazoua Bent Hamed Ben Taher BOUAOUINA	Nationality: Tunisian POB: Monastir DOB: 30 August 1982 Last known address: rue Ibn Maja – Khezama est – Sousse, Tunisia ID no: 08434380 Issuing country: Tunisia Gender: female Other information: daughter of Hayet BEN ALI, married to Badreddine BENNOUR	Person subject to judicial proceedings, or an asset recovery process following a final court ruling, by the Tunisian authorities for complicity in the misappropriation of public monies by a public office-holder, complicity in the misuse of office by a public office-holder to procure an unjustified advantage for a third party and to cause a loss to the administration, and exerting wrongful influence over a public office-holder with a view to obtaining directly or indirectly an advantage for another person, and associated with Hayet Bennekic Ali (No 33).'

(ii) In the following entries in section B, 'Rights of defence and right to effective judicial protection under Tunisian law', under the heading 'Application of the rights of defence and the right to effective judicial protection', the following final sentences are added:

'25.	On 15 February 2021 and 10 March 2021, Mr CHIBOUB was heard by an investigating judge in case 19592/1. On 31 March 2021, the investigating judge decided to sever his case from the general case 19592/1. Case 1137/2 is pending.
26.	On 31 March 2021, the investigating judge decided to sever her case from the general case 19592/1. Case 1137/2 is pending.
30.	A judgment of the Appeal Court of Tunis dated 15 April 2021 in case 29443 convicted him of misappropriation of public funds.
31.	A judgment of the Appeal Court of Tunis dated 1 November 2018 in case 27658 convicted him of misappropriation of public funds.
33.	A judgment dated 14 March 2019 in case 40800 convicted her of misappropriation of public funds.
34.	A judgment dated 7 January 2016 in case 28264 convicted her of misappropriation of public funds.
46.	A judgment of the Court of first instance of Tunis dated 21 March 2019 in case 41328/19 convicted him of misappropriation of public funds.'

COMMISSION IMPLEMENTING REGULATION (EU) 2022/114

of 26 January 2022

granting a Union authorisation for the single biocidal product 'SchwabEX-Guard'

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 528/2012 of the European Parliament and of the Council of 22 May 2012 concerning the making available on the market and use of biocidal products ([1]), and in particular Article 44(5), first subparagraph, thereof,

Whereas:

(1) On 24 March 2017, Sumitomo Chemical Agro Europe SAS submitted to the European Chemicals Agency ('the Agency') an application in accordance with Article 43(1) of Regulation (EU) No 528/2012 and Article 4 of Commission Implementing Regulation (EU) No 414/2013 ([2]) for authorisation of the same single biocidal product, as referred to in Article 1 of Implementing Regulation (EU) No 414/2013, named 'SchwabEX-Guard', of product-type 18, as described in Annex V to Regulation (EU) No 528/2012. The application was recorded under case number BC-PP031247-26 in the Register for Biocidal Products ('the Register'). The application also indicated the application number of the related reference single product 'Pesguard® Gel', recorded in the Register under case number BC-HS027052-37.

(2) The same single biocidal product 'SchwabEX-Guard' contains pyriproxyfen and clothianidin, as the active substances, which are included in the Union list of approved active substances referred to in Article 9(2) of Regulation (EU) No 528/2012.

(3) On 17 December 2020, the Agency submitted to the Commission an opinion ([3]) and the draft summary of the biocidal product characteristics ('SPC') of 'SchwabEX-Guard' in accordance with Article 6(1) and (2) of Implementing Regulation (EU) No 414/2013.

(4) The opinion concludes that 'SchwabEX-Guard' is a biocidal product, that it is eligible for Union authorisation in accordance with Article 42(1) of Regulation (EU) No 528/2012, that the proposed differences between the same single biocidal product and the related reference biocidal product are limited to information which can be the subject of an administrative change in accordance with Commission Implementing Regulation (EU) No 354/2013 ([4]), and that based on the assessment of the related reference 'Pesguard® Gel' single product and subject to compliance with the draft SPC, the same single biocidal product meets the conditions laid down in Article 19(1) of Regulation (EU) No 528/2012.

(5) On 17 December 2020, the Agency transmitted to the Commission the draft SPC in all the official languages of the Union in accordance with Article 44(4) of Regulation (EU) No 528/2012.

([1]) OJ L 167, 27.6.2012, p. 1.

([2]) Commission Implementing Regulation (EU) No 414/2013 of 6 May 2013 specifying a procedure for the authorisation of same biocidal products in accordance with Regulation (EU) No 528/2012 of the European Parliament and of the Council (OJ L 125, 7.5.2013, p. 4).

([3]) ECHA opinion of 17 December 2020 on the Union authorisation of the same biocidal product 'SchwabEX-Guard', https://echa.europa.eu/opinions-on-union-authorisation/echa

([4]) Commission Implementing Regulation (EU) No 354/2013 of 18 April 2013 on changes of biocidal products authorised in accordance with Regulation (EU) No 528/2012 of the European Parliament and of the Council (OJ L 109, 19.4.2013, p. 4).

(6) The Commission concurs with the opinion of the Agency and considers it therefore appropriate to grant a Union authorisation for the same single biocidal product 'SchwabEX-Guard'.

(7) The same single biocidal product 'SchwabEX-Guard' contains the non-active substances cis CTAC and dichloromethane, for which it was not possible to conclude whether they meet the scientific criteria for the determination of endocrine-disrupting properties set out in Commission Delegated Regulation (EU) 2017/2100 ([5]) within the period for the evaluation of the application for the related reference single biocidal product. Further examination of cis CTAC and dichloromethane should therefore take place. If it is concluded that either cis CTAC or dichloromethane or both are considered as having endocrine-disrupting properties, the Commission will consider whether to cancel or amend the Union authorisation for 'SchwabEX-Guard' in accordance with Article 48 of Regulation (EU) No 528/2012.

(8) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Biocidal Products,

HAS ADOPTED THIS REGULATION:

Article 1

A Union authorisation with authorisation number EU-0025436-0000 is granted to Sumitomo Chemical Agro Europe SAS for the making available on the market and use of the same single biocidal product 'SchwabEX-Guard' in accordance with the summary of the biocidal product characteristics set out in the Annex.

The Union authorisation is valid from 17 February 2022 until 30 June 2026.

Article 2

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

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

Done at Brussels, 26 January 2022.

For the Commission
The President
Ursula VON DER LEYEN

([5]) Commission Delegated Regulation (EU) 2017/2100 of 4 September 2017 setting out scientific criteria for the determination of endocrine-disrupting properties pursuant to Regulation (EU) No 528/2012 of the European Parliament and Council (OJ L 301, 17.11.2017, p. 1).

ANNEX

Summary of product characteristics for a biocidal product

SchwabEX-Guard

Product type 18 – Insecticides, acaricides and products to control other arthropods (Pest control)

Authorisation number: EU-0025436-0000

R4BP asset number: EU-0025436-0000

1. **ADMINISTRATIVE INFORMATION**

1.1. **Trade name(s) of the product**

Trade name(s)	SchwabEX-Guard

1.2. **Authorisation holder**

Name and address of the authorisation holder	Name	Sumitomo Chemical Agro Europe SAS
	Address	Parc d' Affaires de Crécy 10A, rue de la Voie Lactée, 69370, Saint Didier au Mont d'Or, France
Authorisation number	EU-0025436-0000	
R4BP asset number	EU-0025436-0000	
Date of the authorisation	17 February 2022	
Expiry date of the authorisation	30 June 2026	

1.3. **Manufacturer(s) of the product**

Name of manufacturer	McLaughlin Gormley King Company (MGK)
Address of manufacturer	8810 10th Avenue North, MN 55427 Minneapolis United States
Location of manufacturing sites	McLaughlin Gormley King Company, 4001 Peavey Road, MN 55318 Chaska United States

1.4. **Manufacturer(s) of the active substance(s)**

Active substance	(E)-1-(2-Chloro-1,3-thiazol-5-ylmethyl)-3- methyl-2-nitroguanidine (Clothianidin)
Name of manufacturer	Sumitomo Chemical Co. Ltd
Address of manufacturer	27-1, Shinkawa 2-chome, Chuo-ku, 104-8260 Tokyo Japan
Location of manufacturing sites	Sumitomo Chemical Company LTD, Oita Works, 2200, Tsurusaki, Oita City„ 870-0106 Oita Japan

Active substance	pyriproxyfen
Name of manufacturer	Sumitomo Chemical Co. Ltd
Address of manufacturer	27-1, Shinkawa 2-chome, Chuo-ku, 104-8260 Tokyo Japan
Location of manufacturing sites	Sumitomo Chemical Company LTD, Misawa Works, Aza-Sabishirotaira, Oaza-Misawa, Misawa„ 033-0022 Aomori Japan

2. **PRODUCT COMPOSITION AND FORMULATION**

2.1. **Qualitative and quantitative information on the composition of the product**

Common name	IUPAC name	Function	CAS number	EC number	Content (%)
(E)-1-(2-Chloro-1,3-thiazol-5-ylmethyl)-3-methyl-2-nitroguanidine (Clothianidin)		Active Substance	210880-92-5	433-460-1	0,526
Pyriproxyfen	4-phenoxyphenyl (RS)-2-(2-pyridyloxy) propyl ether	Active Substance	95737-68-1	429-800-1	0,515
Acetic acid	Ethanoic acid	Non-active substance	64-19-7	200-580-7	0,3
Potassium sorbate	potassium (E,E)-hexa-2,4-dienoate	Non-active substance	24634-61-5	246-376-1	0,5

2.2. **Type of formulation**

RB – Bait (ready for use)

3. **HAZARD AND PRECAUTIONARY STATEMENTS**

Hazard statements	May cause an allergic skin reaction. Very toxic to aquatic life with long lasting effects.
Precautionary statements	IF ON SKIN: Wash with plenty of water. If skin irritation or rash occurs: Get medical advice. Wear protective gloves. Avoid release to the environment. Dispose of container in accordance with local regulations. Collect spillage.

4. **AUTHORISED USE(S)**

4.1. **Use description**

Table 1

Use # 1 – Professional Use – RTU Bait

Product type	PT18 – Insecticides, acaricides and products to control other arthropods (Pest control)
Where relevant, an exact description of the authorised use	Insecticide
Target organism(s) (including development stage)	Scientific name: Blattella germanica Common name: German cockroach Development stage: Nymphs Scientific name: Blattella germanica Common name: German cockroach Development stage: Adults Scientific name: Supella longipalpa Common name: Brown-banded cockroach Development stage: Nymphs Scientific name: Supella longipalpa Common name: Brown-banded cockroach Development stage: Adults Scientific name: Blatta orientalis Common name: Oriental Cockroach Development stage: Nymphs Scientific name: Blatta orientalis Common name: Oriental Cockroach Development stage: Adults Scientific name: Periplaneta americana Common name: American Cockroach Development stage: Nymphs Scientific name: Periplaneta americana Common name: American Cockroach Development stage: Adults
Field(s) of use	Indoor In cracks and crevices, or in concealed locations inaccessible to humans or domestic animals: behind refrigerators cupboards and shelves, under kitchen appliances, in electrical control boxes, voids and ducting and under bathroom fixtures etc.
Application method(s)	Method: Bait application Detailed description: A ready to use (RTU) insecticidal gel bait for the control of cockroaches in public hygiene
Application rate(s) and frequency	Application Rate: SchwabEX-Guard should be applied as a number of spots of approximately 4 mm diameter (each spot comprising approximately 0,032 g of bait).

	In cases of severe infestation, where larger cockroach species are present (B. orientalis or P. americana), in areas that are particularly dirty or cluttered or where alternative sources of food cannot be entirely eliminated the higher application rate (e.g. 2 instead of 1 spot per m^2 in case of a light infestation) should be used. Dilution (%): 0 Number and timing of application: — Light infestation 1 – 2 (0,032 – 0,064 g) spots per m^2 — Medium infestation 3 – 6 (0,096 – 0,192 g) spots per m^2 — Heavy infestation 6 – 10 (0,192 – 0,320 g) spots per m^2 The maximum number of annual applications is 11.
Category(ies) of users	Professional
Pack sizes and packaging material	30 g Polypropylene (PP) syringe Screw top cap High Density Poly Ethylene (HDPE)

4.1.1. *Use-specific instructions for use*

See the general directions for use

4.1.2. *Use-specific risk mitigation measures*

See the general directions for use

4.1.3. *Where specific to the use, the particulars of likely direct or indirect effects, first aid instructions and emergency measures to protect the environment*

See the general directions for use

4.1.4. *Where specific to the use, the instructions for safe disposal of the product and its packaging*

See the general directions for use

4.1.5. *Where specific to the use, the conditions of storage and shelf-life of the product under normal conditions of storage*

See the general directions for use

5. **GENERAL DIRECTIONS FOR USE** [1]

5.1. **Instructions for use**

Always read the label or leaflet before use and respect/follow all the instructions provided.

Do not expose bait drops to sunlight or heat (e.g. radiator).

The pre-filled plastic reservoir containing SchwabEX-Guard is intended for use with the plunger provided or a specific bait application device common to the pest control industry. Refer to the manufacturer's instructions for directions on the use of the applicator.

Inject the bait into cracks and crevices, void spaces, or in concealed locations inaccessible to humans or domestic animals where insects may live, feed and breed. Such areas are generally warm/damp and dark (behind refrigerators, cupboards and shelves, under kitchen appliances, in electrical control boxes, voids and ducting and under bathroom fixtures etc.). Inspection or trapping to confirm infestation is recommended prior to treatment. Ensure that any alternative food sources are removed and concentrate the bait placements as individual spots at cockroach activity sites. The product should only be applied to areas inaccessible to children and pets.

[1] Instructions for use, risk mitigation measures and other directions for use under this section are valid for any authorised uses.

Do not apply SchwabEX-Guard where it will come into contact with water or in areas that are routinely cleaned. Typically cockroaches will die a few hours after a single feed on SchwabEX-Guard. In infested premises, dead cockroaches will normally be seen within 24 hours of treatment.

Remove the cap from the nozzle, touch the top to the surface to be treated, and push down on the plunger. Replace the cap on the dispenser after treatment is completed.

The bait will adhere to non-greasy or non-dusty surfaces and will remain pliable and palatable to cockroaches as long as it is visibly present.

Treated area's should be visually inspected after 1–2 weeks. Where initial infestation was heavy a second SchwabEX-Guard application may be required if the first treatment has been consumed and live cockroaches are still present.

A second visual inspection of bait placements is recommended 2-4 weeks after the initial treatment. Reapply when bait is no longer visibly present, according to the level of infestation (light, medium or heavy). Replace bait before it is completely consumed to keep cockroaches from returning.

Inform the registration holder if the treatment is ineffective.

Spills and residues containing the product need to be removed as chemical waste.

Care should be taken to avoid depositing gel onto exposed surfaces. If gel contacts an exposed surface, remove gel with a paper towel and clean the area with disposable wet wipes.

During follow-up visits, inspect bait placements and re-apply when necessary.

Do not place bait in locations that are routinely washed, as bait will be removed by washing. Do not use this product in or on electrical equipment where a possibility of shock hazard exists. Avoid contact with textiles and clothing, as bait may stain.

5.2. **Risk mitigation measures**

Wear protective chemical resistant gloves during product handling phase (glove material to be specified by the authorisation holder within the product information).

Do not apply bait in area's where repellent insecticides have been used without thoroughly cleaning the surface with disposable wet tissue. Do not apply repellent insecticides after application of the bait.

Do not apply directly on or near food, feed or drinks, or on surfaces or utensils likely to be in direct contact with food, feed, drinks and animals.

Spills and residues containing the product must be removed as chemical waste.

Avoid placing gel on fabrics or carpets since it may stain some absorbent materials. To prevent staining, exposed bait should be cleaned up immediately with disposable wet wipes.

Cleaning materials must be disposed of as solid waste.

5.3. **Particulars of likely direct or indirect effects, first aid instructions and emergency measures to protect the environment**

This biocidal product contains clothianidin, which is dangerous to bees

Description of first aid measures

Skin contact: Remove contaminated clothing immediately and wash skin with soap and water. Get medical attention if irritation persists after washing.

Eye contact: If symptoms occur; rinse with water. Remove contact lenses, if present and easy to do. Call a POISON CENTRE or a doctor.

Ingestion: If swallowed: If symptons occur call a POISON CENTRE or a doctor.

If inhaled: not applicable.

Most important symptoms and effects, both acute and delayed

Eyes: May cause temporary eye irritation.

Emergency measures to protect the environment

Avoid release of the product to the environment.

5.4. **Instructions for safe disposal of the product and its packaging**

Only pass on empty containers/packaging for recycling.

Disposal of this packaging should at all times comply with the waste disposal legislation and any regional local authority requirements.

5.5. **Conditions of storage and shelf-life of the product under normal conditions of storage**

Protect from frost. Store away from direct sunlight.

Shelf life: 2 years.

6. **OTHER INFORMATION**

COMMISSION IMPLEMENTING REGULATION (EU) 2022/115

of 26 January 2022

amending Regulation (EC) No 1484/95 as regards fixing representative prices in the poultrymeat and egg sectors and for egg albumin

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 ([1]), and in particular Article 183(b) thereof,

Having regard to Regulation (EU) No 510/2014 of the European Parliament and of the Council of 16 April 2014 laying down the trade arrangements applicable to certain goods resulting from the processing of agricultural products and repealing Council Regulations (EC) No 1216/2009 and (EC) No 614/2009 ([2]), and in particular Article 5(6)(a) thereof,

Whereas:

(1) Commission Regulation (EC) No 1484/95 ([3]) lays down detailed rules for implementing the system of additional import duties and fixes representative prices in the poultrymeat and egg sectors and for egg albumin.

(2) Regular monitoring of the data used to determine representative prices for poultrymeat and egg products and for egg albumin shows that the representative import prices for certain products should be amended to take account of variations in price according to origin.

(3) Regulation (EC) No 1484/95 should therefore be amended accordingly.

(4) Given the need to ensure that this measure applies as soon as possible after the updated data have been made available, this Regulation should enter into force on the day of its publication,

HAS ADOPTED THIS REGULATION:

Article 1

Annex I to Regulation (EC) No 1484/95 is replaced by the text set out in the Annex to this Regulation.

Article 2

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

([1]) OJ L 347, 20.12.2013, p. 671.
([2]) OJ L 150, 20.5.2014, p. 1.
([3]) Commission Regulation (EC) No 1484/95 of 28 June 1995 laying down detailed rules for implementing the system of additional import duties and fixing representative prices in the poultrymeat and egg sectors and for egg albumin, and repealing Regulation No 163/67/EEC (OJ L 145, 29.6.1995, p. 47).

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

Done at Brussels, 26 January 2022.

For the Commission,
On behalf of the President,
Wolfgang BURTSCHER
Director-General
Directorate-General for Agriculture and Rural Development

ANNEX

'ANNEX I

CN code	Description of goods	Representative price (EUR/100 kg)	Security under Article 3 (EUR/100 kg)	Origin [1]
0207 14 10	Fowls of the species *Gallus domesticus*, boneless cuts, frozen	216,0	25	BR

[1] Nomenclature of countries laid down by Commission Regulation (EU) No 1106/2012 of 27 November 2012 implementing Regulation (EC) No 471/2009 of the European Parliament and of the Council on Community statistics relating to external trade with non-member countries, as regards the update of the nomenclature of countries and territories (OJ L 328, 28.11.2012, p. 7).'

COMMISSION IMPLEMENTING REGULATION (EU) 2022/116

of 27 January 2022

imposing a definitive anti-dumping duty on imports of acesulfame potassium 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 ([1]) ('the basic Regulation'), and in particular Article 11(2) thereof,

Whereas:

1. PROCEDURE

1.1. Previous investigations and measures in force

(1) By Regulation (EU) 2015/1963 ([2]) the European Commission imposed definitive anti-dumping duties on imports of acesulfame potassium ('Ace-K'), originating in the People's Republic of China ('the PRC', 'China' or 'the country concerned') ('the original measures'). The investigation that led to the imposition of the original measures will be referred to as 'the original investigation'.

(2) The rates of anti-dumping duty currently in force range from 2,64 euro to 4,58 euro per kg net on imports from the cooperating exporting producers, and a duty rate of 4,58 euro per kg net applies to imports from all other companies.

1.2. Request for an expiry review

(3) Following the publication of a notice of impending expiry ([3]) the European Commission ('the Commission') received a request for a review pursuant to Article 11(2) of the basic Regulation.

(4) The request for review was lodged on 31 July 2020 by Celanese Sales Germany GmbH ('the applicant'), the sole manufacturer in the Union and thus representing 100 % of the total Union production of Ace-K. The request for review was based on the grounds that the expiry of the measures would be likely to result in continuation of dumping and recurrence of injury to the Union industry ([4]).

1.3. Initiation of an expiry review

(5) Having determined, after consulting the Committee established by Article 15(1) of the basic Regulation, that sufficient evidence existed for the initiation of an expiry review, on 30 October 2020 the Commission initiated an expiry review with regard to imports of Ace-K originating in the PRC on the basis of Article 11(2) of the basic Regulation. It published a Notice of initiation in the *Official Journal of the European Union* ([5]) ('the Notice of initiation').

([1]) OJ L 176, 30.6.2016, p. 21.

([2]) Commission Implementing Regulation (EU) 2015/1963 of 30 October 2015 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of acesulfame potassium originating in the People's Republic of China (OJ L 287, 31.10.2015, p. 1).

([3]) Notice of the impending expiry of certain anti-dumping measures (OJ C 46, 11.2.2020, p. 8).

([4]) Due to the fact that there is only one producer of Ace-K in the Union, some of the data in this Regulation are presented in ranges or in index form to preserve the confidentiality of the data of the Union producer.

([5]) Notice of initiation of an expiry review of the anti-dumping measures applicable to imports of acesulfame potassium (Ace-K) originating in the People's Republic of China (OJ C 366, 30.10.2020, p. 13).

1.4. **Review investigation period and period considered**

(6) The investigation of continuation of dumping covered the period from 1 July 2019 to 30 June 2020 ('review investigation period' or 'RIP'). The examination of trends relevant for the assessment of the likelihood of recurrence of injury covered the period from 1 January 2017 to the end of the review investigation period ('the period considered') ([6]).

1.5. **Interested parties**

(7) In the Notice of initiation, interested parties were invited to contact the Commission in order to participate in the investigation. In addition, the Commission specifically informed the applicant, the known producers of Ace-K in the country concerned and the authorities of the People's Republic of China, the known importers and users about the initiation of the investigation and invited them to participate.

(8) Interested parties also had an opportunity to comment on the initiation of the expiry review and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.

(9) Hearings took place with one exporting producer Anhui Jinhe Industrial Co. Ltd. ('Anhui Jinhe') and the applicant.

1.6. **Comments on initiation**

(10) The Commission received comments on initiation from Anhui Jinhe. The applicant also provided comments in this regard.

(11) Anhui Jinhe requested a disclosure and a meaningful summary of certain data in the request. In particular, it argued that the applicant should have disclosed in the non-confidential version of the request data on the total volume and average prices of imports from China in the period considered referred to in the request. Anhui Jinhe claimed that this data was not confidential as it had been disclosed by the Commission in the original investigation. Furthermore, Anhui Jinhe claimed that the respective data was not based on any actual commercially sensitive data but on the applicant's estimates and that any reference to copyright could not be relied upon to withhold this data. In addition, Anhui Jinhe also requested that the applicant provide a meaningful summary of the relevant injury indicators in order to provide sufficient detail to permit a reasonable understanding of the data submitted in confidence. It further claimed that in the request this data was either confidential or presented based on meaningless ranges that failed to show any trend, while the Commission provided this data in an indexed form in the original investigation. Therefore, Anhui Jinhe requested the applicant to disclose in indexed form data on Union consumption, production capacity, capacity utilization, market shares, undercutting, cost of production, profitability, export sales and cost of raw materials. Anhui Jinhe also requested the applicant to provide a meaningful summary of its current level of profitability indicating whether it was above 5 % in the review reference period as well as indexed data starting from 2011 as the applicant referred to this year as the relevant year for comparison.

(12) In its reply, the applicant claimed that most of the information was confidential by nature as it was based on data from one company only and argued that ranges of indexes were necessary to prevent reconstruction of the underlying confidential data. In particular, the applicant claimed that providing the exact figures of total volume of imports from China combined with the indexation of market shares would enable the reconstruction of the sole Union producer's sales. In its submission, the applicant revised its non-confidential data and provided additional information. In this respect, the applicant provided ranges of volume of total imports, additional information concerning the trend of consumption, ranges of indexation for production, market shares, an indexation of profitability, other injury indicators (such as stocks, employment, cash flow, investments, return on net investments) and of evolution of the Union producer's sales outside the Union. Concerning the rest of the data requested by Anhui Jinhe, the applicant claimed that the non-confidential version of the request contained a sufficiently meaningful summary and that giving additional information would not be possible without revealing confidential information.

([6]) On 31 January 2020, the United Kingdom withdrew from the Union. The Union and the United Kingdom jointly agreed on a transition period during which the United Kingdom remained subject to Union law, which ended on 31 December 2020. The United Kingdom is no longer a Member State of the Union and therefore the figures, findings and conclusions in this Regulation treat the United Kingdom as a third country.

(13) In reaction to the revised data of the applicant, Anhui Jinhe maintained that the request still did not contain sufficient information such as the volume of imports from China or the Union and global demand for Ace-K. Anhui Jinhe argued that the rights of defence should be considered when analysing the meaningfulness of the non-confidential version of the request and that it was not in the position to understand whether there was any factual basis for the allegations of the applicant.

(14) The applicant disagreed with the above claims and argued that the open version of the request provided factual basis for its allegations and data was redacted where it was not possible to provide ranges of indexed trends without revealing confidential information. In particular, the applicant claimed that the non-confidential version of the request showed the evolution of total imports of Ace-K from China and enabled Anhui Jinhe to comment on it. Concerning data on demand, the applicant claimed that the regulation imposing provisional measures on imports of Ace-K from China ([7]) did not indicate the total Union consumption in absolute terms, and therefore the applicant did not have to show this either.

(15) It is noted that as the applicant is the sole producer of Ace-K in the Union, confidential information had to be presented in ranges and indexes in order not to reveal company specific business information. The Commission considered that the data in the non-confidential version of the request as complemented by the applicant in its submission was in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. The applicant provided a meaningful summary with ranges that were sufficiently narrow when compared to the actual figures that allowed interested parties to assess the volume of imports and its trends. Thus, the Chinese exporting producers were able to exercise their rights of defence.

(16) Anhui Jinhe argued that the request failed to demonstrate the attractiveness of the Union market as it showed that average export prices of Chinese exporters to the Union and other markets were the same. Arguably, this showed that Chinese producers were indifferent between selling to the Union and to third countries. In this respect, Anhui Jinhe cited the *Bioethanol* ([8]) and *Urea* ([9]) investigations where the Commission concluded that the Union market was attractive to exporting producers when average export prices to the Union were higher than to third markets.

(17) In this respect, the applicant claimed that the request clearly showed that the Union market was attractive for Chinese exporting producers as, in the absence of the anti-dumping measures, they would be able to obtain higher volumes of sales on the Union market than on other markets. The applicant also argued that the Union market was attractive to Chinese producers before the anti-dumping duties were imposed.

(18) The Commission considered that the request indicated that if the anti-dumping measures were allowed to expire, the Chinese exporting producers would be likely to substantially increase sales volumes to the Union market.

(19) Anhui Jinhe also argued that the applicant's price underselling allegations were manifestly erroneous as the applicant's cost of production used in the underselling calculation of the request was too high as compared to the original investigation and could not be relied upon. Moreover, Anhui Jinhe argued that the applicant had considerably increased its price levels since the original investigation and that the anti-dumping measures brought it excessive profits, which were far beyond what was recorded in the original investigation. In this respect, Anhui Jinhe

([7]) Commission Implementing Regulation (EU) 2015/787 of 19 May 2015 imposing a provisional anti-dumping duty on imports of acesulfame potassium originating in the People's Republic of China as well as acesulfame potassium originating in the People's Republic of China contained in certain preparations and/or mixtures (OJ L 125, 21.5.2015, p. 15).

([8]) Commission Implementing Regulation (EU) 2019/765 of 14 May 2019 repealing the anti-dumping duty on imports of bioethanol originating in the United States of America and terminating the proceedings in respect of such imports, following an expiry review pursuant to Article 11(2) of the Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ L 126, 15.5.2019, p. 4), recital (89).

([9]) Council Regulation (EC) No 240/2008 of 17 March 2008 repealing the anti-dumping duty on imports of urea originating in Belarus, Croatia, Libya and Ukraine, following an expiry review pursuant to Article 11(2) of Regulation (EC) No 384/96 (OJ L 75, 18.3.2008, p. 33), recital (76).

cited the *Dicyandiamide* ([10]) and the *Urea* ([11]) investigations where the Commission allowed the measures to lapse in view of the Union industry's high profitability. Anhui Jinhe also argued that the Union industry's production capacities were fully utilized and were insufficient to satisfy growing Union demand and referred to the *Ferro-Silicon* case where the Commission discontinued the measures ([12]). In addition, Anhui Jinhe claimed Chinese producers still had a [28-34 %] market share on the Union market despite the prohibitive measures because users always maintained two or more suppliers of Ace-K to ensure the safety of the supply chain especially after recent disruptions due to COVID-19. Finally, Anhui Jinhe stressed that the Union industry successfully competed with Chinese imports in third markets where there were no measures in place and sold significant volumes in these markets. Anhui Jinhe claimed that this demonstrated that the applicant was capable of successfully competing with Chinese imports without anti-dumping measures, which pointed to the lack of likelihood of recurrence of injury.

(20) The applicant contested the above claims. In fact, the applicant claimed that it used the profit margin established by the Commission in the original investigation in the underselling calculations of its request. Also, the applicant argued that the anti-dumping duties ensured that prices of imports from China were at a non-injurious level. The applicant claimed that if anti-dumping measures were to expire, Chinese exporting producers would increase their market share in the Union to the same percentage level as in the rest of the world. The applicant also submitted detailed scenarios to demonstrate how its business would be affected if anti-dumping duties were to expire.

(21) The Commission's analysis confirmed that none of the elements mentioned by Anhui Jinhe, whether factually correct or not, were sufficient to call into question the conclusion that the request contained sufficient evidence tending to show that the expiry of the measures would likely result in a continuation of dumping and recurrence of injury. These aspects had been established on the basis of the best evidence available to the applicant at the time, and were sufficiently representative and reliable. Furthermore, the claims put forward by Anhui Jinhe and the rebuttals by the applicant were examined in detail in the course of the investigation and are further addressed below.

(22) On the basis of the above, the Commission confirmed that the request provided sufficient evidence that the expiry of the measures would likely result in a continuation of dumping and recurrence of injury, thereby satisfying the requirements set out in Article 11(2) of the basic Regulation.

(23) In their comments following final disclosure, Anhui Jinhe argued that the information contained in the request was either not relevant (e.g. evidence of distortions concerning sulfamic acid referred to alleged distortions of urea and the evidence of distortion for potassium hydroxide referred to potassium salt) or not based on publically available sources (e.g. the acetic acid distortion relies on a report purchased by the applicant, which at the same time is not consistent with the China Country Report).

(24) In this regard, since sulfamic acid is produced from urea and potassium hydroxide is produced from potassium salt, any market distortions that affected the raw materials affect also the final product. Moreover, contrary to what Anhui claims, in the request the applicant refers to the China Report in addition to another confidential source. As pointed out by the applicant there was an inconsistency in the Country Report between the text and the figures regarding the capacity utilisation of acetic acid in China. However, there is no inconsistency between the China Report and the confidential source, because the updated capacity information provided by the applicant, which was checked by the Commission, was consistent with the capacity utilisation figures in the China Report. Therefore, the claims were rejected.

([10]) Council Implementing Regulation (EU) No 135/2014 of 11 February 2014 repealing the anti-dumping duty on imports of dicyandiamide originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009 (OJ L 43, 13.2.2014, p. 1), recital (70).

([11]) Council Regulation (EC) No 240/2008 of 17 March 2008 repealing the anti-dumping duty on imports of urea originating in Belarus, Croatia, Libya and Ukraine, following an expiry review pursuant to Article 11(2) of Regulation (EC) No 384/96 (OJ L 75, 18.3.2008, p. 33), recital (102).

([12]) Commission Decision of 21 February 2001 terminating the anti-dumping proceeding concerning imports of ferro-silicon originating in Brazil, the People's Republic of China, Kazakhstan, Russia, Ukraine and Venezuela, OJ L 84/36, 23 March 2001.

1.6.1. *Sampling*

(25) In view of the apparent large number of producers in the country concerned and unrelated importers in the Union, the Commission stated in the Notice of initiation that it might sample the producers and unrelated importers in accordance with Article 17 of the basic Regulation.

1.6.2. *Sampling of producers in the PRC*

(26) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked all producers in the PRC to provide the information specified in the Notice of initiation. In addition, the Commission asked the Mission of the People's Republic of China to the European Union to identify and/or contact other producers, if any, that could be interested in participating in the investigation.

(27) Two exporting producers in the country concerned provided the requested information and agreed to be included in the sample. In view of the low number of replies, the Commission decided that sampling was not necessary and informed all the interested parties by a note to the file. The Commission invited these companies to participate in the investigation and sent them a link to the questionnaire.

1.6.3. *Sampling of importers*

(28) To decide whether sampling was necessary and, if so, to select a sample, the Commission invited unrelated importers to provide the information specified in the Notice of initiation.

(29) No unrelated importer provided the requested information and agreed to be included in the sample.

1.7. **Replies to the questionnaire**

(30) The Commission sent a questionnaire concerning the existence of significant distortions in the PRC within the meaning of Article 2(6a)(b) of the basic Regulation to the Government of the People's Republic of China ('GOC').

(31) The Commission sent links to the questionnaire to the two exporting producers that returned the sampling form. The same questionnaires had also been made available online ([13]) on the day of initiation.

(32) Complete questionnaire replies were received from one exporting producer and the sole Union producer.

1.8. **Verification**

(33) The Commission sought and cross-checked all the information it deemed necessary for the determination of likelihood of continuation or recurrence of dumping and injury and of the Union interest. Due to the outbreak of the COVID-19 pandemic and the consequent measures taken to deal with the outbreak ('the COVID-19 Notice') ([14]) the Commission was however unable to carry out verification visits at the premises of the cooperating companies. Instead, the Commission performed remote cross-checks ('RCCs') of the information provided by the following companies via videoconference:

(a) Union producer

— Celanese Sales Germany GmbH, Celanese Production Germany GmbH & Co. KG Sulzbach, Germany and the Principal Operating Company Celanese Europe BV, Amsterdam, the Netherlands;

(b) Exporting producer in the PRC

— Anhui Jinhe Industrial Co., Ltd, Chuzhou, Anhui.

([13]) https://trade.ec.europa.eu/tdi/case_details.cfm?id=2491

([14]) Notice on the consequences of the COVID-19 outbreak on anti-dumping and anti-subsidy investigations (OJ C 86, 16.3.2020, p. 6).

1.9. **Subsequent procedure**

(34) On 27 October 2021, the Commission disclosed the essential facts and considerations on the basis of which it intended to maintain the anti-dumping duties ('final disclosure'). All parties were granted a period within which they could make comments on the disclosure and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.

(35) Comments were received from Anhui Jinhe and the applicant.

(36) Hearings took place with Anhui Jinhe and the applicant.

2. **PRODUCT CONCERNED AND LIKE PRODUCT**

2.1. **Product under review**

(37) The product under review is the same as in in the original investigation namely acesulfame potassium (potassium salt of 6-methyl-1,2,3-oxathiazin-4(3H)-one 2,2-dioxide; CAS RN 55589-62-3) originating in the People's Republic of China currently classified under CN code ex 2934 99 90 (TARIC code 2934 99 90 21) ('the product under review'). Acesulfame potassium is also commonly referred to as Acesulfame K or Ace-K.

(38) Ace-K is used as a synthetic sweetener in a wide range of applications, for example in food, beverage, and pharmaceutical products.

2.2. **Like product**

(39) As established in the original investigation, this expiry review investigation confirmed that the following products have the same basic physical and chemical characteristics as well as the same basic uses:

— the product under review;

— the product produced and sold on the domestic market of the PRC; and

— the product produced and sold in the Union by the Union industry.

(40) These products are therefore considered to be like products within the meaning of Article 1(4) of the basic Regulation.

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

3.1. **Preliminary remarks**

(41) 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.

(42) During the review investigation period, imports of Ace-K from the PRC continued albeit at lower levels than in the investigation period of the original investigation (i.e. from 1 July 2013 to 30 June 2014). According to the data reported to the Commission by the Member States in accordance with Article 14(6) of the basic Regulation ('Article 14(6) database'), imports of Ace-K from the PRC accounted for [31-37 %] of the Union market in the review investigation period compared to [65-80 %] market share during the original investigation. In absolute terms, imports from the PRC have fallen by [47-56 %] since the investigation period of the original investigation.

(43) As mentioned in recital (32) only one of the exporters/producers from the PRC submitted a questionnaire response and was therefore, considered to be cooperating in the investigation.

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

(44) In view of the sufficient evidence available at the initiation of the investigation pointing to the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation with regard to the PRC, the Commission considered it appropriate to initiate the investigation with regard to the exporting producers from this country having regard to Article 2(6a) of the basic Regulation.

(45) Consequently, in order to collect the necessary data for the eventual application of Article 2(6a) of the basic Regulation, in the Notice of initiation the Commission invited all Chinese exporting producers to provide information regarding the inputs used for producing Ace-K. One Chinese exporting producer submitted the relevant information.

(46) In order to obtain information it deemed necessary for its investigation with regard to the alleged significant distortions, the Commission sent a questionnaire to the GOC. In addition, in point 5.3.2 of the Notice of initiation, the Commission invited all interested parties to make their views known, submit information and provide supporting evidence regarding the application of Article 2(6a) of the basic Regulation within 37 days of the date of publication of the Notice of initiation in the *Official Journal of the European Union*. No reply to the requested information was provided by the GOC. Subsequently, the Commission informed the GOC that it would use facts available within the meaning of Article 18 of the basic Regulation for the determination of the existence of the significant distortions in the PRC.

(47) Submissions on the application of Article 2(6a) of the basic Regulation were received from the exporting producer Anhui Jinhe.

(48) 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*'.

(49) 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*'.

(50) 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, the application of Article 2(6a) of the basic Regulation was appropriate.

3.2.1. *Existence of significant distortions*

3.2.1.1. Introduction

(51) Article 2(6a)(b) of the basic Regulation stipulates that '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'.

(52) As the list in Article 2(6a)(b) of the basic Regulation 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. However, 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 on the existence of distortions may also take into account the general context and situation in the exporting country, in particular where the fundamental elements of the exporting country's economic and administrative set-up provides the government with substantial powers to intervene in the economy in such a way that prices and costs are not the result of the free development of market forces.

(53) 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*'. Pursuant to this provision, the Commission has issued a country report concerning the PRC (hereinafter 'the Report') ([15]), showing the existence of substantial government intervention at many levels of the economy, including specific distortions in many key factors of production (such as land, energy, capital, raw materials and labour) as well as in specific sectors (such as steel and chemicals). Interested parties were invited to rebut, comment or supplement the evidence contained in the investigation file at the time of initiation. The Report was placed in the investigation file at the initiation stage.

(54) The applicant provided information additional to the findings of the Report affecting the raw materials used to produce Ace-K. The applicant has commissioned a report to identify the characteristics and the distortions relating to one of the main raw materials of Ace-K, sulphur trioxide, in the two Chinese provinces where it is produced, Jiangsu and Anhui. The relevant evidence includes the *Chemical Industry Development Plan* dated 24 October 2016 that indicates objectives and production targets which affect the supply level in the chemical sector, including the ones of sulphur trioxide sulfonation and Ace-K and the Anhui Province by referring to *Opinions of CPC Anhui Provincial Committee and Anhui Provincial People's Government on Promoting High-quality Economic Development*, issued on 14 March 2018. This policy document sets out several industrial policy initiatives to promote high-quality economic development, in particular in the province of Anhui, such as the use of financial incentives and tax reductions if the industrial and logistics companies operate in line with the 'encouraged' industries in the *Central Structural Adjustment Catalogue*. The applicant furthermore explained how *State Council Decision on Promulgating the Implementation of the Interim Provisions on the Promotion of Industrial Restructuring* of 2 December 2005 defines the economic and industrial policy objectives and directs all provincial governments to identify specific measures to guide investments. This includes supporting policies concerning land, credit, taxation, import and export. It also pointed to other state intervention policy tools, such as the *Guidance Catalogue for the Structural Adjustment of Industry* issued in January 2013 which divides industry segments into 'encouraged,' 'restricted,' and 'eliminated'. Sulphur trioxide sulfonation falls into the 'encouraged' category in this catalogue.

(55) The request also mentioned a document titled *Sulphur Trioxide's Export Tax and VAT Refund Withdrawal* which identifies a VAT cost related to export equal to 13 % which results in an export restriction.

(56) Concerning electricity, gas, stream and water, the request explained the role of pricing controls in the Jiangsu and Anhui provinces and it drew attention to the state and provincial interventions in the coal sector. The document titled *Opinions of the State Council on the Reduction of Overcapacity in the Coal Industry and its Development*, issued on 1 February 2016, confirmed the existence of overcapacity problems as well as the significant state intervention in the market in this sector.

(57) Finally, the request lists specific subsidies for Nantong Acetic Acid, a company related to the Ace-K producer, Nantong Hongxin. According to a public announcement by Nantong Acetic Acid and Nantong Acetic Acid's Annual Report of 2018, Nantong Acetic Acid enjoys a preferential income tax rate of 15 % (rather than 25 %) under the *Preferential Income Tax Program for High- or New-Technology Enterprises*.

([15]) Commission Staff Working Document on Significant Distortions in the Economy of the People's Republic of China for the purposes of Trade Defence Investigations, 20 December 2017, SWD(2017) 483 final/2 (hereafter 'Report').

(58) In addition, the request referred to a number of distortions identified in the Report concerning other raw materials used to produce Ace-K such as diketene, sulfamic acid, tri-ethylamine, potassium hydroxide, acetic acid, dichloromethane and ammonia. Indeed, the request provided evidence on overcapacity in the chemical sector showing that the Chinese acetic acid capacity utilisation rate was about 69 % in the fourth quarter of 2019 and was forecasted by the request to be about 63 % in the first quarter of 2020, rising to about 67 % by the end of 2020. In addition to excess production capacity, investment in acetic acid production in China is subject to controls of the Catalogue for Guiding Industrial Restructuring (as revised in 2013). These two elements combined make the Chinese market for acetic acid distorted, and by consequence, also the downstream production of diketene.

(59) Furthermore, the request mentioned state interference in the policy objectives and targets in the *Hebei province Petrochemical 13th FYP*. The plan highlights how the Chinese state controls sulphur mining and sets limits on entry into the market for sulphuric acid production. By imposing controls on the mining of sulphur, and by limiting investment in sulphuric acid production, the GOC distorts not only the market for these two products, but also the market for the production of sulphur trioxide.

(60) The request further referred to other types of state interference in the urea market such as the existence of strict import quotas for urea and export taxes. Urea is an upstream raw material used for the production of sulfamic acid together with sulphur trioxide and sulphur acid. Moreover, the GOC has exempted the domestic sales of urea from VAT since 1 July 2005. Finally, the GOC intervened in the market through the State Fertiliser System, operating since 2004. According to the Report, urea producers benefit from preferential electricity rates and preferential railway freight rates.

(61) Referring to the Report, the request indicated that potassium salt is in the list of raw materials in the *13th FYP for Mineral Resources* which includes a number of detailed provisions with regard to different mineral groups. Under the heading 'Phosphorus' the Commission's Report finds that one of the objectives is to stabilise the supply in important mineral resources used in agriculture such as phosphorus, sulphur and potassium, in accordance with the food security strategy. Moreover, 'potash and other natural crude potassium salts' are also mentioned in the Report among the items subject to export duties. Further state interventions mentioned by the request also concern ammonia, an additional raw material purchased for the recycling of waste sulphuric acid.

(62) The applicant further pointed out that according to the Report, the GOC itself recognised that an effective competition mechanism for the sale of electricity has not yet been established. This implies that significant distortions exist in the Chinese market for electricity supplies for industrial use. The request finally mentioned other areas where state intervention affects the costs of an industrial operator in China such as access to land-use rights (Report, Chapter 9), access to capital and financing (Report, Chapter 11) and the labour market (Report, Chapter 13).

(63) As indicated in recital (46), the GOC did not comment or provide evidence supporting or rebutting the existing evidence on the case file, including the Report and the additional evidence provided by the applicant, on the existence of significant distortions and/or on the appropriateness of the application of Article 2(6a) of the basic Regulation in the case at hand.

(64) Comments in this regard were received from the cooperating exporting producer, Anhui Jinhe, which claimed that the argument provided to justify the application of Article 2(6a) of the basic Regulation is unfounded and not applicable to the company. Anhui Jinhe argued that the findings on distortions concerning diketene, sulphur trioxide and sulphuric acid identified by the report commissioned by the applicant are not relevant for Anhui Jinhe because Anhui Jinhe produces these inputs in-house. The relevant upstream raw materials are glacial acetic acid, sulfamic acid and potassium hydroxide.

(65) In this regard, Anhui Jinhe referred to the Commission's recent practice under Article 2(6a)(a) and (c) of the basic Regulation, such as in *Aluminium Extrusions* ([16]), according to which exporting producers are required to submit evidence on undistorted prices and costs in order to 'positively establish' that their own domestic costs are not affected by significant distortions. The company submitted that domestic prices of the relevant raw materials are

([16]) Commission Implementing Regulation (EU) 2021/546 of 29 March 2021 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of aluminium extrusions originating in the People's Republic of China (OJ L 109, 30.3.2021, p. 1).

market-oriented and negotiated on the basis of prevailing market conditions. In particular, the company submitted evidence by comparing their own prices with the Turkish ones on the basis of COMTRADE to demonstrate that lower input prices of glacial acetic acid, sulfamic acid, and potassium hydroxide compared to international prices are mainly due to much lower transport costs in China since the company relies exclusively on domestic supply.

(66) Furthermore, the company argued that it does not operate under the control of the authorities of the exporting country. In addition, the company claimed that there is no state interference with respect of prices and costs of inputs for the production of Ace-K. Rebuttals to these claims are discussed in the sections 3.2.1.3 and 3.2.1.4.

(67) In its comments, the exporting producer further pointed out that Article 2(6a) is inconsistent with the WTO Anti-Dumping Agreement ('ADA'). This is because, first, Article 2.2 ADA recognises three scenarios which allow for the normal value construction: (i) sales are not made in the ordinary course of trade, (ii) there is a particular market situation or (iii) because of the low volume of sales on the domestic market, such sales are not representative. Anhui Jinhe submitted that significant distortions meet none of the three criteria. It further submitted that even if the concept of significant distortions could possibly be considered to fall under the second of the above criteria, the WTO Panel in DS529 Australia — Anti-Dumping Measures on A4 Copy Paper confirmed that the fact that the domestic price of the product concerned and its inputs are affected by governmental distortions was not enough to consider that the proper comparison between domestic market sales and export sales is affected 'because of the particular market situation'. In addition, Anhui Jinhe commented that the Commission constructs the normal value systematically, while it should be checking on a case by case basis if the conditions of Article 2.2 ADA are met.

(68) Anhui Jinhe further submitted that Article 2.2 ADA requires that the construction of the normal value must reflect 'a cost in the country of origin', as confirmed in the cases WTO DS529 Australia — Anti-Dumping Measures on A4 Copy Paper and WTO DS473 European Union — Anti-Dumping Measures on Biodiesel from Argentina. Furthermore, Anhui Jinhe argued that the normal value should be constructed in accordance with the requirements of Article 2.2.1.1 ADA, and it added that the findings in case WTO DS427 China — Anti-Dumping and Countervailing Duty Measures on Broiler Products from the United States required the investigating authorities to take into account the recorded costs of the exporting producers unless they are not in accordance with the generally accepted accounting principles or do not reasonably reflect the costs associated with the production and sale of the product under consideration. Article 2(6a) of the basic Regulation is, according to Anhui Jinhe, inconsistent with Article 2.2.1.1 ADA because the costs of the exporting producer are disregarded systematically, irrespective of whether the recorded costs satisfy the two above conditions.

(69) The Commission considered that the provisions of Article 2(6a) of the basic Regulation are fully consistent with the European Union's WTO obligations. As explicitly clarified by the WTO Appellate Body in DS473, WTO law permits the use of data from a third country, duly adjusted when such adjustment is necessary and substantiated. The Commission recalled that the cases DS529 Australia — Anti-Dumping Measures on A4 Copy Paper and DS427 China — Broiler Products (Article 21.5 – US) did not concern the interpretation of Article 2(6a) of the basic Regulation and the conditions for its application. Furthermore, the underlying factual situations in those cases was different from the underlying situation and criteria giving rise to the application of the methodology under this provision of the basic Regulation, which concerns the existence of significant distortions in the exporting country. Under Article 2(6a) of the basic Regulation, it is only when significant distortions are found to be present and to affect costs and prices that normal value is constructed by reference to undistorted costs and prices sourced in a representative country or by reference to an international benchmark. In any event, Article 2(6a) second subparagraph, 3rd dash of the basic Regulation provides for the possibility to use domestic costs to the extent they are established not to be distorted. The Commission therefore rejected these claims.

(70) Furthermore, Anhui Jinhe submitted that Article 2(6a) of the basic Regulation is inconsistent with Article 2.2.2 ADA. It pointed out that the Appellate Body in DS219 EC – Tube or Pipe Fittings confirmed that the investigating authority is obliged to use the actual SG&A and profit of the exporting producers, as long as such data exists. Anhui Jinhe therefore submitted that the Article 2(6a) of the basic Regulation was incompatible with Article 2.2.2 ADA.

(71) The Commission noted that once it is determined that due to the existence of significant distortions in the exporting country in accordance with Article 2(6a)(b) of the basic Regulation it is not appropriate to use domestic prices and costs in the exporting country, the normal value is constructed by reference to undistorted prices or benchmarks in an appropriate representative country for each exporting producer according to Article 2(6a)(a) of the basic Regulation. As explained above, the same provision of the basic Regulation also allows the use of domestic costs if they are positively established not to be distorted. In that context, the exporting producers had the possibility to provide evidence that their individual SG&A costs and/or other input costs were actually undistorted. However, as evidenced in sections 3.2.1.2 to 3.2.1.9, the Commission has established the existence of distortions in the Ace-K industry and there was no positive evidence as to the factors of production of individual exporting producers being undistorted. Therefore, these claims were rejected.

(72) Finally, Anhui Jinhe submitted that the Commission was obliged, according to the provisions of Article 2(6a) of the basic Regulation, to conduct a company-specific and cost-specific analysis. Therefore, there should have been a specific analysis of Anhui Jinhe on the basis of the questionnaire it submitted.

(73) The Commission noted that the existence of significant distortions giving rise to the application of Article 2(6a) of the basic Regulation is established on a country-wide level. If the existence of significant distortions is established, then the provisions of Article 2(6a) of the basic Regulation apply, *a priori*, to all exporting producers in the PRC and concern all costs relating to their factors of production. In any event, the same provision of the basic Regulation provides for the use of domestic costs which are positively established not to be affected by significant distortions. However, no domestic costs have been established to be undistorted based on accurate and appropriate evidence. In particular, the exporting producers did not submit accurate and appropriate evidence on undistorted prices and costs. In any event, the calculations concerning Anhui Jinhe reflect the data submitted by the company itself, including the factors of production and amounts as reported by the company in the questionnaire reply, but duly taking into account the existence and impact of significant distortions in the PRC, in accordance with the provisions of the basic Regulation, in particular Article 2(6a) of the basic Regulation. These claims were therefore, rejected.

(74) In their comments following final disclosure, Anhui Jinhe reiterated its arguments laid out in recitals (67) and (68) above concerning the WTO compatibility of Article 2(6a) of the basic Regulation with WTO law. They argued that the European Commission should refrain from applying the Article 2(6a) methodology or precisely explain how this methodology can be applied consistently with the obligations set forth in Articles 2.2, 2.2.1.1 and 2.2.2 of the ADA. Indeed, Anhui Jinhe stated that the Commission could only reconstruct the normal value if one of the three conditions of Article 2.2 was present. If the Commission relies on the second (or third) condition, then it must examine whether 'a proper comparison' of the domestic and the export price is permitted or not.

(75) Furthermore, concerning the argument according to which WTO law (as clarified in DS473) permits the use of data from a third country, '*duly adjusted when such adjustment is necessary and substantiated*', Anhui Jinhe stated that this legal test was not mentioned in the Panel or Appellate Body's report. According to the Anhui Jinhe's interpretation, the Commission adopted a biased and limited reading of the Report which explicitly mentions that '*[w]hen relying on any out-of-country information to determine the "cost of production in the country of origin" under Article 2.2, an investigating authority has to ensure that such information is used to arrive at the "cost of production in the country of origin", and this may require the investigating authority to adapt that information*'.

(76) Moreover, Anhui Jinhe argued that a 'significant distortion' was not in itself one of the conditions to resort to normal value construction. Finally, on the possibility to use domestic costs to the extent they were established not to be distorted, according to the Anhui Jinhe, the Commission could have used the possibility opened by Article 2(6a) to use the actual data of the company.

(77) As to the Anhui Jinhe's arguments on compatibility of Article 2(6a) of the basic Regulation with ADA and the DSB findings, these were already addressed in recital (69), including the explanation that DS473 did not concern the application of Article 2(6a) of the basic Regulation. Concerning the claim that the concept of 'significant distortions' included in Article 2(6a) of the basic Regulation does not appear in any rule of the WTO ADA or the GATT 1994, the Commission recalled that domestic law does not need to use the exact same terms as the covered

Agreements in order to be compliant with those Agreements, and that it considers Article 2(6a) to be fully compliant with the relevant rules of the ADA (and, in particular, the possibilities to construct normal value provided in Article 2.2 ADA). Therefore, the claims were rejected.

(78) In addition, Anhui Jinhe stated that the Commission had not provided any explanation as to why it did not consider the elements mentioned in recitals (65) and (66) as constituting 'positive evidence' within the meaning of Article 2(6a) that its costs were not distorted. Anhui Jinhe reiterated this claim and further added that its prices were not distorted due to its acquisition practices (online platform) and the absence of government intervention from any governmental authorities or agencies that are controlled by the government of China.

(79) As stated in recital (65), the evidence submitted by Anhui Jinhe was just a comparison of their own domestic purchase prices for one raw material with Turkish import prices extracted from the COMTRADE database and with Thai prices extracted from GTA database. The comparison showed that the domestic price were lower that the Turkish and Thai import prices for the two raw materials. Anhui Jinhe claimed that this was due to its lower domestic transport cost. Anhui Jinhe also claimed that it purchased glacial acetic acid from the applicant.

(80) The Commission notes that Anhui Jinhe did not provide any evidence to substantiate its claim regarding transport cost. Furthermore, such price comparison is not sufficient to demonstrate that domestic prices in China are not distorted. Furthermore, the fact that the purchases on the domestic market were made online, does not mean that these prices were not distorted. In addition, the investigation revealed that contrary to what Anhui Jinhe stated, Anhui Jinhe did not purchase glacial acetic acid from the applicant for the production of Ace-K. Therefore, the claims were rejected.

(81) The Commission examined whether it was appropriate or not to use domestic prices and costs in the PRC, due to the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation. The Commission did so on the basis of the evidence available on the file, including the evidence contained in the Report, which relies on publicly available sources. That analysis covered the examination of the substantial government interventions in the PRC's economy in general, but also the specific market situation in the relevant sector including the product concerned. The Commission further supplemented these evidentiary elements with its own research on the various criteria relevant to confirm the existence of significant distortions in the PRC.

3.2.1.2. Significant distortions affecting the domestic prices and costs in the PRC

(82) 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*' ([17]). 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 ([18]).

(83) 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 of 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 already existing first sentence of the provision: '[t]*he socialist system is the basic system of the People's Republic of China*' a new second

([17]) Report – Chapter 2, p. 6-7.
([18]) Report – Chapter 2, p. 10.

sentence was inserted which reads: '[t]*he defining feature of socialism with Chinese characteristics is the leadership of the Communist Party of China*.' ([19]) This illustrates the unquestioned and ever growing control of the CCP over the economic system of the PRC. This leadership and control is inherent to the Chinese system and goes well beyond the situation customary in other countries where the governments exercise general macroeconomic control within the boundaries of which free market forces are at play.

(84) The Chinese State engages in an interventionist economic policy in pursuance of goals, which coincide with the political agenda set by the CCP rather than reflecting the prevailing economic conditions in a free market ([20]). The interventionist economic tools deployed by the Chinese authorities are manifold, including the system of industrial planning, the financial system, as well as the level of the regulatory environment.

(85) 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 covers 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 in order to support the relevant industries/sectors as well as the timeframes in which the objectives need to be achieved. Some plans still contain explicit output targets while this was a regular feature in previous planning cycles. Under the plans, individual industrial sectors and/or projects are being 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. This is not only because of the binding nature of the plans but also because the relevant Chinese authorities at all levels of government adhere to the system of plans and use their vested powers accordingly, thereby inducing the economic operators to comply with the priorities set out in the plans (see also section 3.2.1.7 below) ([21]).

(86) Second, on the level of allocation of financial resources, the financial system of the PRC 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 3.2.1.8 below) ([22]). The same applies to the other components of the Chinese financial system, such as the stock markets, bond markets, private equity markets etc. Also these parts of the financial sector other than the banking sector are institutionally and operationally set up in a manner not geared towards maximizing the efficient functioning of the financial markets but towards ensuring control and allowing intervention by the State and the CCP ([23]).

(87) 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 ([24]). 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 ([25]).

(88) 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 the free play of market forces, resulting in distorting the effective allocation of resources in line with market principles ([26]).

([19]) Available at http://www.fdi.gov.cn/1800000121_39_4866_0_7.html (last viewed 15 July 2019).
([20]) Report – Chapter 2, p. 20-21.
([21]) Report – Chapter 3, p. 41, 73-74.
([22]) Report – Chapter 6, p. 120-121.
([23]) Report – Chapter 6. p. 122 -135.
([24]) Report – Chapter 7, p. 167-168.
([25]) Report – Chapter 8, p. 169-170, 200-201.
([26]) Report – Chapter 2, p. 15-16, Report – Chapter 4, p. 50, p. 84, Report – Chapter 5, p. 108-9.

3.2.1.3. 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

(89) In the PRC, enterprises operating under the ownership, control and/or policy supervision or guidance by the State represent an essential part of the economy.

(90) The GOC and the CCP maintain structures that ensure their continued influence over enterprises, and in particular State-owned enterprises (SOEs). The State (and in many aspects also the CCP) not only actively formulates and oversees the implementation of general economic policies by individual SOEs, but it also claims its rights to participate in operational decision making in SOEs. This is typically done through rotation of cadres between government authorities and SOEs, through presence of party members on SOEs executive bodies and of party cells in companies (see also section 3.2.1.4), as well as through shaping the corporate structure of the SOE sector ([27]). In exchange, SOEs enjoy a particular status within the Chinese economy, which entails a number of economic benefits, in particular shielding from competition and preferential access to relevant inputs, including finance ([28]). The elements that point to the existence of government control over enterprises in the Ace-K sector is further developed in section 3.2.1.4.

(91) Specifically in the Ace-K sector, even if the level of state ownership is relatively low, a substantial degree of policy supervision by the GOC persists. There are indeed only a few companies other than the applicant with large-scale production capacity in the world. Among them, the exporting company, Anhui Jinhe currently has the largest production capacity in the world.

(92) With the high level of government intervention in the Ace-K industry, even privately owned producers are prevented from operating under market conditions. Indeed, even privately owned enterprises in the Ace-K sector are indirectly subject to policy supervision and guidance as set out in section 3.2.1.5.

3.2.1.4. 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

(93) Apart from exercising control over the economy by means of ownership of SOEs and other tools, the GOC is in a position to interfere with prices and costs through State presence in firms. While the right to appoint and to remove key management personnel in SOEs by the relevant State authorities, as provided for in the Chinese legislation, can be considered to reflect the corresponding ownership rights ([29]), CCP cells in enterprises, state owned and private alike, represent another important channel through which the State can interfere with business decisions. According to the PRC'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 ([30])) and the company shall provide the necessary conditions for the activities of the party organisation. In the past, this requirement appears not to have always been followed or strictly enforced. However, since at least 2016 the CCP has reinforced its claims to control business decisions in SOEs as a matter of political principle. The CCP is also reported to exercise pressure on private companies to put 'patriotism' first and to follow party discipline ([31]). 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 a final say over the business decisions within their respective companies ([32]). These rules are of general application throughout the Chinese economy, across all sectors, including to the producers of Ace-K and the suppliers of their inputs.

([27]) Report – Chapter 3, p. 22-24 and Chapter 5, p. 97-108.
([28]) Report – Chapter 5, p. 104-9.
([29]) Report – Chapter 5, p. 100-1.
([30]) Report – Chapter 2, p. 26.
([31]) Report – Chapter 2, p. 31-2.
([32]) Available at https://www.reuters.com/article/us-china-congress-companies-idUSKCN1B40JU (last viewed on 15 July 2019).

(94) In addition, on 15 September 2020 a document titled 'General Office of CCP Central Committee's Guidelines on stepping up the United Front work in the private sector for the new era' ('the Guidelines') ([33]) was released, which further expanded the role of the party committees in private enterprises. Section II.4 of the Guidelines state: '[w]*e must raise the Party's overall capacity to lead private-sector United Front work and effectively step up the work in this area*'; and section III.6 states: '[w]*e must further step up Party building in private enterprises and enable the Party cells to play their role effectively as a fortress and enable Party members to play their parts as vanguards and pioneers*.' The Guidelines thus emphasise and seek to increase the role of the CCP in companies and other private sector entities ([34]).

(95) The following examples illustrate the above trend of an increasing level of intervention by the GOC in the Ace-K sector.

(96) According to the information collected on Anhui Jinhe ([35]), the Chairman of the Supervisory Board is also the Anhui Jinhe's Party Committee Secretary whose objectives are to focus on enterprise's production and business targets and '*to set up and improve the Party Committee's discussion mechanism and decision process, as regards development and planning, main reform plans, main changes to the management system…*'. The State's presence and intervention in the financial markets (see also section 3.2.1.8 below) as well as in the provision of raw materials and inputs further have an additional distorting effect on the market ([36]). Thus, the State presence in firms, including SOEs, in the Ace-K and other sectors (such as the financial and input sectors) allow the GOC to interfere with respect to prices and costs.

3.2.1.5. 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

(97) 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 ([37]).

(98) The Ace-K industry is regarded as a key industry by the GOC. In particular, in the last ten years, while the global demand for Ace-K balanced supply, the production capacity of Anhui Jinhe was gradually expanded. Moreover, due to the gradual squeeze of production of other sweeteners like saccharin and cyclamate, an expansion of the market of Ace-K has taken place thanks to government support and it is expected to expand further ([38]). This is confirmed in a number of plans, directives and other documents focused on Ace-K and its main raw materials, which are issued at national, regional and municipal level such as:

— 13th FYP on Petrochemical and Chemical Industry ([39]). The plan considers fine chemicals a key industry to support through a national and industry innovation platform. More specifically, in Section III-2, the plan promotes the transformation and upgrading of traditional industries by controlling the newly added capacity of urea, among others, and implements advanced technological transformation and upgrade projects complying with policy requirements that shall be subject to an equal or reduced capacity renewal requirement.

([33]) Available at www.gov.cn/zhengce/2020-09/15/content_5543685.htm (last viewed on 10 March 2021).
([34]) Financial Times (2020) 'Chinese Communist Party asserts greater control over private enterprise', available at: https://on.ft.com/3mYxP4j
([35]) Anhui Jinhe Industrial's website (jinheshiye.com).
([36]) Report – Chapters 14.1 to 14.3.
([37]) Report – Chapter 4, p. 41-42, 83.
([38]) Zhongtai securities' analysis of Anhui Jinhe Industrial, February 2020 (dfcfw.com).
([39]) 13th Five Year Plan on the development of the petrochemical and chemical industry 2016-2020, displayed on the NDRC website.

— Hebei's 13th Five Year Plan on the development of the petrochemical industry. The plan, in accordance with the national industry policy and in accordance with the requirements of Hebei's list of industry restrictions and eliminations, strictly implements the sector entry conditions, controls any new production capacity project regarding sulphuric acid, among others.

— Agreement signed by Anhui Jinhe with the Dingyuan District ([40]) (Anhui Province) in view to develop the Jinhe Industrial Circular Economy Industrial Park Project Framework Agreement of 24 November 2017. The agreement, aimed at developing upstream raw materials for existing chemical products, expanding the industrial chain and supporting its vertical integration, stipulates that the company would invest RMB 2,25 billion in the Dingyuan Salt Chemical Industrial Park to build a circular economy industrial park and it implied an annual output of 310 000 tons of diketene (which is internally produced by the company for the production of Ace-K); an annual production of 30 000 tons of high-efficiency food preservative potassium sorbate; and the use of sulphur as raw material to develop a series of chemical products.

(99) The GOC further guides the development of the sector in accordance with a broad range of policy tools and directives. As explained in the recital above, the government's support of the vertical integration of the industrial chain in the Ace-K sector helped Anhui Jinhe become an undisputed world leader in the sector. The company further received large amounts of governmental subsidies which amounted to RMB 41 685 378 in 2020 and RMB 40 900 000 in 2019 as stated in the company's financial account (amounting to 1,2 % of the total turnover) ([41]). It cannot be ruled out that the other producers, which did not cooperate with this investigation and still represent a substantial part of the market, may have also benefitted from similar financial supports. Through these and other means, the GOC directs and controls virtually every aspect in the development and functioning of the sector.

(100) In sum, the GOC has measures in place to induce operators to comply with the public policy objectives of supporting encouraged industries, including the production of urea, diketene and sulphur trioxide among others as the main raw materials used in the manufacturing of the product under review. Such measures impede market forces from operating freely.

3.2.1.6. 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

(101) According to the information on file, the Chinese bankruptcy system delivers inadequately 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 principles that are similar to those applied in corresponding laws in countries other than the PRC, 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 ([42]).

(102) 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 ([43]). 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 ([44]). Moreover, authorities often pursue specific political goals including the implementation of the economic plans when allocating land ([45]).

([40]) Announcement of Anhui Jinhe Industrial signing a framework agreement with the Dingyuan County on a circular economy industry park project - 24 NOV 2017 as released on the financial information website cninfo.com.cn
([41]) Anhui Jinhe Industrial's 2020 annual report (dfcfw.com).
([42]) Report – Chapter 6, p. 138-149.
([43]) Report – Chapter 9, p. 216.
([44]) Report – Chapter 9, p. 213-215.
([45]) Report – Chapter 9, p. 209-211.

(103) Much like other sectors in the Chinese economy, the producers of Ace-K are subject to the ordinary rules on Chinese bankruptcy, corporate, and property laws. That has the effect that these companies, too, are subject to the top-down distortions arising from the discriminatory application or inadequate enforcement of bankruptcy and property laws. The present investigation revealed nothing that would call those findings into question. As such, the Commission concluded that the Chinese bankruptcy and property laws do not work properly, thus generating distortions when maintaining insolvent firms afloat and when allocating land use rights in the PRC. Those considerations, based on the evidence available, appear to be fully applicable also in the Ace-K sector.

(104) In light of the above, the Commission concluded that there was discriminatory application or inadequate enforcement of bankruptcy and property laws in the Ace-K sector, including with respect to the product concerned.

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

(105) 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 ([46]). 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 ([47]). 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 ([48]). Those findings lead to the distortion of wage costs in the PRC.

(106) No evidence was submitted to the effect that the Ace-K sector would not be subject to the Chinese labour law system described. The Ace-K sector is thus affected by the distortions of wage costs both directly (when making the product concerned or the main raw material for its production) as well as indirectly (when having access to capital or inputs from companies subject to the same labour system in the PRC).

3.2.1.8. 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

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

(108) Firstly, the Chinese financial system is characterised by the strong position of State-owned banks ([49]), which, when granting access to finance, take into consideration criteria other than the 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 large State-owned financial institutions are ultimately appointed by the CCP) ([50]) 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 ([51]). This is compounded by additional existing rules, which direct finances into sectors designated by the government as encouraged or otherwise important ([52]).

([46]) Report – Chapter 13, p. 332-337.
([47]) Report – Chapter 13, p. 336.
([48]) Report – Chapter 13, p. 337-341.
([49]) Report – Chapter 6, p. 114-117.
([50]) Report – Chapter 6, p. 119.
([51]) Report – Chapter 6, p. 120.
([52]) Report – Chapter 6, p. 121-122, 126-128, 133-135.

(109) While it is acknowledged that various legal provisions refer to the need to respect normal banking behaviour and prudential rules such as the need to examine the creditworthiness of the borrower, the overwhelming evidence, including findings made in trade defence investigations, suggests that these provisions play only a secondary role in the application of the various legal instruments.

(110) For example, the GOC has recently clarified that even private commercial banking decisions must be overseen by the CCP and remain in line with national policies. One of the State's three overarching goals in relation to banking governance is now to strengthen the Party's leadership in the banking and insurance sector, including in relation to operational and management issues in companies ([53]). Also, the performance evaluation criteria of commercial banks have now to, notably, take into account how entities '*serve the national development objectives and the real economy*', and in particular how they '*serve strategic and emerging industries*'. ([54])

(111) 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 ([55]).

(112) This is compounded by additional existing rules, which direct finances into sectors designated by the government as encouraged or otherwise important ([56]). This results in a bias in favour of 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.

(113) Secondly, 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 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.

(114) Thirdly, 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. The share of lending at or below the benchmark rate still represented at least one-third of all lending as of the end of 2018 ([57]). Official media in the PRC have recently reported that the CCP called for '*guiding the loan market interest rate downwards*.' ([58]) Artificially low interest rates result in under-pricing, and consequently, the excessive utilisation of capital.

(115) 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

([53]) See official policy document of the China Banking and Insurance Regulatory Commission (CBIRC) of 28 August 2020: *Three-year action plan for improving corporate governance of the banking and insurance sectors (2020-2022)*. http://www.cbirc.gov.cn/cn/view/pages/ItemDetail.html?docId=925393&itemId=928 (last viewed on 3 April 2021). The Plan instructs to '*further implement the spirit embodied in General Secretary Xi Jinping's keynote speech on advancing the reform of corporate governance of the financial sector*'. Moreover, the Plan's section II aims at promoting the organic integration of the Party's leadership into corporate governance: '*we shall make the integration of the Party's leadership into corporate governance more systematic, standardised and procedure-based […] Major operational and management issues must have been discussed by the Party Committee before being decided upon by the Board of Directors or the senior management*.'

([54]) See CBIRC's *Notice on the Commercial banks performance evaluation method*, issued on 15 December 2020. http://jrs.mof.gov.cn/gongzuotongzhi/202101/t20210104_3638904.htm (last viewed on 12 April 2021).

([55]) See IMF Working Paper 'Resolving China's Corporate Debt Problem', by Wojciech Maliszewski, Serkan Arslanalp, John Caparusso, José Garrido, Si Guo, Joong Shik Kang, W. Raphael Lam, T. Daniel Law, Wei Liao, Nadia Rendak, Philippe Wingender, Jiangyan, October 2016, WP/16/203.

([56]) Report – Chapter 6, p. 121-122, 126-128, 133-135.

([57]) See OECD (2019), OECD Economic Surveys: China 2019, OECD Publishing, Paris. p. 29. https://doi.org/10.1787/eco_surveys-chn-2019-en

([58]) See: http://www.xinhuanet.com/fortune/2020-04/20/c_1125877816.htm (last viewed on 12 April 2021).

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.

(116) In essence, despite the steps that have been taken to liberalise the market, the corporate credit system in the PRC is affected by significant distortions resulting from the continuing pervasive role of the state in the capital markets.

(117) No evidence was submitted to the effect that the Ace-K sector, would be exempted from the above-described government intervention in the financial system. The Commission has also established that the cooperating exporting producer benefited from preferential long term loans, among others, from 2006 to 2021 released by the Lai'an District Finance bureau. Therefore, the substantial government intervention in the financial system leads to the market conditions being severely affected at all levels.

3.2.1.9. Systemic nature of the distortions described

(118) The Commission noted that the distortions described in the Report are characteristic for the Chinese economy. The evidence available shows that the facts and features of the Chinese system as described above in Sections 3.2.1.2 - 3.2.1.5 as well as in Part A of the Report apply throughout the country and across the sectors of the economy. The same holds true for the description of the factors of production as set out above in Sections 3.2.1.6 - 3.2.1.8 above and in Part B of the Report.

(119) The Commission recalls that in order to produce Ace-K, a broad range of inputs is needed. According to the evidence on the file, the exporting producer sourced almost all their inputs in the PRC. When the producers of Ace-K purchase/contract the upstream raw materials to produce the 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 that applies across all levels of government and sectors.

(120) As a consequence, not only are the domestic sales prices of Ace-K not appropriate for use within the meaning of Article 2(6a)(a) of the basic Regulation, but all the input costs (including raw materials, energy, land, financing, labour, etc.) are also affected because their price formation is affected by substantial government intervention, as described in Parts A and B of the Report. 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. The same applies for the input to the input and so forth. No evidence or argument to the contrary has been adduced by the GOC or the exporting producers in the present investigation.

3.2.1.10. Conclusion

(121) The analysis set out in sections 3.2.1.2 to 3.2.1.9, 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 Ace-K sector (including the product concerned) showed that prices or costs of the product concerned, 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 as shown by the actual or potential impact of one or more of the relevant elements listed therein. On that basis, and in the absence of any cooperation from the GOC, the Commission concluded that it is not appropriate to use domestic prices and costs to establish normal value in this case.

(122) 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.

3.3. **Representative country**

3.3.1. *General remarks*

(123) The choice of the representative country was based on the following criteria pursuant to Article 2(6a) of the basic Regulation:

— A level of economic development similar to the PRC. For this purpose, the Commission used countries with a gross national income per capita similar to the PRC on the basis of the database of the World Bank ([59]);

— Production of the product concerned in that country ([60]);

— Availability of relevant public data in the representative country.

(124) Where there is more than one possible representative country, preference should be given, where appropriate, to the country with an adequate level of social and environmental protection.

(125) As explained in recitals (127) and (128), the Commission issued two notes for the file on the sources for the determination of the normal value. These notes described the facts and evidence underlying the relevant criteria, and addressed the comments received by the parties on these elements and on the relevant sources. In the Second Note, the Commission informed interested parties of its intention to consider Malaysia as an appropriate representative country in the present case if the existence of significant distortions pursuant to Article 2(6a) of the basic Regulation was confirmed.

(126) In point 5.3.2 of the Notice of initiation the Commission identified Turkey as a potential representative country pursuant to Article 2(6a)(a) of the basic Regulation for the purpose of determining the normal value on the basis of undistorted prices or benchmarks. The Commission further stated that it would examine other possibly appropriate representative countries in accordance with the criteria set out in 2(6a)(a) first indent of the basic Regulation.

(127) On 15 March 2021, the Commission informed by a note ('the First Note') interested parties on the relevant sources it intended to use for the determination of the normal value. In that note, the Commission provided a list of all factors of production such as raw materials, labour and energy used in the production of Ace-K. In addition, the Commission identified Argentina, Malaysia and Thailand as possible representative countries. The Commission received comments on the First Note only from the applicant. These comments were addressed in detail in recitals (129) to (147).

(128) On 11 June 2021, the Commission informed by a second note ('the Second Note') interested parties on the relevant sources it intended to use for the determination of the normal value, with Malaysia as the representative country. It also informed interested parties that it would establish selling, general and administrative costs ('SG&A') and profits on the basis of available information for the relevant company Ajinomoto (Malaysia) Berhad. The Commission received comments on the Second Note only from the applicant. These comments are addressed in detail in recitals (178) to (192).

3.3.2. *A level of economic development similar to the PRC*

(129) In the First Note on production factors, the Commission explained that the product concerned did not appear to be produced in any of the countries with a level of economic development similar to the PRC in accordance with the criteria mentioned in recital (123). It was only produced in the People's Republic of China and in the EU.

([59]) World Bank Open Data – Upper Middle Income, https://data.worldbank.org/income-level/upper-middle-income

([60]) If there is no production of the product under review in any country with a similar level of development, production of a product in the same general category and/or sector of the product under review may be considered.

(130) As a result, the Commission considered whether there was production of a product in the same general category and/or sector as the product concerned. The Commission consequently indicated that it would consider production of sweeteners, flavourings and food additives, which were products in the same general category as Ace-K, to establish an appropriate representative country for the application of Article 2(6a) of the basic Regulation.

(131) In the First Note on production factors, the Commission identified Argentina, Malaysia and Thailand as potential representative countries with a similar level of economic development to the PRC according to the World Bank, i.e. they were all classified by the World Bank as 'upper-middle income' countries on a gross national income basis.

(132) The applicant commented that within the upper-middle-income category there was a wide range of development levels. It was therefore necessary to give preference to candidate 'representative' countries that were close to China in terms of GNI per capita. They indicated that of the three countries proposed by the Commission, Argentina and Malaysia had similar levels of GNI, but Thailand was substantially lower and should be excluded.

(133) When constructing the normal value in line with Article 2(6a)(a) of the basic Regulation, the Commission may use a representative country with a similar level of economic development to the exporting country. The basic Regulation does not contain any further requirement to choose the country with the level of economic development closest to the exporting country.

(134) The fact that a country may have a closer GNI per capita to China than another one is not a factor considered in the selection of the appropriate representative country. Therefore, this claim was rejected.

3.3.3. *Availability of relevant public data in the representative country*

(135) In the First Note, the Commission identified one company in Argentina, one company in Malaysia and four companies in Thailand for which financial information for products in the same general category as the product under review was readily available in the Dun and Bradstreet database ([61]).

(136) In the Second Note, the Commission indicated that for the countries identified i.e. Argentina, Malaysia and Thailand, it investigated further the availability of public financial data.

(137) With regard to Argentina, the Commission found readily available financial information for one producer, Laboratorios Argentinos Farmesa, of products in the same general category as Ace-K, in the Dun and Bradstreet database but did not find published financial statements.

(138) The applicant commented that the ratio of profit to sales of 5,3 % for this Argentinian producer was not reasonable for the Ace-K business.

(139) With regard to Malaysia, the Commission found readily available published financial statements for the Malaysian company, Ajinomoto (Malaysia) Berhad ('Ajinomoto Malaysia') mentioned in the First Note, for the financial years ending 31 March 2017, 2018, 2019 and 2020 ([62]) as well as readily available financial data for that company in the Dun and Bradstreet database.

(140) The applicant provided the same financial statements that the Commission had identified. It further argued that these annual reports showed different profitability figures for the industrial sector (which allegedly was more appropriate for the Ace-K business) and the consumer sector and gave a breakdown of the income, costs and expenses, which allowed the extraction of appropriate SG&A and profit figures. The applicant argued further that the cost of sales figure in the published financial statements was more reliable than the equivalent cost figures

([61]) https://globalfinancials.com/index-admin.html
([62]) https://www.ajinomoto.com.my/investors/annual-reports

extracted from the Dun and Bradstreet database. Furthermore, the applicant indicated that since profitability was stable for the financial years 2017 to 2020, this provided confidence that the profitability in financial year 2020 was representative.

(141) With regard to Thailand, the Commission found readily available financial data for four profitable companies of products in the same general category, i.e. flavourings and food additives, as Ace-K, in the Dun and Bradstreet database.

(142) The applicant argued that although the Commission had found such data for four companies in Thailand, two of the Thai companies, Shimakyu Co. Ltd. and Patchara Products Ltd., were unsuitable because of their low profit to sales ratios of 6,1 % and 2,7 % respectively.

(143) The Commission considered that the financial information available for Ajinomoto Malaysia would indeed be the most appropriate source to establish SG&A and profits for the construction of normal value. Audited financial statements overlapping the investigation period by 9 months were readily available for Ajinomoto Malaysia. Furthermore, Ajinomoto Malaysia is a large company and has significant production of products in the same general category as the Ace-K.

(144) In order to determine an appropriate representative country, the Commission also assessed the existence of market distortions by export and/or import restrictions on the Ace-K as well as on the raw materials, namely those representing the most important items of cost of manufacturing used for producing Ace-K.

(145) Based on the OECD database ([63]) and the Global Trade Alert ([64]) database and in particular the list of export/import restrictions on industrial raw materials, several restrictions were indicated, in the First Note, for the main factors of production. For Argentina the Commission identified import tariffs on acetic acid (291521) from the USA and import licensing requirements for potassium hydroxide (281520) from Brazil, Korea and USA, sulphur (250300) from Kazakhstan, Russia, Spain and the USA, calcium carbonate (251710) from Paraguay and acetic acid (291521) from the USA. For Thailand, the Commission identified import tariffs on anthracite (270111) from Vietnam and calcium carbonate (251710) from Laos. Finally for Malaysia the Commission identified import tariffs on sulfamic acid (281119) from Namibia; export licensing requirements on exports of acetic acid (291521) to Belgium, India, Indonesia, Japan, Pakistan, Singapore and Thailand; and export licensing requirements on exports of calcium carbonate (251710) to Brunei Darussalam, Indonesia and Singapore.

(146) The applicant claimed that the import licensing requirements implemented on four raw materials by Argentina (such as potassium hydroxide, sulphur, calcium carbonate and acetic acid) highlighted by the Commission in the First Note, limited the sources of supply and thereby kept prices up in the domestic market. They further argued that export licensing requirements, as implemented by Malaysia on two of these raw materials (such as acetic acid and calcium carbonate), could have the opposite effect by maintaining domestic supply and holding prices down in the domestic market. They therefore considered that Malaysia would be a better choice of representative country than Argentina in this regard.

(147) With regard to the export licensing requirements applied by Malaysia, the Commission indicated in the First Note that these applied to only two raw materials, acetic acid and calcium carbonate. The impact of export licensing requirements would be to hold domestic prices down, which was also likely to hold import quantities and/or prices down in order to compete with domestic supplies. As such, import prices for these two raw materials were very likely to be understated if used to construct normal value ([65]).

([63]) http://qdd.oecd.org/subject.aspx?Subject=ExportRestrictions_IndustrialRawMaterials

([64]) https://www.globaltradealert.org/data_extraction

([65]) Given that in expiry reviews anti-dumping duties are not revised, the use of these two raw materials to construct the normal value in principle would not affect the overall findings of this review. In fact, in this particular case, any impact would be to the advantage of the exporting producers since the constructed normal value, and the resulting dumping margin, would be potentially higher in the absence of such licencing requirements.

(148) In the light of the above considerations, the Commission informed the interested parties with the Second Note that it intended to use Malaysia as an appropriate representative country and the company, Ajinomoto (Malaysia) Berhad, in accordance with Article 2(6a)(a), first ident of the basic Regulation, in order to source undistorted prices or benchmarks for the calculation of normal value.

(149) Interested parties were invited to comment on the appropriateness of Malaysia as a representative country and of Ajinomoto (Malaysia) Berhad as producers in the representative country.

(150) Following the Second Note, comments were received from the applicant only. The applicant provided comments on the basis that Malaysia would be chosen as the representative country.

3.3.4. *Level of social and environmental protection*

(151) Having established that Malaysia was the appropriate representative country, on the basis of all of the above elements, there was no need to carry out an assessment of the level of social and environmental protection in accordance with the last sentence of Article 2(6a)(a) first indent of the basic Regulation.

3.3.5. *Conclusion*

(152) In view of the above analysis, Malaysia met the criteria laid down in Article 2(6a)(a), first indent of the basic Regulation in order to be considered as an appropriate representative country.

(153) In their comments following final disclosure, Anhui Jinhe stated that Malaysia was not an appropriate representative country as there was only one company, Ajinomoto (Malaysia) Berhad, operating in the same general product category as Ace-K, and Ajinomoto's financial data was distorted because its costs were highly reliant on purchases from related companies. They argued that the resulting lower raw material and other direct costs incurred by the company explained the high SG&A percentage used for the construction of the normal value.

(154) The Commission noted that in Note 29 to the Notes to the Financial Statements of Ajinomoto (Malaysia) Berhad for the financial year ended 31 March 2020 ([66]), a statement from the directors, with regard to transactions with related parties, including purchases, indicated '*The directors are of the opinion that all of the transactions above have been entered into in the normal course of business and have been established on negotiated terms and conditions that are not materially different from those obtainable in transactions with unrelated parties*'. Furthermore, this statement, incorporated in the notes to the financial statements, was audited, as part of the statutory audit, by independent auditors, who pronounced ([67]) that the financial statements gave a true and fair view of the financial position of the company at 31 March 2020. As such, the Commission considered that it could establish SG&A costs on the basis of Ajinomoto (Malaysia) Berhad's SG&A to production costs ratio and rejected the argument raised by Anhui Jinhe.

(155) Anhui Jinhe further argued that Argentina was a more suitable representative country because financial information was available, the ratio of profit to sales of 5,3 % was reasonable and the Commission's argument that the import licensing requirements by Argentina limited sources of supply was not valid as import tariffs were only applied towards one country (USA) and one product.

(156) The Commission disagreed with these claims. The Commission did not reject Argentina as a representative country because the ratio of profit to sales of 5,3 % was not reasonable, but for other reasons. In fact, as explained in recital (137), no detailed financial statements were available for any relevant company in Argentina, as it was available for Malaysia. Furthermore, in addition to the import tariff mentioned by Anhui Jinhe, the Commission identified import licensing requirements for four other raw materials, which could limit the sources of supply and thereby increase prices on the domestic market. Therefore, the Commission rejected this claim.

([66]) Ajinomoto (Malaysia) Berhad Financial Statements for the year ended 31 March 2020, p. 84.
([67]) Ajinomoto (Malaysia) Berhad Financial Statements for the year ended 31 March 2020, p. 45.

3.4. **Sources used to establish undistorted costs**

(157) In the First Note, the Commission listed the factors of production such as materials, energy and labour used in the production of the product concerned by the exporting producers and invited the interested parties to comment and propose readily available information on undistorted values for each of the factors of production mentioned in that note.

(158) Subsequently, in the Second Note, the Commission stated that, in order to construct the normal value in accordance with Article 2(6a)(a) of the basic Regulation, it would use GTA data to establish the undistorted cost of most of the factors of production, notably the raw materials. In addition, the Commission stated that it would use the Institute of Labour Market Information and Analysis (ILMIA) ([68]) for establishing undistorted costs of labour and electricity price information published by the electricity company Tenaga Nasional Berhad (TNB) in its website ([69]) for electricity costs.

(159) In the Second Note, the Commission also informed the interested parties that due to the limited importance of some individual raw material items in the total cost of production, some of the factors of production were considered 'consumables'. Furthermore, the Commission informed interested parties that it would calculate the percentage of the consumables in the total cost of production and apply this percentage to the recalculated cost of production using the established undistorted benchmarks in the appropriate representative country.

(160) During a hearing, Anhui Jinhe argued that the Commission had not added the First Note to the non-confidential file of the investigation within 65 days of the date of publication of the Notice of initiation, as indicated in section 5.3.2. of the Notice of initiation.

(161) However, that deadline does not encompass the notes to the file. The Commission issued its First Note on 15 March 2021 and its Second Note on 11 June 2021, and in both of those Notes the interested parties had 10 days to submit comments on those aspects. Anhui Jinhe did not submit any comments in response to either of the notes.

(162) In their comments following final disclosure, Anhui Jinhe reiterated its claim stated in recital (160). It further argued that by adding the First Note in the investigation file after 4,5 months since the initiation of the investigation and the Second Note after 7,5 months, the Commission did not add the notes to the file 'shortly' in line with section 5.3.2 of the Notice of initiation and 'promptly' pursuant to Article 2(6a)(e) of the basic Regulation and therefore they should be disregarded. Moreover, it was claimed that the request did not contain any elements regarding distortions of certain specific inputs used in the production process by Anhui Jinhe and the Commission was not provided with such evidence within the 37 days of the date of the Notice on initiation by the applicant. Finally, it was argued that by submitting the First Note after the 37 days since the initiation, Anhui Jinhe's rights of defence were breached.

(163) The Commission disagrees with these claims. The purpose of the First Note and Second Note to the file is to inform parties about the relevant sources that it intends to use for the purpose of determining the normal value pursuant to Article 2(6a) of the basic Regulation. The Notes do not include an assessment regarding the application of Article 2(6a) of the basic Regulation. In addition, a particularity of this case was the fact that as explained in recital (129), Ace-K was manufactured only in the Union and in the PRC. Therefore, the selection process of the representative country was more complex than usual as the Commission had to consider whether there was production of a product in the same general category and/or sector as the product concerned. Furthermore, an investigation carried out pursuant to Article 11.2 of the basic Regulation, like the current one, needs to be concluded within 12 months and in any event no later than 15 months from the date of the publication of the Notice of initiation (as stated in Section 6 of the Notice of initiation), as compared to an investigation carried our pursuant to Article 5 of the basic Regulation when provisional measures should be imposed no later than 8 months from the initiation of the investigation. Moreover, Anhui Jinhe had enough time to comment on the notes. However, Anhui Jinhe did not make any comments to the First Note, which identified three potential representative countries. Nor did Anhui Jinhe provide comments to the Second Note. Therefore, the Commission rejected the claims that there had been a breach of Anhui Jinhe's rights of defence.

([68]) https://www.ilmia.gov.my/index.php/my/labour-cost
([69]) https://www.tnb.com.my/commercial-industrial/pricing-tariffs1
https://www.tnb.com.my/assets/files/Tariff_Rate_Final_01.Jan.2014.pdf

(164) Regarding the claim that the request did not contain any elements regarding distortions of certain specific inputs, as stated in recital (22), the Commission concluded that the request contained sufficient evidence to initiate the investigation. The applicant is not required to submit additional evidence specifically regarding distortions of certain inputs in order for the Commission to look into the application of Article 2(6a) of the basic Regulation. Therefore, the claim was rejected.

3.5. **Undistorted costs and benchmarks**

3.5.1. *Factors of production*

(165) Considering all the information submitted by the interested parties and collected during the remote cross-checks, the following factors of production and their sources have been identified in order to determine the normal value in accordance with Article 2(6a)(a) of the basic Regulation:

Table 1

Factors of production of Ace-K

Factor of Production	Commodity Code in Malaysia	Undistorted values in CNY	Unit of measurement
Raw materials			
Activated carbon	38021000	17,78	kg
Ammonium phosphate/ diammonium phosphate	31053000	2,87	kg
Anthracite	27011100	0,99	kg
Butyl acetate	29153300	6,99	kg
Calcium carbonate stone powder/$CaCO_3$/ 200 mesh	25171000	0,72	kg
Defoaming agent/ Silicones in primary form	39100020 39100090	64,55	kg
Dichloromethane	29031200	4,51	kg
Glacial acetic acid	29152100	6,00	kg
Lime/Powder/250 mesh	25221000	1,07	kg
Potassium hydroxide	28152000	4,14	kg
Sulfamic acid	28111990	18,14	kg
Sulphur/liquid	25030000	0,77	kg
Triethylamine	29211900	47,51	kg
Energy			
Electricity	N/A	0,52	kWh
Labour			
Labour costs in the manufacturing sector	N/A	64,10	Labour hour

(166) The Commission also included a value for manufacturing overhead costs in order to cover costs not included in the factors of production referred to above. The methodology to establish this amount is duly explained in recital (186).

Raw materials and by-products

(167) 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. An import price in the representative country was determined as a weighted average of unit prices of imports from all third countries excluding the PRC and countries which are not members of the WTO, listed in Annex 1 of Regulation (EU) 2015/755 of the European Parliament and the Council ([70]). The Commission decided to exclude imports from the PRC into the representative country as it concluded in recital (121) that it is not appropriate to use domestic prices and costs in the PRC due to the existence of significant distortions in accordance with Article 2(6a)(b) of the basic Regulation. Given that there is no evidence showing that the same distortions do not equally affect products intended for export, the Commission considered that the same distortions affected export prices. After excluding the imports into Malaysia from China and the countries listed in Annex 1 of Regulation 2015/755, the Commission found that imports of the main raw materials from other third countries remained representative (more than 75 % of total volumes imported into Malaysia).

(168) For a small number of factors of production and by-products the actual costs incurred, or values credited by the cooperating exporting producer, represented a negligible share of total raw material costs in the review investigation period.

(169) As the value used for these had no appreciable impact on the dumping margin calculations, regardless of the source used, the Commission decided to include the net value of those costs in consumables.

(170) With regard to steam, a significant cost was reported by the exporting producer in the consumables category. As steam was also a by-product of the production process, the Commission included both the cost and the by-product income value for steam, in consumables.

(171) The Commission calculated the percentage of the consumables on the total cost of raw materials and applied this percentage to the recalculated cost of raw materials when using the established undistorted prices.

(172) In order to establish the undistorted price of raw materials, as provided by Article 2(6a)(a), first indent of the basic Regulation, the Commission applied the relevant import duties of the representative country.

(173) 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 transport costs of raw materials when delivered to the company's factory.

(174) In their comments following final disclosure, Anhui Jinhe argued that the Commission did not construct an accurate benchmark for potassium hydroxide. It argued that the Commission used the Malaysian price for HS 281520 in this regard and this methodology did not take into account the fact that potassium hydroxide could be imported in liquid and solid form which have different prices.

(175) For constructing the benchmark for potassium hydroxide, the Commission used the HS code submitted by Anhui Jinhe, which was the same for both liquid and solid forms. The 8-digit commodity code in Malaysia for this product does not differentiate between liquid and solid products. Therefore, the claim was rejected.

(176) Anhui Jinhe also argued that the basic premise underlying the concept of import duties was that, if raw materials were purchased on the domestic market, the purchase price was subject to value-added tax (VAT), whereas if the raw materials were acquired on foreign markets, the countries which exported the raw material generally did not levy VAT. Therefore, at the stage of importation import duties were levied to equalize the tax so that the domestic

([70]) Regulation (EU) 2015/755 of the European Parliament and of the Council of 29 April 2015 on common rules for imports from certain third countries (OJ L 123, 19.5.2015, p. 33).

price was comparable with the import price. However, if a company purchases raw materials the VAT paid is input VAT which was not a part of cost of production as it was an offset of output VAT. Thus, Anhui Jinhe claimed that for normal value calculation the import duty should not be added.

(177) The Commission disagreed with this claim. The VAT regime is different than for the import duty. While for the VAT, there is an offset between input and output VAT even for imported raw materials, such offset does not apply for the import duties. Furthermore, the purpose of adding import duties is to obtain the final import price on the domestic market. Therefore, the claim was rejected.

Labour

(178) In the Second Note, the Commission indicated its intention to use the statistics published by the Institute of Labour Market Information and Analysis (ILMIA) ([71]) in Malaysia to determine the wages in Malaysia by using the information for average labour cost per employee in the manufacturing sector for the investigation period.

(179) Following the Second Note, the applicant commented that based on the non-executive labour cost established by the Commission for Ajinomoto (Malaysia) Berhad (RM 38 791 005) and the fact that this related to 452 people, one could deduce that Ajinomoto (Malaysia) Berhad paid each non-executive employee, on average, 85 820,81 RM/year which was equivalent to 7 151,73 RM/month (11 952,8 CNY/month). They indicated that since Ajinomoto (Malaysia) Berhad operated in the same business sector as Ace-K producers, it would be reasonable to calculate the benchmark for labour using non-executive labour hourly labour costs from the Ajinomoto (Malaysia) Berhad financial statements.

(180) The Commission notes that the Institute of Labour Market Information and Analysis (ILMIA) figures relate to the year 2016. Since the non-executive labour figures proposed by the applicant relate to the financial year ending 31 March 2020 and derive from a company in the same business sector as Ace-K producers, the Commission found appropriate the request from the applicant to establish labour costs on that basis.

Electricity

(181) Prices for electricity for companies (industrial users) in Malaysia are published by the electricity company Tenaga Nasional Berhad (TNB) in its website ([72]). The most recent rates were published on 1 January 2014 and were still applicable in the RIP. The Commission used the rates of the industrial electricity prices in the consumption band 'Tariff E2 - Medium Voltage Peak/Off-Peak Industrial Tariff', from TNB to establish the electricity cost per kWh.

(182) With regard to the maximum demand element, the exporting producer did not provide details of the maximum demand per half hour, which is an element of the calculation. Therefore, the Commission established this element, conservatively, on the basis of the average demand per half hour for the month with the highest demand.

(183) The Commission then established the consumption by the exporting Chinese producer during the peak and off peak periods in the Malaysian tariff system, which corresponded to the peak and flat periods (Malaysian peak period) and valley period (Malaysian off-peak period) in the Chinese tariff system.

(184) Then the Commission applied the Malaysian prices per unit consumed during the Malaysian peak and off-peak periods to the Chinese exporting producer's consumption in kWh during those periods and added the maximum demand charge established above and the 1,6 % feed-in-tariff in order to establish the electricity cost per kWh.

([71]) https://www.ilmia.gov.my/index.php/my/labour-cost
([72]) https://www.tnb.com.my/commercial-industrial/pricing-tariffs1
https://www.tnb.com.my/assets/files/Tariff_Rate_Final_01.Jan.2014.pdf

3.5.2. *Manufacturing overhead costs, SG&A, and profits*

(185) According to Article 2(6a)(a) of the basic Regulation, *'the constructed normal value shall include an undistorted and reasonable amount for administrative, selling and general costs and for profits*'. In addition, a value for manufacturing overhead costs needs to be established to cover costs not included in the factors of production referred to above.

(186) The manufacturing overheads incurred by the cooperating exporting producer were expressed as a share of the costs of manufacturing actually incurred by the exporting producer. This percentage was applied to the undistorted costs of manufacturing.

(187) For establishing an undistorted and reasonable amount for SG&A and profit, the Commission relied on the financial data ending 31 March 2020 for Ajinomoto (Malaysia) Berhad. The Commission made this data available to interested parties in the Second Note.

(188) As indicated in the Second Note, the Commission first analysed the audited Profit and Loss account and Notes to the accounts for Ajinomoto (Malaysia) Berhad for the year ending 31 March 2020 in order to establish the Cost of sales and SG&A expenses. Certain types of costs were directly allocated to cost of sales (e.g. plant, machinery and equipment depreciation) or SG&A expenses (e.g. directors' salaries) as appropriate. Other costs were apportioned to cost of sales and SG&A expenses on the basis of the numbers of non-executive (apportioned to cost of sales) and other (apportioned to SG&A) employees. By this analysis the Commission expressed the SG&A expenses as a percentage of the Cost of sales.

(189) Further to the Second Note, the applicant commented that the interest income of MR 2 894 308 should not be treated as a negative cost of SG&A.

(190) The Commission concurred that since Ajinomoto (Malaysia) Berhad held significant cash assets, which would have been the source of such income, the interest received should not be included to reduce the SG&A costs associated with production of the product under review. The Commission therefore, adjusted the SG&A costs in this regard.

(191) The applicant further argued that in establishing the level of profitability, the Commission should take into account the profitability of Ajinomoto (Malaysia) Berhad on its industrial sales rather than on its consumer sales, as both the applicant and Anhui Jinhe sell Ace-K 'business to business'. They indicated that it would be possible to calculate the profitability for the industrial sector using the segmental information available on page 89 of the Annual Report 2020.

(192) The Commission noted that the figures in the Annual Report would have allowed determination of a profit percentage for industrial sales, but not an equivalent SG&A expenses percentage for industrial sales. Therefore, the Commission rejected this argument and established the profit and SG&A on the basis of the Ajinomoto (Malaysia) Berhad total company figures.

(193) In their comments following final disclosure, Anhui Jinhe further argued that the Commission over-estimated the SG&A expenses of Ajinomoto, by allocating the entirety of the 'other operating expenses' to SG&A. They argued that parts of the 'other operating expenses' necessarily constitute costs of sales, rather than SG&A, as for example, none of the expenses not classified as 'other operating expenses' appear to include energy expenses, which should, at least partially, be considered as costs of production rather than SG&A.

(194) The Commission notes that there is no clear indication or break-down of the costs included in the category in the annual report of Ajinomoto. The detailed disclosure of the allocation of costs to determine the SG&A expenses was made as part of the Second Note and interested parties were given 10 days to comment. Anhui Jinhe did not comment on that aspect at that time. Nevertheless, even if the Commission would accept that claim, this would not change the conclusions of the investigation that dumping (at a high rate) continued during the investigation period.

3.5.3. *Calculation*

(195) On the basis of the above, 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.

(196) First, the Commission established the undistorted manufacturing costs (covering the consumption of raw materials, labour and energy). The Commission applied the undistorted unit costs to the actual consumption of the individual factors of production of the cooperating exporting producer. The Commission multiplied the usage factors by the undistorted costs per unit observed in the representative country.

(197) Second, to arrive at the undistorted costs of production, the Commission added manufacturing overheads. Manufacturing overheads incurred by the cooperating exporting producer were increased by the costs of raw materials and consumables referred to in recitals (168) to (171) and subsequently expressed as a share of the costs of manufacturing actually incurred by the cooperating exporting producer. This percentage was applied to the undistorted costs of manufacturing.

(198) Once the undistorted manufacturing cost was established, the Commission applied the SG&A and profit determined as noted in recitals (188) to (192). They were determined on the basis of the financial statements of Ajinomoto (Malaysia) Berhad as explained in recital (187).

(199) The SG&A expenses expressed as a percentage of the Costs of Goods Sold ('COGS') and applied to the undistorted costs of production, amounted to 32,7 %. The profit expressed as a percentage of the COGS and applied to the undistorted costs of production, amounted to 22,8 %.

(200) On that basis, 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.

3.6. **Export price**

(201) The cooperating exporting producer exported directly to independent customers in the Union market.

(202) The export price was the price actually paid or payable for the product concerned when sold for export to the Union, in accordance with Article 2(8) of the basic Regulation.

3.7. **Comparison**

(203) The Commission compared the normal value and the export price of the cooperating exporting producer on an ex-works basis.

(204) Where justified by the need to ensure a fair comparison, the Commission adjusted the normal value and/or the export price for differences affecting prices and price comparability, in accordance with Article 2(10) of the basic Regulation. Adjustments were made to the export price for freight, handling, loading and ancillary costs in the PRC, ocean freight and insurance, credit costs, bank charges and packaging costs.

3.8. **Dumping margin**

(205) For the cooperating exporting producer, Anhui Jinhe, the Commission compared the normal value of the like product with the export price of the corresponding type of the product concerned, in accordance with Article 2(11) and (12) of the basic Regulation.

(206) On this basis, the weighted average dumping margin expressed as a percentage of the CIF Union frontier price, duty unpaid, was 67,6 %.

(207) Average import prices from China from official statistics are in line with Anhui Jinhe prices. Given the significant dumping margin and the lack of cooperation from other exporting producers, the Commission considered that other companies were also exporting at dumped prices.

(208) It was therefore, concluded that dumping continued during the review investigation period.

4. LIKELIHOOD OF CONTINUATION OF DUMPING

(209) Further to the finding of the existence of dumping during the review investigation period, the Commission investigated, in accordance with Article 11(2) of the basic Regulation, the likelihood of continuation of dumping should the measures be repealed. The following additional elements were analysed: the production capacity and spare capacity in the PRC, the attractiveness of the Union market and likely prices and dumping margins should measures be repealed.

4.1. Production capacity and spare capacity in the PRC

(210) The Commission analysed the situation relating to production capacity and spare capacity on the basis of the information in the request, the sampling forms submitted by Chinese exporting producers, the questionnaire response received from the cooperating exporting producer, the submissions received and websites of producers in China.

(211) In the request, the applicant indicated that existing capacity in the PRC amounted to 39 500 tonnes and capacity utilisation based on global sales was less than 50 % ([73]).

(212) Anhui Jinhe claimed that only three companies, Anhui Jinhe, Vitasweet and Yabang were producing Ace-K in the PRC and provided evidence to show that some of the Chinese producers indicated in the request were not producing Ace-K.

(213) The Commission accepted the evidence ([74]) from Anhui Jinhe, which seemed to suggest that Shandong MinghuiFood Co., Ltd, Suzhou PeacockFood Additive Co., Ltd and Suzhou Hope Technology Co., Ltd were no longer producing Ace-K. Nevertheless, there was no evidence indicating that their capacity did not exist anymore or information on whether their capacity could be reinstated in the short term.

(214) With regard to Hangzhou SanheFood Co., Ltd, in the absence of evidence to the contrary, the Commission considered that they were still a producer and concluded from their website ([75]) that they have a capacity of at least 5 000 tonnes and potentially more.

(215) The applicant provided evidence that a company named Nantong Hongxin had Ace-K capacity under construction totalling 15 000 tonnes with completion expected in 2021 ([76]) and that a company named Ningxia Wanxiangyuan had plans to build a new Ace-K production facility, with a capacity of 5 000 tonnes per year, which passed the environmental assessment stage in October 2020 ([77]). The applicant also referred to an announcement in 2017 by Anhui Jinhe regarding a potential increase in production capacity but did not provide any evidence of such expansion taking place or the volume of the production capacity concerned.

(216) Anhui Jinhe did not dispute this evidence.

(217) The Commission has also become aware of another possible producer of Ace-K in China named Jiangxi Beiyang, but has not been able to find more detailed information on its potential production or production capacity.

(218) Considering all the evidence available, the Commission considered that the current Chinese capacity was likely to be in the range of 32 000 to 40 500 tonnes and the capacity was likely to increase in the short term by 20 000 tonnes to within the range of 52 000 to 60 500 tonnes.

(219) Anhui Jinhe estimated the annual global demand for Ace-K in the range of 18 000 to 20 000 tonnes and argued that with an annual growth rate of 2,3-4,5 % (for which evidence was provided by the applicant), this would rapidly exhaust any available spare capacity in China.

([73]) Open version of Request, p. 41.

([74]) Certificate issued by the China Food Additives and Ingredients Association on 2 March 2021, provided by Anhui Jinhe in Slide 16 of their Open Submission dated 4 March 2021 and Announcement of the Peoples Court confirming bankruptcy of Hope, provided by Anhui Jinhe in Slide 17 of their Open Submission dated 4 March 2021.

([75]) http://www.hzsanhe.com/default2.asp

([76]) http://www.cninfo.com.cn/new/disclosure/detail?plate=sse&orgId=9900023704&stockCode=603968&announcementId=1209844300&announcementTime=2021-04-27%2018:00, p. 30.

([77]) Applicant's open submission dated 8 June 2021 Annex I.

(220) However, on the basis of the current capacity in China of 32 000 to 40 500 tonnes, it was clear that China alone could easily fulfil the existing global demand and would be able to for at least the next 10 years.

(221) The Commission also examined the situation with regard to spare capacity.

(222) Based on the information available concerning the three companies which Anhui Jinhe claimed were currently producing as well as for Hangzhou SanheFood Co. Ltd., the Commission concluded that these four companies were likely to have a spare capacity of around 5 200 tonnes ([78]). This was approximately double the Union consumption in the RIP (see recital (239)).

(223) The estimated current spare capacity of around 5 200 tonnes, together with additional capacity of 20 000 tonnes to be installed in China in the short term, is higher than Anhui Jinhe's estimate of current global demand and more than 8 times total Union consumption.

(224) Therefore, there will be substantial production capacity and spare capacity in the PRC, to increase sales to the Union market massively in the event that the anti-dumping measures are allowed to expire.

4.2. **Attractiveness of the Union market**

(225) The attractiveness of the Union market for Chinese exports was apparent given their continuing and massive presence even with anti-dumping measures – reaching [31 % to 37 %] of the Union market share during the RIP as mentioned in recital (242).

(226) Chinese overcapacity provides a powerful incentive to export in this naturally export-oriented sector because there is only one overseas competitor (the applicant). Chinese exporters have already exhausted the potential of export markets other than the Union because they already dominate them with a market share on average of more than 70 % ([79]).

(227) In its comments on final disclosure, Anhui Jinhe claimed that the Commission had failed to demonstrate that the Union was an attractive market to Chinese producers of Ace-K. In this respect, Anhui Jinhe claimed that the applicant sold an increasing part of its production to third markets, which suggested that the Union market was not even attractive for the Union producer. Moreover, Anhui Jinhe claimed that the export price of Chinese producers to the Union was the same, or slightly lower than their export price to non-EU markets. On the basis of the above, Anhui Jinhe concluded that the Union market was less attractive to Chinese producers than any other third market due to the presence of a local competitor.

(228) In its comments on Anhui Jinhe's submission, the applicant claimed that the anti-dumping duties did not exclude the Chinese exporting producers from the Union market. The applicant further argued that the Union market might be less attractive for Chinese producers because of the anti-dumping duties in force, but if these duties were repealed, the Chinese producers would consider the Union market to be attractive.

(229) In this respect, the Commission recalls that Chinese exporting producers have maintained a very important market share on the Union market even after the imposition of anti-dumping duties as described in recital (242). If the market were not attractive, such high penetration would not exist. This is more the case where additional anti-dumping duties apply, as landed import prices are higher and make exports to the EU more costly. Under such price circumstances, exporters would not continue to sell significant quantities to an unattractive market. Therefore, on the basis of the findings summarised in recital (234), the Commission dismisses the above argument. If anti-dumping duties were left to expire, the Chinese producers would have an opportunity to increase their sales and market share in the Union.

(230) The attractiveness of the Union market was further confirmed by the price elements analysed in recitals (232) and (233).

([78]) This includes best estimates of potential spare capacity for two companies based on information in a submission received and/or a sampling form received from a Chinese exporting producer.

([79]) Request non-confidential version, page 41.

4.3. **Likely prices and dumping margins should measures be repealed**

(231) Anhui Jinhe argued that export prices of Ace-K from the PRC to third countries were higher than export prices to the Union. In addition, they argued that there were no restrictions on selling Ace-K to third countries.

(232) The Commission found that Chinese export prices to third countries were at about the same level as their prices to the Union. This indicates that dumping is a structural strategy to penetrate third-country markets and that it will therefore continue.

(233) Chinese producers may be able to sell at a higher price to the Union than to other third countries if the existing duties were allowed to lapse, but the substantial excess supply in China would likely push prices down to levels below existing levels on the Union market. Therefore, dumping margins are likely to increase further.

4.4. **Conclusion**

(234) The Commission found that there was substantial spare capacity in the PRC, which was likely to grow even further in the short term. The attractiveness of the Union market was clear from the high market share the Chinese producers enjoyed despite the significant anti-dumping duties in place. Furthermore, prices to the Union market were attractive and although there would be potential for the Chinese producers to raise their prices from current levels, should the measures expire, the excess spare capacity in China, coupled with moderate anticipated global market growth rates, was likely to drive prices still lower, in the absence of measures.

(235) Furthermore, the level of dumping found was substantial.

(236) Therefore, the Commission's analysis revealed dumping in the review investigation period and the likelihood that imports would continue, in significant volumes, at dumped prices, should the measures expire.

5. **INJURY**

5.1. **Definition of the Union industry and Union production**

(237) The like product was manufactured by one producer in the Union during the period considered. This producer constitutes the 'Union industry' within the meaning of Article 4(1) of the basic Regulation.

5.2. **Union consumption**

(238) The Commission established the Union consumption on the basis of the free market sales of the Union industry on the Union market and imports from the PRC and other third countries, as indicated in import statistics based on the 14(6) database.

(239) Union consumption developed as follows:

Table 2

Union consumption (tonnes)

	2017	2018	2019	Review Investigation period
Total Union consumption	[2 313-2 800]	[2 339-2 831]	[2 549-3 085]	[2 447-2 962]
Index	*100*	*101*	*110*	*106*

Source: Data from the Union industry and the 14(6) database.

(240) The consumption of Ace-K increased by 6 % compared to the beginning of the period considered due to an increased demand of sugar-free products in the Union.

5.3. **Imports from the country concerned**

5.3.1. *Volume and market share of the imports from the country concerned*

(241) The Commission established the volume of imports on the basis of the 14(6) database. The market share of the imports was established on the basis of the 14(6) database and data provided by the Union industry.

(242) Imports from the country concerned developed as follows:

Table 3

Import volume and market share

	2017	2018	2019	Review Investigation period
Volume of imports from China (tonnes)	[669-810]	[699-846]	[658-796]	[788-953]
Index	*100*	*104*	*98*	*118*
Market share (%)	[27-33]	[28-34]	[25-30]	[31-37]
Index	*100*	*103*	*89*	*111*

Source: Data from the Union industry and the 14(6) database.

(243) The volume of imports from China showed some fluctuations with an increase by 4 % in 2018, followed by a decrease in 2019. During the RIP, the volume of imports increased considerably by 18 %, compared to the beginning of the period considered. This increase since 2019 coincided with a slight decrease in consumption in the Union during the same period.

(244) The market share of imports from China showed a similar development as the volume of imports, with an increase by 3 % in 2018, followed by a drop in 2019. This drop could be recovered during the RIP with an increase of 11 % compared to the beginning of the period considered. The Commission observed that in the RIP, despite the decrease in Union consumption, the market share of the imports from the PRC increased at the expense of sales volume and market share of the Union industry as described in recitals (257) and (258).

5.3.2. *Prices of the imports from the country concerned and price undercutting*

(245) The Commission established the prices of imports on the basis of data from the 14(6) database.

(246) The average price of imports from the country concerned developed as follows:

Table 4

Import prices (EUR/ tonne)

	2017	2018	2019	Review Investigation period
Average import price from the country concerned	[5 202-6 297]	[5 232-6 334]	[5 827-7 054]	[6 207-7 513]
Index	*100*	*101*	*112*	*119*

Source: 14(6) database.

(247) The average prices of imports from the PRC showed overall a strong increase of 19 % during the period considered. Import prices from China remained substantially lower compared to Union prices, as reflected in Table 8.

(248) The Commission determined the price undercutting during the review investigation period by comparing:

(a) the weighted average sales prices per product type of the sole Union producer charged to unrelated customers on the Union market, adjusted to an ex-works level; and

(b) the corresponding weighted average prices per product type of the imports from the sole cooperating Chinese producer to the first independent customer on the Union market, established on a cost, insurance, freight (CIF) basis, including the anti-dumping duty, with appropriate adjustments for post-importation costs.

(249) The price comparison was made on a type-by-type basis for transactions at the same level of trade, duly adjusted where necessary, and after deduction of rebates and discounts. The result of the comparison was expressed as a percentage of the Union producer's turnover during the RIP. It showed a weighted average undercutting margin of more than 10 %. When anti-dumping duties are disregarded, the weighted average undercutting margin reached more than 45 %.

5.4. **Imports from third countries other than the PRC**

(250) The imports of Ace-K from third countries other than the PRC represent a market share of only 1 to 4 % over the period considered. As Ace-K is produced only in China and the Union, the Commission considered that these imports were wrongly classified as Ace-K or their origin was wrongly declared. For this reason, the Commission did not consider these imports further in its injury analysis.

5.5. **Economic situation of the Union industry**

5.5.1. *General remarks*

(251) The assessment of the economic situation of the Union industry included an evaluation of all economic indicators having a bearing on the state of the Union industry during the period considered.

5.5.1.1. Production, production capacity and capacity utilisation

(252) The total Union production, production capacity and capacity utilisation developed over the period considered as follows:

Table 5

Union production volume, production capacity and capacity utilisation

	2017	2018	2019	Review Investigation period
Production volume (tonnes)	[4 271 – 5 171]	[4 833 – 5 850]	[4 860 – 5 883]	[4 873 – 5 899]
Index	*100*	*113*	*114*	*114*
Production capacity (tonnes)	[5 700 – 6 900]	[5 700 – 6 900]	[5 700 – 6 900]	[5 700 – 6 900]
Index	*100*	*100*	*100*	*100*
Capacity utilisation	[71 - 86]	[81 - 97]	[81 - 98]	[81 - 98]
Index	*100*	*113*	*114*	*114*

Source: Data provided by the Union industry.

(253) The production volume of the Union industry increased by 14 % during the period considered. This increase can be related first, to the general increase in the demand for Ace-K and second, to the effect of the anti-dumping duties that allowed the industry to recover and to increase its production volume.

(254) The production capacity of the Union industry was maintained at the same level during the period considered. Although the anti-dumping duties allowed the Union industry to recover, the market evaluation has not justified any extension of capacity.

(255) The capacity utilisation increased in line with the annual production volume described in recital (253) and increased by 14 % because of the anti-dumping duties and the general increase in the demand of Ace-K.

5.5.1.2. Sales volume and market share

(256) The Union industry's sales volume and market share developed over the period considered as follows:

Table 6

Union sales volume and market share

	2017	2018	2019	Review Investigation period
Sales volume on the Union market (tonnes)	[1 614 – 1 953]	[1 565 – 1 894]	[1 786 – 2 162]	[1 623 – 1 964]
Index	*100*	*97*	*111*	*101*
Market share (%)	[66-80]	[64-77]	[67-81]	[63-76]
Index	*100*	*96*	*100*	*95*

Source: Data provided by the Union industry.

(257) Over the period considered, the volume of sales of the Union producer fluctuated. The sales volume decreased in 2018 by 3 %, followed by a strong increase of 11 % in 2019 compared to the beginning of the period considered. During the RIP, the sales volume returned to the initial level at the beginning of the period considered.

(258) The market share of the Union industry fluctuated during the period considered and decreased by 5 % during the RIP.

5.5.1.3. Employment and productivity

(259) Employment and productivity developed in the Union over the period considered as follows:

Table 7

Employment and productivity in the Union

	2017	2018	2019	Review Investigation period
Number of employees	[73 - 89]	[76 - 93]	[76 - 92]	[76 - 92]
Index	*100*	*113*	*114*	*114*
Productivity (tonnes/FTE)	[55 - 67]	[60 - 73]	[61 - 74]	[61 - 74]
Index	*100*	*108*	*110*	*110*

Source: Data provided by the Union industry.

(260) From 2017 to the end of the investigation period, the Union industry increased its personnel by 14 %, in line with the increase in production.

(261) At the same time, the productivity increased by 10 % over the same period.

5.5.1.4. Magnitude of the dumping margin and recovery from past dumping

(262) The dumping margin for the cooperating exporting producer as stated in recital (206) was significantly above the de minimis level, and the volume and market share of the imports from the PRC as described in recitals (243) and (244) were still significant during the period considered.

(263) However, despite the fact there was still dumping from the PRC, the Union industry managed to recover from past dumping practices.

5.5.1.5. Prices and factors affecting prices

(264) The weighted average unit sales prices of the sole Union producer to unrelated customers in the Union developed over the period considered as follows:

Table 8

Sales prices in the Union

	2017	2018	2019	Review Investigation period
Average unit sales price in the Union on the total market (EUR/ tonne)	[9 840 – 11 911]	[9 833 – 11 903]	[10 941 – 13 245]	[13 279 – 16 075]
Average unit sales price in the Union on the total market (EUR/tonne) *(Index)*	*100*	*100*	*111*	*135*
Unit cost of production (EUR/ tonne) *(Index)*	*100*	*97*	*101*	*101*

Source: Data provided by the Union industry.

(265) The Union industry's average unit sales price to unrelated customers increased by 35 % over the period considered following the imposition of anti-dumping measures.

(266) The cost of production remained stable during the period considered.

5.5.1.6. Labour costs

(267) The average labour costs of the Union producer developed over the period considered as follows:

Table 9

Average labour costs per employee

	2017	2018	2019	Review Investigation period
Average labour costs per employee (EUR)	[88 709 – 107 384]	[91 459 – 110 714]	[96 239 – 116 500]	[98 783 – 119 579]
Index	*100*	*103*	*108*	*111*

Source: Data provided by the Union industry.

(268) The Union industry average labour costs per employee increased by 11 % over the period considered.

5.5.1.7. Inventories

(269) Stock levels of the sole Union producer developed over the period considered as follows:

Table 10

Inventories

	2017	2018	2019	Review Investigation period
Closing stocks (tonnes)	[696 – 842]	[979 – 1 186]	[1 150 – 1 392]	[1 226 – 1 484]
Index	*100*	*103*	*108*	*111*

Source: Data provided by the Union industry.

(270) Inventories increased by 11 % during the period considered.

5.5.1.8. Profitability, cash flow, investments, return on investments and ability to raise capital

(271) Profitability, cash flow, investments and return on investments of the Union producer developed over the period considered as follows:

Table 11

Profitability, cash flow, investments and return on investments

	2017	2018	2019	Review Investigation period
Profitability of sales in the Union to unrelated customers *(Index)*	*100*	*116*	*137*	*193*
Cash flow (EUR)	[12 183 444 – 14 748 380]	[10 422 105 – 12 616 232]	[15 616 733 – 18 904 467]	[21 987 559 – 26 616 519]
Index	*100*	*86*	*128*	*180*
Investments (EUR)	[1 360 987 – 1 647 510]	[1 187 387 – 1 437 363]	[1 236 940 – 1 497 348]	[1 182 289 – 1 431 192]
Index	*100*	*87*	*91*	*87*
Return on investments	[92 – 111]	[92 – 111]	[131 – 159]	[206 – 250]
Index	100	100	142	224

Source: Data provided by the Union industry.

(272) The Commission established the profitability of the Union producer 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. The profitability showed a strong increase by 93 % during the period considered. The anti-dumping duties allowed the Union producer to return to a high level of profitability.

(273) The investigation showed that the RIP was characterised by exceptional circumstances, which were linked to the outbreak of the COVID-19 pandemic. In particular, large food and pharma grade customers bought higher volumes of Ace-K from the Union industry during the first half of 2020 in order to secure supplies of this ingredient. Also, the yearly maintenance of the Union industry which entails a period where production is stopped, was postponed in 2020 as compared to its usual timing in the year, which has led to increased production in the RIP. These exceptional market developments generated an increase in the Union industry's sales prices as compared to 2019 and an increase in the Union industry's profit in the RIP. The investigation found that by eliminating such one-off impacts, the profit of the Union industry would be in the same order of magnitude as the profitability achieved before the exceptional circumstances took place, i.e. in 2019.

(274) The net cash flow is the ability of the Union producers to self-finance their activities. The trend in net cash flow increased similar to the profitability by 80 %, reflecting again the positive effect of the anti-dumping duties and exceptional circumstances in the RIP described in recital (273).

(275) The level of investment decreased by 13 % over the period considered. As described in recital (272), the anti-dumping duties allowed to return to healthy business activities but did not justify the need for investments in additional production capacities.

(276) The return on investment increased considerably by 124 % during the period considered.

5.5.1.9. Conclusion on injury

(277) Most injury indicators, such as production, employment, capacity utilisation, productivity, profitability and cash flow developed positively. While the trend of the financial indicators such as the level of investment and the return on investment is negative, their absolute levels are satisfactory and do not indicate a sign of material injury.

(278) Therefore, the Commission concluded that the Union industry has recovered from previous injury and did not suffer material injury within the meaning of Article 3(5) of the basic Regulation during the review investigation period.

6. **LIKELIHOOD OF RECURRENCE OF INJURY**

(279) The Commission concluded in recital (278) that the Union industry did not suffer material injury during the review investigation period. Therefore, the Commission assessed, in accordance with Article 11(2) of the basic Regulation, whether there would be a likelihood of recurrence of injury originally caused by the dumped imports from the PRC if the measures against Chinese imports were allowed to lapse.

(280) The Commission examined the production capacity and spare capacity in the PRC, the likely price levels of imports from the PRC in the absence of anti-dumping measures and their impact on the Union industry, including the level of undercutting in the absence of anti-dumping measures.

(281) As set out in recitals (210) - (223) above, there is substantial production capacity and spare capacity in the PRC to increase exports to the EU market rapidly in the event that the anti-dumping measures were allowed to expire.

(282) This significant overcapacity and the attractiveness of the Union market described in recitals (225) to (229) would be likely to generate massive additional exports to the Union at dumped prices, which could easily cover the full Union consumption.

(283) In the world market outside the Union, where no trade defence measures are in place, Chinese producers have a dominant market share (on average more than 70 %).

(284) In the absence of measures, it is likely that the market share of Chinese producers would reach at least their worldwide market share.

(285) In its comments on final disclosure, Anhui Jinhe argued that there was no dominant position of China on third markets as the alleged 70 % market share of Chinese producers on third markets corresponded to their share in total production capacity in the world, and this market share therefore reflected a well-balanced repartition of the world market between competing producers.

(286) In its comments on Anhui Jinhe's submission, the applicant claimed that Anhui Jinhe's argument was based on a comparison of total Chinese production capacity with the total production capacity of the applicant and that this argument was invalid because there was significant excess capacity in China.

(287) Anhui Jinhe's argument reflects China's step-by-step approach to industrial policy: massive overcapacity is built, based on State-led distortions; a large part of that overcapacity is exported globally; decimating competitors in the EU (and elsewhere), not on the basis of genuine competitiveness, but on the basis of unfair trade; Chinese companies attain massive, even dominant positions worldwide. This is then argued to be 'normal repartition'. Yet markets should not be driven by the size of competitors, but rather by their ability to compete on a fair basis on a level playing field. This argumentation provides a Chinese narrative as to the reasons behind China's massive global presence. But the fact remains that such massive presence has a material impact on competition, and leads to the Commission's findings that in the absence of anti-dumping measures, the market share of Chinese producers on the Union market would very likely increase significantly and that this would entail an important loss of market share for the Union producer. Therefore, the claim was rejected.

(288) Without the anti-dumping duties, customs cleared prices of Chinese Ace-K would range from about 6,2 to 6,75 EUR/kg. When comparing these prices to the Union industry's unit cost of production, net of freight and warehousing during the RIP and its average ex-works sales price in the Union for food grade Ace-K in the RIP to users and to traders, the analysis showed that prices of imports from China would undercut the Union industry's sales prices by more than 45 %.

(289) In the absence of measures, in a scenario where Chinese exporting producers would have in the EU the same penetration as in other world markets (around 70 % on average) ([80]), the loss in sales and resulting increase in the costs of the Union industry would entail significant financial losses considering the likely price levels, with profitability becoming negative. Injury would thus become material within a short period and jeopardise the survival of the Union industry.

(290) This likely scenario is supported by the evidence provided by the applicant of a significant loss of sales and market share in the UK following Brexit and the resulting removal of anti-dumping measures on Ace-K. Indeed, a similar situation is likely to develop in the Union market in the absence of measures.

(291) In its comments on final disclosure, Anhui Jinhe argued that that the applicant did not suffer a significant loss of sales and market share in the UK following the removal of anti-dumping duties due to Brexit. In addition, Anhui Jinhe claimed that there was no evidence on the open file regarding the UK sales of the applicant and an increase of Chinese exports to the UK.

(292) In its comments on Anhui Jinhe's submission, the applicant claimed the Anhui Jinhe had access to Chinese export statistics and that the applicant had also provided such export data in the course of the investigation. Moreover, the applicant pointed out that its loss off business took place already in anticipation of the lifting of anti-dumping duties in the UK.

(293) In this respect, the Commission recalls that the applicant submitted its questionnaire reply first with data including the UK in the EU sales and then a new version with data excluding the UK. The non-confidential versions of the two questionnaire replies are on the open file. The Commission also analysed import statistics of the product under review from China to the UK. In reply to Anhui Jinhe's submission, a note was added to the non-confidential file of the investigation in this regard. Both the questionnaire replies and the statistics confirmed the findings on the loss of market share of the applicant already in anticipation of the removal of anti-dumping duties due to Brexit. Therefore, the above claim of Anhui Jinhe is unfounded.

([80]) See recital (255).

(294) The above analysis has shown that the Union industry benefited from the imposition of duties and has recovered from its injurious situation after measures were imposed. However, in the absence of measures, the expected massive increase in imports from China at injurious prices would quickly lead to the deterioration of the economic situation of the Union industry resulting in material injury.

(295) Therefore, the Commission concluded that the absence of measures would in all likelihood result in a significant increase of dumped imports from the country concerned at injurious prices and material injury would be likely to recur.

7. **UNION INTEREST**

(296) In accordance with Article 21 of the basic Regulation, the Commission examined whether maintaining the existing anti-dumping measures would be against the interest of the Union. The determination of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, importers, and users.

(297) All interested parties were given the opportunity to make their views known pursuant to Article 21(2) of the basic Regulation.

(298) On this basis the Commission examined whether, despite the conclusions on the likelihood of continuation of dumping and recurrence of injury, compelling reasons existed which would lead to the conclusion that it was not in the Union interest to maintain the existing measures.

7.1. **Interest of the Union industry**

(299) As stated in recital (278), Union industry has recovered from the injury caused by past dumping and its operations are viable when not subject to unfair competition by dumped imports.

(300) Should the measures be allowed to lapse, the situation of the Union industry is likely to deteriorate quickly as explained in recitals (279) to (294).

(301) It was therefore concluded that extending the measures in force against the PRC would be in the interest of the Union industry.

7.2. **Interest of unrelated importers**

(302) As stated in recital (29), no unrelated importer cooperated during the investigation.

(303) The current investigation did not reveal any significant adverse impact of the measures in force on importers.

(304) The previous investigation concluded that importers could be negatively affected by the measures but to a very limited extent. Ace-K is only a small part of the business for importers, which have a wider product portfolio.

(305) Therefore, from the information available, it is clear that the imposition of measures on importers would have a very limited impact, if at all, and such impact would be clearly outweighed by the benefits that the measures could bring to the Union industry.

7.3. **Interest of users**

(306) Ace-K is mainly used as a sugar substitute in the food and beverage sector, for example in soft drinks or dairy products. To a smaller extent, Ace-K is used in the pharma sector.

(307) No users cooperated in the investigation.

(308) The current investigation did not reveal any significant adverse impact of the measures in force. The previous investigation against the PRC revealed that in terms of costs, the impact of Ace-K in finished products is minimal. However, it revealed also that the use of Ace-K is essential for products that are already in the market. New products might be developed with alternative sweeteners but to change the formulation of established products would be risky and costly. Hence, the access of users to alternative sources of Ace-K was considered important.

(309) On these grounds, the Commission concluded that should the measures be extended, the impact on the economic situation of users was likely not to be significant.

7.4. **Other factors**

7.4.1. *Security of supply*

(310) The Union producer claimed that security of supply of Ace-K is crucial to producers of food and beverages and it was not in the Union interest to become dependent on product supplies of only one country. The producer further considered that once a producer of a beverage or food product has chosen to use Ace-K as its low calorie sweetener, it cannot switch to another sweetener without materially changing the taste and affecting consumers' perception of the product.

7.5. **Conclusion on Union interest**

(311) On the basis of the above, the Commission concluded that there were no compelling reasons of Union interest against the maintenance of the existing measures on imports of Ace-K originating in the PRC.

(312) In its comments on final disclosure, Anhui Jinhe argued that the continuation of the measures was not in the Union's interest. In this respect, Anhui Jinhe claimed that the applicant had a limited production capacity and a high capacity utilisation rate and was therefore incapable of supplying the whole market without disengaging from export markets. Moreover, Anhui Jinhe held that users of Ace-K were reliant on alternative sources of supply and therefore had no choice but pay the anti-dumping duties and pass them on to consumers, which inflated food prices. Finally, Anhui Jinhe maintained that the multiple sourcing strategy of users would in any case be a sufficient protection for the applicant, as it would prevent Chinese imports from grabbing substantial market shares from the Union producer.

(313) In its comments on Anhui Jinhe's submission, the applicant claimed that it had enough production capacity to supply the whole of the Union market as well as its current exports to third countries. The applicant also argued that due to the very small dosage levels of Ace-K used in beverages and food, the effect of anti-dumping duties on the cost of the finished products was negligible. In addition, the applicant claimed that contrary to Anhui Jinhe's claim, the dual sourcing strategy of Ace-K users did not prevent Chinese imports from grabbing substantial market shares to the detriment of the Union producer in the period prior to the original investigation.

(314) With regard to these arguments, the Commission recalls that no importers, users or consumer organisations cooperated in the present expiry review. In fact, the investigation found that there was sufficient production capacity of Ace-K in the EU to cover consumption as seen in recitals (239) and (252) in addition to the spare capacity in China as described in recital (210) to (223) and therefore there was no risk of insufficient supply of the product under review. Also, the Commission found that in terms of costs, the impact of Ace-K in finished products was minimal as described in recital (308). Therefore, the Commission dismissed the above arguments.

8. **ANTI-DUMPING MEASURES**

(315) On the basis of the conclusions reached by the Commission on continuation of dumping, recurrence of injury and Union interest, the anti-dumping measures on Ace-K from the PRC should be maintained.

(316) In view of Article 109 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council ([81]), 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.

(317) 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 acesulfame potassium (potassium salt of 6-methyl-1,2,3-oxathiazin-4(3H)-one 2,2-dioxide; CAS RN 55589-62-3) originating in the People's Republic of China currently falling under CN code ex 2934 99 90 (TARIC code 2934 99 90 21).

2. The rates 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 produced by the companies listed below shall be as follows:

Company	Anti-dumping duty - euro per kg net	TARIC additional code
Anhui Jinhe Industrial Co., Ltd	4,58	C046
Suzhou Hope Technology Co., Ltd	4,47	C047
Anhui Vitasweet Food Ingredient Co., Ltd	2,64	C048
All other companies	4,58	C999

3. The application of the individual anti-dumping duty rates 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 it must 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 acesulfame potassium sold for export to the European Union covered by this invoice was manufactured by (company name and address) (TARIC additional code) in the People's Republic of China. I declare that the information provided in this invoice is complete and correct.' If no such invoice is presented, the duty 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*.

([81]) 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, 27 January 2022.

For the Commission
The President
Ursula VON DER LEYEN

COMMISSION IMPLEMENTING REGULATION (EU) 2022/117

of 27 January 2022

amending for the 328th time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures against certain persons and entities associated with the ISIL (Da'esh) and Al-Qaida organisations

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the ISIL (Da'esh) and Al-Qaida organisations ([1]), and in particular Article 7(1)(a) and Article 7a(5) thereof,

Whereas:

(1) Annex I to Regulation (EC) No 881/2002 lists the persons, groups and entities covered by the freezing of funds and economic resources under that Regulation.

(2) On 24 January 2022, the Sanctions Committee of the United Nations Security Council decided to remove one entry from the list of persons, groups and entities to whom the freezing of funds and economic resources should apply.

(3) Annex I to Regulation (EC) No 881/2002 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Annex I to Regulation (EC) No 881/2002 is amended in accordance with 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, 27 January 2022.

For the Commission,
On behalf of the President,
Director-General
Directorate-General for Financial Stability, Financial Services and Capital Markets Union

([1]) OJ L 139, 29.5.2002, p. 9.

ANNEX

In Annex I to Regulation (EC) No 881/2002, the following entry under the heading 'Natural persons' is deleted:

'Khalil Ben Ahmed Ben Mohamed Jarraya (original script: خليل بن احمد بن محمد جراية) (good quality alias: (a) Khalil Yarraya; (b) Ben Narvan Abdel Aziz (Date of birth: 15.8.1970; place of birth: Sereka, former Yugoslavia); (c) Abdel Aziz Ben Narvan (Date of birth: 15.8.1970; place of birth: Sereka, former Yugoslavia); low quality alias: (a) Amro; (b) Omar; (c) Amrou; (d) Amr). Date of birth: 8.2.1969. Place of birth: Sfax, Tunisia. Nationality: Tunisian. Passport no. K989895 (Tunisian passport issued on 26.7.1995 in Genoa, Italy, expired on 25.7.2000). Address: Nuoro, Italy. Other information: (a) Deported from Italy to Tunisia on 24.2.2015. Date of designation referred to in Article 7d(2)(i): 25.6.2003.'

DECISIONS

COUNCIL DECISION (CFSP) 2022/118

of 27 January 2022

amending Decision 2011/72/CFSP concerning restrictive measures directed against certain persons and entities in view of the situation in Tunisia

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union and in particular Article 29 thereof,

Having regard to the proposal from the High Representative of the Union for Foreign Affairs and Security Policy,

Whereas:

(1) On 31 January 2011, the Council adopted Decision 2011/72/CFSP [1] concerning restrictive measures directed against certain persons and entities in view of the situation in Tunisia.

(2) On the basis of a review of Decision 2011/72/CFSP, the restrictive measures should be extended until 31 January 2023 for forty-two persons and until 31 July 2022 for one person. Moreover, in the Annex to that Decision, the statements of reasons should be amended for three persons, and the information relating to the application of the rights of defence and right to effective judicial protection under Tunisian law should be amended for seven persons.

(3) Decision 2011/72/CFSP should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Decision 2011/72/CFSP is amended as follows:

(1) Article 5 is replaced by the following:

'*Article 5*

1. This Decision shall apply until 31 January 2023.

2. By way of derogation from paragraph 1, the measures in Article 1 shall apply with regard to entry Number 45 in the Annex until 31 July 2022.

3. This Decision shall be kept under constant review. It may be renewed or amended, as appropriate, if the Council deems that its objectives have not been met.';

(2) The Annex is amended in accordance with the Annex to this Decision.

Article 2

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

[1] Council Decision 2011/72/CFSP of 31 January 2011 concerning restrictive measures directed against certain persons and entities in view of the situation in Tunisia (OJ L 28, 2.2.2011, p. 62).

Done at Brussels, 27 January 2022.

For the Council
The President
J.-Y. LE DRIAN

ANNEX

The Annex to Decision 2011/72/CFSP is amended as follows:

(i) The following entries in section 'A. List of persons and entities referred to in Article 1' are replaced by the following:

	Name	Identifying information	Grounds
'7.	Halima Bent Zine El Abidine Ben Haj Hamda BEN ALI	Nationality: Tunisian POB: Tunis, Tunisia DOB: 17 July 1992 Last known address: the Presidential Palace, Tunis, Tunisia ID no: 09006300 Issuing country: Tunisia Gender: female Other information: daughter of Leïla TRABELSI	Person subject to judicial proceedings, or an asset recovery process following a final court ruling, by the Tunisian authorities for complicity in the misappropriation of public monies by a public office-holder, complicity in the misuse of office by a public office-holder to procure an unjustified advantage for a third party and to cause a loss to the administration, exerting wrongful influence over a public office-holder with a view to obtaining directly or indirectly an advantage for another person, and associated with Leila Trabelsi (No 2).
29.	Ghazoua Bent Zine El Abidine Ben Haj Hamda BEN ALI	Nationality: Tunisian POB: Le Bardo DOB: 8 March 1963 Last known address: 49 avenue Habib Bourguiba – Carthage, Tunisia ID no: 00589758 Issuing country: Tunisia Gender: female Other information: medical doctor, daughter of Naïma EL KEFI, married to Slim ZARROUK	Person subject to judicial proceedings, or an asset recovery process following a final court ruling, by the Tunisian authorities for complicity in the misappropriation of public monies by a public office-holder, complicity in the misuse of office by a public office-holder to procure an unjustified advantage for a third party and to cause a loss to the administration, and exerting wrongful influence over a public office-holder with a view to obtaining directly or indirectly an advantage for another person, and associated with Slim Zarrouk (No 30).
42.	Ghazoua Bent Hamed Ben Taher BOUAOUINA	Nationality: Tunisian POB: Monastir DOB: 30 August 1982 Last known address: rue Ibn Maja – Khezama est – Sousse, Tunisia ID no: 08434380 Issuing country: Tunisia Gender: female Other information: daughter of Hayet BEN ALI, married to Badreddine BENNOUR	Person subject to judicial proceedings, or an asset recovery process following a final court ruling, by the Tunisian authorities for complicity in the misappropriation of public monies by a public office-holder, complicity in the misuse of office by a public office-holder to procure an unjustified advantage for a third party and to cause a loss to the administration, and exerting wrongful influence over a public office-holder with a view to obtaining directly or indirectly an advantage for another person, and associated with Hayet Ben Ali (No 33).'

(ii) In the following entries in section B, 'Rights of defence and right to effective judicial protection under Tunisian law', under the heading 'Application of the rights of defence and the right to effective judicial protection', the following final sentences are added:

'25.	On 15 February 2021 and 10 March 2021, Mr CHIBOUB was heard by an investigating judge in case 19592/1. On 31 March 2021, the investigating judge decided to sever his case from the general case 19592/1. Case 1137/2 is pending.
26.	On 31 March 2021, the investigating judge decided to sever her case from the general case 19592/1. Case 1137/2 is pending.
30.	A judgment of the Appeal Court of Tunis dated 15 April 2021 in case 29443 convicted him of misappropriation of public funds.
31.	A judgment of the Appeal Court of Tunis dated 1 November 2018 in case 27658 convicted him of misappropriation of public funds.
33.	A judgment dated 14 March 2019 in case 40800 convicted her of misappropriation of public funds.
34.	A judgment dated 7 January 2016 in case 28264 convicted her of misappropriation of public funds.
46.	A judgment of the Court of first instance of Tunis dated 21 March 2019 in case 41328/19 convicted him of misappropriation of public funds.'

COMMISSION DECISION (EU) 2022/119

of 26 January 2022

repealing Decision 2004/613/EC concerning the creation of an advisory group on the food chain and animal and plant health

THE EUROPEAN COMMISSION,

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

Whereas:

(1) Commission Decision 2004/613/EC ([1]) established the advisory group on the food chain and animal and plant health. This group has been consulted by the Commission on its work programme on food and feed safety, food and feed labelling and presentation, human nutrition in relation to food legislation, animal health and welfare, and plant health as well as on any measure which the Commission had to take or propose in the above policy areas.

(2) On 20 May 2020, the Commission adopted the Farm to Fork Strategy for a fair, healthy and environmentally-friendly food system ([2]).

(3) In the implementation of the Farm to Fork Strategy, consultations are to be made with stakeholders having expertise in health, nutrition, marketing, environment, climate, sustainable agriculture, agronomy, fisheries, aquaculture and social sciences areas, as well as digital transformation and finance areas pertaining to food systems.

(4) Hence, the issues relating to the implementation of the Farm to Fork Strategy go beyond the expertise of the group as currently provided for in Decision 2004/613/EC. Therefore, to ensure an enlarged expert participation in those policy areas, it is necessary to set up a new informal expert group with enlarged membership and tasks.

(5) In light of the above, it is necessary to repeal Decision 2004/613/EC.

(6) As the mandate of the members of the current advisory group expires on 14 July 2022, this Decision should apply from the following day,

HAS ADOPTED THIS DECISION:

Article 1

Decision 2004/613/EC is repealed.

Article 2

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

It shall apply from 15 July 2022.

Done at Brussels, 26 January 2022.

For the Commission
The President
Ursula VON DER LEYEN

([1]) Commission Decision 2004/613/EC of 6 August 2004 concerning the creation of an advisory group on the food chain and animal and plant health (OJ L 275, 25.8.2004, p. 17).

([2]) Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – A Farm to Fork Strategy for a fair, healthy and environmentally-friendly food system (COM/2020/381 final).

COMMISSION IMPLEMENTING DECISION (EU) 2022/120

of 26 January 2022

amending Decision 2002/840/EC adopting the list of approved facilities in third countries for the irradiation of foods

(notified under document C(2022) 367)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 1999/2/EC of the European Parliament and of the Council of 22 February 1999 on the approximation of the laws of the Member States concerning foods and food ingredients treated with ionising radiation [1], and in particular Article 9(2) thereof,

Whereas:

(1) Directive 1999/2/EC provides that a foodstuff treated with ionising radiation may not be imported from a third country unless it has been treated in an irradiation facility approved by the European Union.

(2) Commission Decision 2002/840/EC [2] established a list of approved irradiation facilities in third countries.

(3) On 31 August 2021, the United Kingdom submitted an application for approval of the irradiation facility 'Synergy Health' located in Swindon, United Kingdom.

(4) The United Kingdom provided adequate evidence that the official supervision of that irradiation facility guarantees that the requirements of Article 7 of Directive 1999/2/EC are complied with.

(5) The irradiation facility 'Synergy Health' should be included in the list of approved irradiation facilities in third countries.

(6) Decision 2002/840/EC should therefore be amended accordingly.

(7) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS DECISION:

Article 1

The Annex to Decision 2002/840/EC is replaced by the text set out in the Annex to this Decision.

Article 2

This Decision is addressed to the Member States.

[1] OJ L 66, 13.3.1999, p. 16.

[2] Commission Decision 2002/840/EC of 23 October 2002 adopting the list of approved facilities in third countries for the irradiation of foods (OJ L 287, 25.10.2002, p. 40).

Done at Brussels, 26 January 2022.

For the Commission
Stella KYRIAKIDES
Member of the Commission

ANNEX

'*ANNEX*

List of irradiation facilities in third countries approved by the Union

Reference No: EU-AIF 01-2002

HEPRO Cape (Pty) Ltd
6 Ferrule Avenue
Montague Gardens
Milnerton 7441
Western Cape
Republic of South Africa

Tel. (27-21) 551 24 40

Fax (27-21) 551 17 66

Reference No: EU-AIF 02-2002

GAMMASTER South Africa (Pty) Ltd
PO Box 3219
5 Waterpas Street
Isando Extension 3
Kempton Park 1620
Johannesburg
Republic of South Africa

Tel. (27-11) 974 88 51

Fax (27-11) 974 89 86

Reference No: EU-AIF 03-2002

GAMWAVE (Pty) Ltd
PO Box 26406
Isipingo Beach
Durban 4115
Kwazulu-Natal
Republic of South Africa

Tel. (27-31) 902 88 90

Fax (27-31) 912 17 04

Reference No: EU-AIF 05-2004

GAMMA-PAK AS
Yünsa Yolu N: 4 OSB
Cerkezköy/TEKIRDAG
TR-59500
Turkey

Tel. (90-282) 726 57 90

Fax (90-282) 726 51 78

Reference No: EU-AIF 06-2004

STUDER AGG WERK HARD
Hogenweidstrasse 2
Däniken
CH-4658
Switzerland

Tel. (41-062) 288 90 60

Fax (41-062) 288 90 70

Reference No: EU-AIF 07-2006

THAI IRRADIATION CENTER
Thailand Institute of Nuclear Technology (Public Organisation)
37 Moo 3, TECHNOPOLIS
Klong 5, Klong Luang
Pathumthani 12120
Thailand

Tel. (662) 577 4167 to 71

Fax (662) 577 1945

Reference No: EU-AIF 08-2006

Synergy Health (Thailand) Ltd
700/465 Amata Nakorn Industrial
Moo 7, Tambon Donhuaroh
Amphur Muang
Chonburi 20000
Thailand

Tel. (66) (0) 38 458431 to 3 and (66) (0) 38 450092 to 3

Fax (66) (0) 38 458435 and (66) (0) 38 717146

Reference No: EU-AIF 09-2010

Board of Radiation and Isotope Technology
Department of Atomic Energy
BRIT/BARC Vashi Complex
Sector 20, Vashi
Navi Mumbai – 400 705 (Maharashtra)
India

Tel. +91 2227840000/+91 2227887000

Fax +91 2227840005

Email: chief@britatom.gov.in cebrit@vsnl.net

Reference No: EU-AIF 10-2010

Board of Radiation and Isotope Technology
ISOMED
Bhabha Atomic Research Centre
South Site Gate, Refinery Road
Next to TATA Power Station, Trombay
Mumbai – 400 085 (Maharashtra)
India

Tel. +91 2225595684/+91 2225594751

Fax +91 2225505338

Email: chief@britatom.gov.in cebrit@vsnl.net

Reference No: EU-AIF 11-2010

Microtrol Sterilisation Services Pvt. Ltd
Plot No 14 Bommasandra- Jigani Link Road Industrial Area
KIADB, Off Hosur Road
Hennagarra Post
Bengalooru – 562 106 (Karnataka)
India

Tel. +91 8110653932/+91 8110414030

Fax +91 8110414031

Email: vikram@microtrol-india.com

Reference No: EU-AIF 12-2021

Synergy Health
Moray Road
Elgin Industrial Estate
Swindon
SN2 8XS
United Kingdom

Tel. +44 (0) 1793-601004

Email: ast_info@steris.com'

COMMISSION DECISION (EU) 2022/121

of 27 January 2022

laying down internal rules concerning the provision of information to data subjects and the restriction of certain of their rights in the context of processing of personal data for the purposes of handling requests and complaints under the Staff Regulations

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 249(1) thereof,

Whereas:

(1) The Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the Union, laid down in Council Regulation (EEC, Euratom, ECSC) No 259/68 ([1]) ('the Staff Regulations'), require the Commission to respond to certain requests and complaints. Those tasks are mainly carried out by Unit 'Appeals and Case Monitoring' of the Directorate-General responsible for Human Resources and Security ('DG HR'), which establishes the relevant facts and assesses them from a legal point of view in order to assist the Appointing Authority or the Authority responsible for Concluding Contracts of Employment ('the Authority') in taking a decision.

(2) Article 22c of the Staff Regulations requires the Commission, in accordance with Articles 24 and 90 of the Staff Regulations, to put in place a procedure for the handling of complaints made by officials concerning the way in which they are treated after or as a consequence of having reported a serious irregularity pursuant to Articles 22a and 22b of the Staff Regulations ([2]).

(3) Article 24 of the Staff Regulations requires the Commission to assist officials in proceedings against persons perpetrating threats, insulting or defamatory acts or utterances, or attacks to person or property to which he or a member of their family is subjected by reason of his position or duties.

(4) Article 90(1) and (2) of the Staff Regulations allow any person to whom the Staff Regulations apply to request the Authority to take a decision relating to him, or to submit a complaint against a decision affecting him adversely.

(5) In the context of those activities, the Commission collects and processes relevant information. That information includes personal data, in particular identification, contact and behavioural data. The competent Commission services transmit personal data to other Commission services on 'a need to know' basis.

(6) The personal data are stored in a secured physical and electronic environment, to prevent unlawful access or transfer of data to persons who do not have a need to know. After the end of the processing, the data are retained in accordance with the applicable Commission rules ([3]).

([1]) OJ L 56, 4.3.1968, p. 1.

([2]) Administrative Notice No 79-2013 of 19 December 2013 *'Update of the arrangements for submitting requests and complaints (Article 90(1) and (2) of the Staff Regulations) and requests for assistance (Article 24 of the Staff Regulations)'*.

([3]) Retention of files in the Commission is regulated by the Common Commission-Level Retention List, a regulatory document in the form of a retention schedule that establishes the retention periods for the different types of Commission files (SEC(2019)900). The retention periods for personal data are indicated in the privacy notice concerning the handling of requests and complaints under the Staff Regulations.

(7) While carrying out its tasks under the Staff Regulations, the Commission is bound to respect the rights of natural persons in relation to the processing of personal data recognised by Article 8(1) of the Charter of Fundamental Rights of the European Union and by Article 16(1) of the Treaty, as well as the rights provided for in Regulation (EU) 2018/1725 of the European Parliament and of the Council ([4]). At the same time, the Commission is required to comply with strict rules of confidentiality and professional secrecy.

(8) In certain circumstances, it is necessary to reconcile the rights of data subjects pursuant to Regulation (EU) 2018/1725 with the need to safeguard the prevention, investigation, detection and prosecution of criminal offences and to ensure the effectiveness of the Commission's response to allegations of harassment and other inappropriate behaviour or attacks, as well as with full respect for the fundamental rights and freedoms of other data subjects. To that effect, Article 25(1), points (b), (c), (g) and (h), of Regulation (EU) 2018/1725 provide the Commission with the possibility to restrict the application of Articles 14 to 17, 19, 20 and 35, as well as the principle of transparency laid down in Article 4(1), point (a), insofar as its provisions correspond to the rights and obligations provided for in Articles 14 to 17, 19 and 20 of that Regulation.

(9) This might, in particular, be the case as regards the provision of information about the processing of personal data to the person in respect of whom a request or complaint is submitted ('the person concerned'), in particular where the procedure originates from a request for assistance under Article 24 of the Staff Regulations alleging harassment. The Commission may decide to restrict the provision of such information to the person concerned in order to protect the rights and freedoms of the requestor, complainant or witness pursuant to Article 25(1), point (h), of Regulation (EU) 2018/1725. The Commission may decide to do so, in particular to protect those persons against possible retaliation by the persons concerned against whom allegations in good faith were made, which however have not led to measures by the administration. In some situations it might be necessary to restrict the provision of such information to prevent harassment or other inappropriate behaviour or attacks from occurring in the Commission (in particular in the organisational entity where the person concerned works together with the requestor, complainant and or witness).

(10) It might also be necessary to restrict other rights of the person concerned when the exercise of these rights would reveal information about the requestor, complainant or a witness who has asked not to have their identity disclosed. In such a case, the Commission may decide to restrict the right of access to the statement relating to the person concerned or his or her other rights in order to protect the rights and freedoms of the requestor, complainant or witness for the reasons set out in recital 9. The Commission may decide to do so pursuant to Article 25(1), point (h), of Regulation (EU) 2018/1725.

(11) It might also be necessary to restrict the rights of the person concerned in order to safeguard a monitoring, inspection or regulatory function connected to the exercise of official authority in a case where an important objective of general public interest of the Union, namely ensuring the effectiveness of the Commission's response to allegations of harassment and of any other inappropriate behaviour or attacks, is at stake. The combat of harassment and of any other inappropriate behaviour or attacks constitutes an important objective of general public interest of the Union, including of the Commission. In addition, the Commission has a duty to assist its staff pursuant to Article 24 of the Staff Regulations. In order not to discourage staff members from reporting perceived instances of harassment and other inappropriate behaviour or attacks and from requesting assistance in this context, which is in the public interest of the Union, it must be ensured that persons concerned do not gain knowledge of the request for assistance which concerns them. This might be particularly pertinent in cases where the Authority finds that no harassment within the meaning of the Staff Regulations occurred. In such a situation, the public interest of the Union would require that the person concerned does not gain knowledge of the request for assistance in order to preserve the recourse by staff members to the procedure under Article 24 of the Staff Regulations and to prevent new conflicts. In this respect, the Commission may decide to restrict the rights of the person concerned pursuant to Article 25(1), points (c) and (g) of Regulation (EU) 2018/1725.

([4]) 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).

(12) It might also be necessary to restrict the rights of the person concerned in order to safeguard the prevention, investigation, detection and prosecution of criminal offences, which requestors, complainants or witnesses report to the Commission in relation to the person concerned. For example, requestors, complainants and witnesses may report inappropriate behaviour and psychological and sexual harassment. In such cases, the Commission may decide to restrict the rights of the person concerned pursuant to Article 25(1), point (b) of Regulation (EU) 2018/1725.

(13) The Staff Regulations require the Commission to ensure that requests and complaints under those Regulations are handled confidentially. In order to ensure that confidentiality, while respecting the standards of protection of personal data under Regulation (EU) 2018/1725, it is necessary to adopt internal rules under which the Commission may restrict data subjects' rights in line with Article 25(1), points (b), (c), (g) and (h) of Regulation (EU) 2018/1725.

(14) The internal rules should apply to all processing operations carried out by the Commission in the performance of its tasks regarding the handling of requests and complaints under the Staff Regulations.

(15) In order to comply with Articles 14, 15 and 16 of Regulation (EU) 2018/1725, the Commission should inform all individuals of its activities involving the processing of their personal data and of their rights, in a transparent and coherent manner, by means of a data protection notice published on the Commission's website. Where relevant, the Commission should individually inform, by appropriate means, the data subjects involved in a request or complaint, that is to say, the requestors and complainants, persons concerned and witnesses.

(16) The Commission should handle all restrictions in a transparent manner and register each application of restrictions in the corresponding record system.

(17) As regards restrictions to the application of Article 16 of Regulation (EU) 2018/1725, which provides that where personal data have not been obtained from the data subject, the data subject has to be informed within one month at the latest, the Commission should, within one month, draw up a record describing the reasons for any restriction applied. That record should include a case-by-case assessment of the necessity and proportionality of the restriction.

(18) Pursuant to Article 25(8) of Regulation (EU) 2018/1725, controllers may defer, omit or deny the provision of information relating to the principal reasons for the application of a restriction to the data subject if providing that information would cancel the effect of the restriction. This is particularly the case with respect to restrictions to the application of Articles 16 and 35 of that Regulation.

(19) The Commission should regularly review the restrictions imposed in order to ensure that the data subject's rights to be informed in accordance with Articles 16 and 35 of Regulation (EU) 2018/1725 are restricted only as long as such restrictions are necessary for the reasons listed in recital 8.

(20) The application of restrictions should be reviewed when replying to requests submitted under Articles 22c and 24 and Article 90(1) of the Staff Regulations and to complaints submitted under Article 22c and Article 90(2) of the Staff Regulations, or when closing such requests and complaints, whichever is earlier. Thereafter, the Commission should monitor the need to maintain any restrictions on an annual basis.

(21) In certain cases, it may prove necessary to maintain the application of a restriction, in particular a restriction of the application of Article 16 of Regulation (EU) 2018/1725, until the personal data at issue is no longer retained by the Commission. In such a case, the data subject should not be informed of the processing of his or her personal data. Such a situation could, in particular, occur where there is a high risk that providing information on the processing of personal data to the person concerned would undermine the rights and freedoms of others. This may be the case where the Authority rejects a request for assistance made in good faith for alleged inappropriate behaviour by the person concerned, and where the person concerned and the requestor work together in the same organisational entity. In such a situation, the requestor risks being subject to retaliation and the working atmosphere of the organisational entity risks being affected. In such a case, the personal data of the person concerned should only be retained for as long as the data are relevant for the handling of the request and/or complaint and for as long as the latter may be the subject of litigation.

(22) The Data Protection Officer of the European Commission should carry out an independent review of the application of restrictions, with a view to ensuring compliance with this Decision.

(23) The European Data Protection Supervisor has been consulted and delivered his opinion on 23 September 2021.

HAS ADOPTED THIS DECISION:

Article 1

Subject matter and scope

1. This Decision lays down the rules to be followed by the Commission to inform data subjects of the processing of their personal data in accordance with Articles 14, 15 and 16 of Regulation (EU) 2018/1725 when handling requests and complaints under the Staff Regulations.

It also lays down the conditions under which the Commission may restrict the application of Articles 4, 14 to 17, 19, 20 and 35 of Regulation (EU) 2018/1725, in accordance with Article 25(1), points (b), (c), (g) and (h) thereof.

2. This Decision applies to the processing of personal data by the Commission for the purposes of the handling of requests and complaints pursuant to Articles 22c and 24 and Article 90(1) and (2) of the Staff Regulations.

3. The categories of personal data covered by this Decision include identification, contact and behavioural data as well as special categories of personal data within the meaning of Article 10(1) of Regulation (EU) 2018/1725.

Article 2

Applicable exceptions and restrictions

1. Where the Commission exercises its duties with respect to data subjects' rights under Regulation (EU) 2018/1725, it shall consider whether any of the exceptions laid down in that Regulation apply.

2. Subject to Articles 3 to 7, where the exercise of the rights and obligations provided for in Articles 14 to 17, 19, 20 and 35 of Regulation (EU) 2018/1725 in relation to personal data processed by the Commission would undermine the grounds listed in Article 25(1), points (b), (c), (g) or (h) of that Regulation, the Commission may restrict the application of:

(a) Articles 14 to 17, 19, 20 and 35 of Regulation (EU) 2018/1725; and

(b) The principle of transparency laid down in Article 4(1), point (a), of Regulation (EU) 2018/1725 insofar as its provisions correspond to the rights and obligations provided for in Articles 14 to 17, 19 and 20 of that Regulation, in order to safeguard the prevention, investigation, detection and prosecution of criminal offences, which requestors, complainants or witnesses report to the competent services of the Commission, in relation to the person concerned by allegations of harassment or other inappropriate behaviour or attacks.

3. Paragraphs 1 and 2 shall be without prejudice to the application of other Commission decisions laying down internal rules concerning the provision of information to data subjects and the restriction of certain rights under Article 25 of Regulation (EU) 2018/1725.

4. Any restriction of the rights and obligations referred to in paragraph 2 shall be necessary and proportionate taking into account the risks to the rights and freedoms of data subjects.

5. Before restrictions are applied, the Commission should carry out a 'case-by-case' assessment of their necessity and proportionality. Restrictions shall be limited to what is strictly necessary to achieve their objective.

Article 3

Provision of information to data subjects

1. The Commission shall publish on its website a data protection notice that informs all data subjects of its activities involving processing of their personal data for the purpose of handling requests and complaints under the Staff Regulations.

2. The Commission shall individually inform, by appropriate means, requestors and complainants, the persons concerned, as well as witnesses requested to provide information in relation to such requests or complaints, about the processing of their personal data.

3. Where the Commission restricts in accordance with Article 2, wholly or partly, the provision of information referred to in paragraph 2 to the persons concerned, whose personal data are processed for the purpose of handling requests and complaints under the Staff Regulations, it shall record and register the reasons for the restriction in accordance with Article 6.

Article 4

Right of access by data subjects, right of erasure and right to restriction of processing

1. Where the Commission restricts, wholly or partly, the right of access to personal data by data subjects, the right of erasure, or the right to restriction of processing as referred to in Articles 17, 19 and 20, respectively, of Regulation (EU) 2018/1725, it shall inform the data subject concerned, in its reply to the request for access, erasure or restriction of processing:

(a) of the restriction applied and of the principal reasons therefor;

(b) of the possibility of lodging a complaint with the European Data Protection Supervisor or of seeking a judicial remedy in the Court of Justice of the European Union.

2. The provision of information concerning the reasons for the restriction referred to in paragraph 1 may be deferred, omitted or denied for as long as it would cancel the effect of the restriction.

3. The Commission shall record the reasons for the restriction in accordance with Article 6.

4. Where the right of access is wholly or partly restricted, the data subject may exercise his or her right of access through the intermediary of the European Data Protection Supervisor, in accordance with Article 25(6), (7) and (8) of Regulation (EU) 2018/1725.

Article 5

Communication of personal data breaches to data subjects

Where the Commission restricts the communication of a personal data breach to the data subject, as referred to in Article 35 of Regulation (EU) 2018/1725, it shall record and register the reasons for the restriction in accordance with Article 6. The Commission shall communicate the record to the European Data Protection Supervisor at the time of the notification of the personal data breach.

Article 6

Recording and registering of restrictions

1. The Commission shall record the reasons for any restriction applied pursuant to this Decision, including an assessment of the necessity and proportionality of the restriction, taking into account the relevant elements set out in Article 25(2) of Regulation (EU) 2018/1725.

2. The record shall state how the exercise of the right by the relevant data subject would undermine one or more of the applicable grounds listed in Article 25(1), points (b), (c), (g) and (h) of Regulation (EU) 2018/1725.

3. The record and, where applicable, the documents containing underlying factual and legal elements shall be registered. They shall be made available to the European Data Protection Supervisor on request.

Article 7

Duration of restrictions

1. Restrictions referred to in Articles 3, 4 and 5 shall continue to apply as long as the reasons justifying them remain applicable.

2. Where the reasons for a restriction referred to in Article 3, 4 or 5 no longer apply, the Commission shall lift the restriction.

3. It shall also provide the principal reasons for applying that restriction to the data subject and inform him or her of the possibility of lodging a complaint with the European Data Protection Supervisor at any time or of seeking a judicial remedy in the Court of Justice of the European Union.

4. The Commission shall review the application of the restrictions referred to in Articles 3, 4 and 5 when it replies to requests submitted under Articles 22c and 24 and Article 90(1) of the Staff Regulations, and to complaints, submitted under Article 22c and Article 90(2) of the Staff Regulations, or, when such requests or complaints are closed, whichever is the earlier. Thereafter, the Commission shall monitor the need to maintain any restriction on an annual basis. The review shall include an assessment of the necessity and proportionality of the restriction, taking into account the relevant elements set out in Article 25(2) of Regulation (EU) 2018/1725.

Article 8

Safeguards and storage periods

1. The Commission, respectively the Appeals and Case Monitoring Unit of DG HR shall implement safeguards to prevent abuse and unlawful access to or transfer of personal data in respect of which restrictions apply or could be applied. Such safeguards shall include technical and organisational measures such as:

(a) a clear definition of roles, responsibilities, access rights and procedural steps;

(b) a secure electronic environment to prevent unlawful or accidental access to or transfer of electronic data to unauthorised persons;

(c) a secure storage and processing of paper documents limited to what is strictly necessary to achieve the purpose of processing;

(d) due monitoring of restrictions and a periodic review of their application. The reviews referred to in point (d) shall be conducted at least every six months.

2. Restrictions shall be lifted as soon as the circumstances justifying them no longer apply.

3. The personal data shall be retained in accordance with the applicable Commission retention rules, to be defined in the records kept under Article 31 of Regulation (EU) 2018/1725. At the end of the retention period, the personal data shall be deleted, anonymised or transferred to the archives in accordance with Article 13 of Regulation (EU) 2018/1725.

Article 9

Review by the Data Protection Officer of the Commission

1. The Data Protection Officer of the Commission shall be informed, without undue delay, whenever data subjects' rights are restricted in accordance with this Decision. Upon request, the Data Protection Officer shall be provided with access to the record and any documents containing underlying factual and legal elements.

2. The Data Protection Officer may request a review of the restriction. The Data Protection Officer shall be informed in writing of the outcome of the requested review.

3. The Commission shall document the involvement of the Data Protection Officer in each case where the rights and obligations referred to in Article 2(2) are restricted.

Article 10

Entry into force

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

Done at Brussels, 27 January 2022.

For the Commission
The President
Ursula VON DER LEYEN

ACTS ADOPTED BY BODIES CREATED BY INTERNATIONAL AGREEMENTS

DECISION No 2/2021 OF THE JOINT EUROPEAN UNION/SWITZERLAND AIR TRANSPORT COMMITTEE SET UP UNDER THE AGREEMENT BETWEEN THE EUROPEAN COMMUNITY AND THE SWISS CONFEDERATION ON AIR TRANSPORT

of 8 December 2021

replacing the Annex to the Agreement between the European Community and the Swiss Confederation on Air Transport [2022/122]

THE EUROPEAN UNION/SWITZERLAND AIR TRANSPORT COMMITTEE,

Having regard to the Agreement between the European Community and the Swiss Confederation on Air Transport (the 'Agreement'), and in particular Article 23(4) thereof,

HAS DECIDED AS FOLLOWS:

Article 1

The Annex to this Decision replaces the Annex to the Agreement, as from 1 February 2022.

Article 2

1. Amendments to any act referred to in the Annex to the Agreement, adopted by the European Union in view of the COVID 19 pandemic after the adoption of this Decision and limited to amending the entry into force or date of application of the act or its complete or partial application, or limited to its complete or partial abrogation, shall be communicated to the Swiss Confederation in accordance with Article 23(3) of the Agreement and shall be considered included in the Annex to the Agreement as of their publication in the Official Journal of the European Union without the need for a further decision of the Joint Committee revising the Annex. Information containing a complete reference to the relevant amendments, following their adoption, together with a reference to the present decision, shall be published in the Official Journal of the European Union and in the Official Compilation of Swiss Federal Law. The amendments shall become applicable in Switzerland as of their date of application in the European Union.

2. Paragraph 1 shall apply to acts adopted until 31 December 2022.

Done at Brussels, on 8 December 2021.

For the Joint Committee
The Head of the European Union Delegation
Filip CORNELIS

The Head of the Swiss Delegation
Christian HEGNER

ANNEX

For the purposes of this Agreement:

— By virtue of the Treaty of Lisbon, entered into force on 1 December 2009, the European Union shall replace and succeed the European Community;

— Wherever acts specified in this Annex contain references to Member States of the European Community, as replaced by the European Union, or a requirement for a link with the latter, the references shall, for the purpose of the Agreement, be understood to apply equally to Switzerland or to the requirement of a link with Switzerland;

— The references to Council Regulations (EEC) No 2407/92 and No 2408/92 made in the Articles 4, 15, 18, 27 and 35 of the Agreement, shall be understood as references to Regulation (EC) No 1008/2008 of the European Parliament and of the Council;

— Without prejudice to Article 15 of this Agreement, the term 'Community air carrier' referred to in the following Community directives and regulations shall include an air carrier which is licensed and has its principal place of business and, if any, its registered office in Switzerland in accordance with the provisions of Regulation (EC) No 1008/2008. Any reference to Council Regulation (EEC) No 2407/92 shall be understood as reference to Regulation (EC) No 1008/2008;

— Any reference in the following texts to Articles 81 and 82 of the Treaty or to Articles 101 and 102 of the Treaty on the Functioning of the European Union shall be understood to mean Articles 8 and 9 of this Agreement.

1. **Aviation liberalisation and other civil aviation rules**

Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (Recast), OJ L 293, 31.10.2008, p. 3, as amended by:

— Regulation (EU) 2018/1139, OJ L 212, 22.8.2018, p. 1,

— Regulation (EU) 2020/696, OJ L 165, 27.5.2020, p. 1,

— Commission Delegated Regulation (EU) 2020/2114, OJ L 426, 17.12.2020, p. 1; Regulation (EU) 2020/2114 is applicable in Switzerland in its entirety since 18.12.2020,

— Commission Delegated Regulation (EU) 2020/2115, OJ L 426, 17.12.2020, p. 4; Regulation (EU) 2020/2115 is applicable in Switzerland in its entirety since 18.12.2020.

Council Directive 2000/79 of 27 November 2000 concerning the European Agreement on the Organisation of Working Time of Mobile Workers in Civil Aviation concluded by the Association of European Airlines (AEA), the European Transport Workers' Federation (ETF), the European Cockpit Association (ECA), the European Regions Airline Association (ERA) and the International Air Carrier Association (IACA) (text with EEA relevance), OJ L 302, 1.12.2000, p. 57.

Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time, OJ L 299, 18.11.2003, p. 9.

Regulation (EC) No 437/2003 of the European Parliament and of the Council of 27 February 2003 on statistical returns in respect of the carriage of passengers, freight and mail by air, OJ L 66, 11.3.2003, p. 1.

Commission Regulation (EC) No 1358/2003 of 31 July 2003 implementing Regulation (EC) No 437/2003 of the European Parliament and of the Council on statistical returns in respect of the carriage of passengers, freight and mail by air and amending Annexes I and II thereto, OJ L 194, 1.8.2003, p. 9, as amended by:

— Commission Regulation (EC) No 158/2007, OJ L 49, 17.2.2007, p. 9.

Regulation (EC) No 785/2004 of the European Parliament and of the Council of 21 April 2004 on insurance requirements for air carriers and aircraft operators OJ L 138, 30.4.2004, p. 1, as amended by:

— Commission Regulation (EU) No 285/2010, OJ L 87, 7.4.2010, p. 19,

— Commission Delegated Regulation (EU) 2020/1118, OJ L 243, 29.7.2020, p. 1.

Council Regulation (EEC) No 95/93 of 18 January 1993 on common rules for the allocation of slots at Community airports, OJ L 14, 22.1.1993, p. 1 (Articles 1-12), as amended by:

— Regulation (EC) No 793/2004, OJ L 138, 30.4.2004, p. 50,

— Regulation (EU) 2020/459, OJ L 99, 31.3.2020, p. 1,

— Commission Delegated Regulation (EU) 2020/1477, OJ L 338, 15.10.2020, p. 4,

— Regulation (EU) 2021/250, OJ L 58, 19.2.2021, p. 1; paragraphs 1 and 4 of Article 10a of Regulation (EEC) No 95/93, as amended by paragraph (6) of Article 1 of Regulation (EU) 2021/250, are applicable in Switzerland since 20.2.2021.

Directive 2009/12/EC of the European Parliament and of the Council of 11 March 2009 on airport charges (Text with EEA relevance), OJ L 70, 14.3.2009, p. 11.

Council Directive 96/67/EC of 15 October 1996 on access to the groundhandling market at Community airports, OJ L 272, 25.10.1996, p. 36.

(Articles 1-9, 11-23, and 25).

Regulation (EC) No 80/2009 of the European Parliament and of the Council of 14 January 2009 on a Code of Conduct for computerised reservation systems and repealing Council Regulation (EEC) No 2299/89 (text with EEA relevance), OJ L 35, 4.2.2009, p. 47.

2. **Competition rules**

Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (Text with EEA relevance), OJ L 1, 4.1.2003, p. 1 (Articles 1-13, 15-45)

(To the extent that this Regulation is relevant for the application of this Agreement. The insertion of this Regulation does not affect the division of tasks according to this Agreement.)

Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty (Text with EEA relevance), OJ L 123, 27.4.2004, p. 18, as amended by:

— Commission Regulation (EC) No 1792/2006, OJ L 362, 20.12.2006, p. 1,

— Commission Regulation (EC) No 622/2008, OJ L 171, 1.7.2008, p. 3.

Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (text with EEA relevance), OJ L 24, 29.1.2004, p. 1.

(Article 1-18, 19(1)-(2), and 20-23)

With respect to Article 4(5) of the Merger Regulation the following shall apply between the European Community and Switzerland:

(1) With regard to a concentration as defined in Article 3 of Regulation (EC) No 139/2004 which does not have a Community dimension within the meaning of Article 1 of that Regulation and which is capable of being reviewed under the national competition laws of at least three EC Member States and the Swiss Confederation, the persons or undertakings referred to in Article 4(2) of that Regulation may, before any notification to the competent authorities, inform the EC Commission by means of a reasoned submission that the concentration should be examined by the Commission.

(2) The European Commission shall transmit all submissions pursuant to Article 4(5) of Regulation (EC) No 139/2004 and the previous paragraph to the Swiss Confederation without delay.

(3) Where the Swiss Confederation has expressed its disagreement as regards the request to refer the case, the competent Swiss competition authority shall retain its competence, and the case shall not be referred from the Swiss Confederation pursuant to this paragraph.

With respect to time limits referred to in Articles 4(4) and (5), Articles 9(2) and (6), and Articles 22(2) of the Merger Regulation:

(1) The European Commission shall transmit all the relevant documents pursuant to Articles 4(4) and (5), Articles 9(2) and (6) and Article 22(2) to the competent Swiss competition authority without delay.

(2) The calculation of the time limits referred to in Articles 4(4) and (5), Articles 9(2) and (6), and Article 22(2) of Regulation (EC) No 139/2004 shall start, for the Swiss Confederation, upon receipt of the relevant documents by the competent Swiss competition authority.

Commission Regulation (EC) No 802/2004 of 21 April 2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (text with EEA relevance), OJ L 133, 30.4.2004, p. 1 (Articles 1-24), as amended by:

— Commission Regulation (EC) No 1792/2006, OJ L 362, 20.12.2006, p. 1,

— Commission Regulation (EC) No 1033/2008, OJ L 279, 22.10.2008, p. 3,

— Commission Implementing Regulation (EU) No 1269/2013, OJ L 336, 14.12.2013, p. 1.

Commission Directive 2006/111/EC of 16 November 2006 on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings (Codified version) (text with EEA relevance), OJ L 318, 17.11.2006, p. 17.

Council Regulation (EC) No 487/2009 of 25 May 2009 on the application of Article 81(3) of the Treaty to certain categories of agreements and concerted practices in the air transport sector (codified version) (text with EEA relevance), OJ L 148, 11.6.2009, p. 1.

3. **Aviation safety**

Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018 on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency, and amending Regulations (EC) No 2111/2005, (EC) No 1008/2008, (EU) No 996/2010, (EU) No 376/2014 and Directives 2014/30/EU and 2014/53/EU of the European Parliament and of the Council, and repealing Regulations (EC) No 552/2004 and (EC) No 216/2008 of the European Parliament and of the Council and Council Regulation (EEC) No 3922/91, OJ L 212, 22.8.2018, p. 1, as amended by:

— Commission Delegated Regulation (EU) 2021/1087, OJ L 236, 5.7.2021, p. 1.

The Agency shall enjoy also in Switzerland the powers granted to it under the provisions of the Regulation.

The Commission shall enjoy also in Switzerland the powers granted to it for decisions pursuant to Article 2(6),(7), Article 41(6), Article 62(5), Article 67(2),(3), Article 70(4), Article 71(2), Article 76(4), Article 84(1), Article 85(9), Article 104(3)(i), Article 105(1) and Article 106(1),(6).

Notwithstanding the horizontal adaptation provided for in the second indent of the Annex to the Agreement between the European Community and the Swiss Confederation on Air Transport, the references to the 'Member States' made in the provisions of Regulation (EU) No 182/2011 mentioned in Article 127 of Regulation (EU) 2018/1139 shall not be understood to apply to Switzerland.

Nothing in this Regulation shall be construed so as to transfer to the EASA authority to act on behalf of Switzerland under international agreements for other purposes than to assist in the performance of its obligations pursuant to such agreements.

The text of the Regulation shall, for the purposes of this Agreement, be read with the following adaptations:

(a) Article 68 is amended as follows:

(i) in paragraph 1(a), the words 'or Switzerland' shall be inserted after the words 'the Union';

(ii) the following paragraph is added:

'4. Whenever the Union negotiates with a third country in order to conclude an agreement providing that a Member State or the Agency may issue certificates on the basis of certificates issued by the aeronautical authorities of that third country, it shall endeavour to obtain for Switzerland an offer of a similar agreement with the third country in question. Switzerland shall, in turn, endeavour to conclude with third countries agreements corresponding to those of the Union'.

(b) In Article 95, the following paragraph shall be added:

'3. By way of derogation from Article 12(2)(a) of the Conditions of Employment of Other Servants of the European Union, Swiss nationals enjoying their full rights as citizens may be engaged under contract by the Executive Director of the Agency.'

(c) In Article 96, the following paragraph is added:

'Switzerland shall apply to the Agency the Protocol on the Privileges and Immunities of the European Union, which is set out as Annex A to the present Annex, in accordance with the Appendix to Annex A.'

(d) In Article 102, the following paragraph is added:

'5. Switzerland shall participate fully in the Management Board and shall within it have the same rights and obligations as European Union Member States, except for the right to vote'.

(e) In Article 120, the following paragraph shall be added:

'13. Switzerland shall participate in the financial contribution referred to in paragraph 1(b), according to the following formula:

$$S\ (0.2/100) + S\ [1 - (a+b)\ 0.2/100]\ c/C$$

where:

S = the part of the budget of the Agency not covered by the fees and charges mentioned in paragraph 1 (c) and (d)

a = the number of Associated States

b = the number of EU Member States

c = the contribution of Switzerland to the ICAO budget,

C = the total contribution of the EU Member States and of the Associated States to the ICAO budget.'

(f) In Article 122, the following paragraph is added:

'6. The provisions relating to financial control by the Union in Switzerland concerning the participants in the activities of the Agency are set out in Annex B to the present Annex.'

(g) Annex I to the Regulation shall be extended to include the following aircraft as products covered by Article 3(1)(a) of Commission Regulation (EU) No 748/2012 of 3 August 2012 laying down implementing rules for the airworthiness and environmental certification of aircraft and related products, parts and appliances, as well as for the certification of design and production organisations ([1]):

A/c - [HB-JES] – type Gulfstream G-V

A/c - [HB-ZDF] – type MD900.

(h) In Article 132(1), the reference to Regulation (EU) 2016/679 shall be understood, regarding Switzerland, as a reference to relevant national legislation.

(i) Article 140(6) does not apply to Switzerland.

([1]) OJ L 224, 21.8.2012, p. 1.

Commission Regulation (EU) No 1178/2011 of 3 November 2011 laying down technical requirements and administrative procedures related to civil aviation aircrew pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council, OJ L 311, 25.11.2011, p. 1, as amended by:

— Commission Regulation (EU) No 290/2012, OJ L 100, 5.4.2012, p. 1,

— Commission Regulation (EU) No 70/2014, OJ L 23, 28.1.2014, p. 25,

— Commission Regulation (EU) No 245/2014, OJ L 74, 14.3.2014, p. 33,

— Commission Regulation (EU) 2015/445, OJ L 74, 18.3.2015, p. 1,

— Commission Regulation (EU) 2016/539, OJ L 91, 7.4.2016, p. 1,

— Commission Regulation (EU) 2018/1065, OJ L 192, 30.7.2018. p. 21,

— Commission Regulation (EU) 2018/1119, OJ L 204, 13.8.2018, p. 13,

— Commission Regulation (EU) 2018/1974, OJ L 326, 20.12.2018, p. 1,

— Commission Regulation (EU) 2019/27, OJ L 8, 10.1.2019, p. 1,

— Commission Implementing Regulation (EU) 2019/430, OJ L 75, 19.3.2019, p. 66,

— Commission Implementing Regulation (EU) 2019/1747, OJ L 268, 22.10.2019, p. 23,

— Commission Implementing Regulation (EU) 2020/359, OJ L 67, 5.3.2020, p. 82,

— Commission Delegated Regulation (EU) 2020/723, OJ L 170, 2.6.2020, p. 1,

— Commission Implementing Regulation (EU) 2020/2193, OJ L 434, 23.12.2020, p. 13,

— Commission Implementing Regulation (EU) 2021/1310, OJ L 284, 9.8.2021, p. 15.

Commission Delegated Regulation (EU) 2020/723 of 4 March 2020 laying down detailed rules with regard to the acceptance of third-country certification of pilots and amending Regulation (EU) No 1178/2011, OJ L 170, 2.6.2020, p. 1.

Council Regulation (EEC) No 3922/91 of 16 December 1991 on the harmonisation of technical requirements and administrative procedures in the field of civil aviation, OJ L 373, 31.12.1991, p. 4 (Articles 1-3, 4(2), (5-11, and 13), as amended by:

— Regulation (EC) No 1899/2006, OJ L 377, 27.12.2006, p. 1,

— Regulation (EC) No 1900/2006, OJ L 377, 27.12.2006, p. 176,

— Commission Regulation (EC) No 8/2008, OJ L 10, 12.1.2008, p. 1,

— Commission Regulation (EC) No 859/2008, OJ L 254, 20.9.2008, p. 1.

In Accordance with Article 139 of Regulation (EU) 2018/1139, Regulation (EEC) No 3922/91 is repealed from the date of application of the detailed rules adopted pursuant to point (a) of Article 32(1) of Regulation (EU) 2018/1139 on flight and duty time limitations and rest requirements with regard to air taxi, emergency medical service and single pilot commercial air transport operations by aeroplanes.

Regulation (EU) No 996/2010 of the European Parliament and of the Council of 20 October 2010 on the investigation and prevention of accidents and incidents in civil aviation and repealing Directive 94/56/EC (text with EEA relevance), OJ L 295, 12.11.2010, p. 35, as amended by:

— Regulation (EU) No 376/2014, OJ L 122, 24.4.2014, p. 18,

— Regulation (EU) 2018/1139, OJ L 212, 22.8.2018, p. 1.

Commission Regulation (EC) No 104/2004 of 22 January 2004 laying down rules on the organisation and composition of the Board of Appeal of the European Aviation Safety Agency, OJ L 16, 23.1.2004, p. 20.

Regulation (EC) No 2111/2005 of the European Parliament and of the Council of 14 December 2005 on the establishment of a Community list of air carriers subject to an operating ban within the Community and on informing air transport passengers of the identity of the operating air carrier, and repealing Article 9 of directive 2004/36/EC (text with EEA relevance), OJ L 344, 27.12.2005, p. 15, as amended by:

— Regulation (EU) 2018/1139, OJ L 212, 22.8.2018, p. 1.

Commission Regulation (EC) No 473/2006 of 22 March 2006 laying down implementing rules for the Community list of air carriers which are subject to an operating ban within the Community referred to in Chapter II of Regulation (EC) No 2111/2005 of the European Parliament and of the Council (text with EEA relevance), OJ L 84, 23.3.2006, p. 8.

Commission Regulation (EC) No 474/2006 of 22 March 2006 establishing the Community list of air carriers which are subject to an operating ban within the Community referred to in Chapter II of Regulation (EC) No 2111/2005 of the European Parliament and of the Council, OJ L 84, 23.3.2006, p. 14, as last amended by:

— Commission Implementing Regulation (EU) 2021/883, OJ L 194, 2.6.2021, p. 22.

Commission Regulation (EU) No 1332/2011 of 16 December 2011 laying down common airspace usage requirements and operating procedures for airborne collision avoidance (text with EEA relevance), OJ L 336, 20.12.2011, p. 20, as amended by:

— Commission Regulation (EU) 2016/583, OJ L 101, 16.4.2016, p. 7.

Commission Implementing Regulation (EU) No 646/2012 of 16 July 2012 laying down detailed rules on fines and periodic penalty payments pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council (text with EEA relevance), OJ L 187, 17.7.2012, p. 29.

Commission Regulation (EU) No 748/2012 of 3 August 2012 laying down implementing rules for the airworthiness and environmental certification of aircraft and related products, parts and appliances, as well as for the certification of design and production organisations, OJ L 224, 21.8.2012, p. 1, as amended by:

— Commission Regulation (EU) No 7/2013, OJ L 4, 9.1.2013, p. 36,

— Commission Regulation (EU) No 69/2014, OJ L 23, 28.1.2014, p. 12,

— Commission Regulation (EU) 2015/1039, OJ L 167, 1.7.2015, p. 1,

— Commission Regulation (EU) 2016/5, OJ L 3,6.1.2016, p. 3,

— Commission Delegated Regulation (EU) 2019/897, OJ L144, 3.6.2019, p. 1,

— Commission Delegated Regulation (EU) 2020/570, OJ L 132, 27.4.2020, p. 1,

— Commission Delegated Regulation (EU) 2021/699, OJ L 145, 28.4.2021, p. 1,

— Commission Delegated Regulation (EU) 2021/1088, OJ L 236, 5.7.2021, p. 3.

Commission Regulation (EU) No 965/2012 of 5 October 2012 laying down technical requirements and administrative procedures related to air operations pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council, OJ L 296, 25.10.2012, p. 1, as amended by:

— Commission Regulation (EU) No 800/2013, OJ L 227, 24.8.2013, p. 1,

— Commission Regulation (EU) No 71/2014, OJ L 23, 28.1.2014, p. 27,

— Commission Regulation (EU) No 83/2014, OJ L 28, 31.1.2014, p. 17,

— Commission Regulation (EU) No 379/2014, OJ L 123, 24.4.2014, p. 1,

— Commission Regulation (EU) 2015/140, OJ L 24, 30.1.2015, p. 5,

— Commission Regulation (EU) 2015/1329, OJ L 206, 1.8.2015, p. 21,

— Commission Regulation (EU) 2015/640, OJ L 106, 24.4.2015, p. 18,

— Commission Regulation (EU) 2015/2338, OJ L 330, 16.12.2015, p. 1,

— Commission Regulation (EU) 2016/1199, OJ L 198, 23.7.2016, p. 13,

— Commission Regulation (EU) 2017/363, OJ L 55, 2.3.2017, p. 1,

— Commission Regulation (EU) 2018/394, OJ L 71, 14.3.2018, p. 1,

— Commission Regulation (EU) 2018/1042, OJ L 188, 25.7.2018, p. 3 with the exception of the new Article 4.2 of Regulation (EU) 965/2012, as provided for in Article 1(1) of Regulation (EU) 2018/1042, as amended by:

  — Commission Implementing Regulation (EU) 2020/745, OJ L 176, 5.6.2020, p. 11,

— Commission Implementing Regulation (EU) 2018/1975, OJ L 326, 20.12.2018, p. 53,

— Commission Implementing Regulation (EU) 2019/1387, OJ L 229, 5.9.2019, p. 1, as amended by:

  — Commission Implementing Regulation (EU) 2020/1176, OJ L 259, 10.8.2020, p. 10,

— Commission Implementing Regulation (EU) 2019/1384, OJ L 228, 4.9.2019, p. 106,

— Commission Implementing Regulation (EU) 2020/2036, OJ L 416, 11.12.2020, p. 24; paragraphs 4 to 6 of the Annex to Regulation (EU) 2020/2036 are applicable in Switzerland since 31.12.2020,

— Commission Implementing Regulation (EU) 2021/1062, OJ L 229, 29.6.2021, p. 3.

Commission Implementing Regulation (EU) No 628/2013 of 28 June 2013 on working methods of the European Aviation Safety Agency for conducting standardisation inspections and for monitoring the application of the rules of Regulation (EC) No 216/2008 of the European Parliament and of the Council and repealing Commission Regulation (EC) No 736/2006 (text with EEA relevance), OJ L 179, 29.6.2013, p. 46.

Commission Regulation (EU) No 139/2014 of 12 February 2014 laying down requirements and administrative procedures related to aerodromes pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council (text with EEA relevance), OJ L 44, 14.2.2014, p. 1, as amended by:

— Commission Regulation (EU) 2017/161, OJ L 27, 1.2.2017, p. 99,

— Commission Regulation (EU) 2018/401, OJ L 72, 15.3.2018, p. 17,

— Commission Implementing Regulation (EU) 2020/469, OJ L 104, 3.4.2020, p. 1, as amended by:

  — Commission Implementing Regulation (EU) 2020/1177, OJ L 259, 10.8.2020, p. 12,

— Commission Delegated Regulation (EU) 2020/1234, OJ L 282, 31.8.2020, p. 1,

— Commission Delegated Regulation (EU) 2020/2148, OJ L 428, 18.12.2020, p. 10.

Commission Implementing Regulation (EU) 2019/2153 of 16 December 2019 on the fees and charges levied by the European Union Aviation Safety Agency, and repealing Regulation (EU) No 319/2014, OJ L 327, 17.12.2019, p. 36.

Regulation (EU) No 376/2014 of the European Parliament and of the Council of 3 April 2014 on the reporting, analysis and follow-up of occurrences in civil aviation, amending Regulation (EU) No 996/2010 of the European Parliament and of the Council and repealing Directive 2003/42/EC of the European Parliament and of the Council and Commission Regulations (EC) No 1321/2007 and (EC) No 1330/2007 (text with EEA relevance), OJ L 122, 24.4.2014, p. 18, as amended by:

— Regulation (EU) 2018/1139, OJ L 212, 22.8.2018, p. 1.

Commission Regulation (EU) No 452/2014 of 29 April 2014 laying down technical requirements and administrative procedures related to air operations of third country operators pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council (text with EEA relevance), OJ L 133, 6.5.2014, p. 12, as amended by:

— Commission Regulation (EU) 2016/1158, OJ L 192, 16.7.2016, p. 21.

Commission Regulation (EU) No 1321/2014 of 26 November 2014 on the continuing airworthiness of aircraft and aeronautical products, parts and appliances, and on the approval of organisations and personnel involved in these tasks (text with EEA relevance), OJ L 362, 17.12.2014, p. 1, as amended by:

— Commission Regulation (EU) 2015/1088, OJ L 176, 7.7.2015, p. 4,

— Commission Regulation (EU) 2015/1536, OJ L 241, 17.9.2015, p. 16,

— Commission Regulation (EU) 2017/334, OJ L 50, 28.2.2017, p. 13,

— Commission Regulation (EU) 2018/1142, OJ L 207, 16.8.2018, p. 2,

— Commission Implementing Regulation (EU) 2019/1383, OJ L 228, 4.9.2019, p. 1,

— Commission Implementing Regulation (EU) 2019/1384, OJ L 228, 4.9.2019, p. 106,

— Commission Implementing Regulation (EU) 2020/270, OJ L 56, 27.2.2020, p. 20,

— Commission Implementing Regulation (EU) 2020/1159, OJ L 257, 6.8.2020, p. 14,

— Commission Implementing Regulation (EU) 2021/685, OJ L 143, 27.4.2021, p. 6,

— Commission Implementing Regulation (EU) 2021/700, OJ L 145, 28.4.2021, p. 20; point (1) of Article 1 and points (5), (6) and (8) of Annex I of Regulation (EU) 2021/700 are applicable in Switzerland since 18.05.2021.

Commission Regulation (EU) 2015/340 of 20 February 2015 laying down technical requirements and administrative procedures relating to air traffic controllers' licences and certificates pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council, amending Commission Implementing Regulation (EU) No 923/2012 and repealing Commission Regulation (EU) No 805/2011 (text with EEA relevance), OJ L 63, 6.3.2015, p. 1.

Commission Regulation (EU) 2015/640 of 23 April 2015 on additional airworthiness specifications for a given type of operations and amending Regulation (EU) No 965/2012, OJ L 106, 24.4.2015, p. 18, as amended by:

— Commission Implementing Regulation (EU) 2019/133, OJ L 25, 29.1.2019, p. 14,

— Commission Implementing Regulation (EU) 2020/1159, OJ L 257, 6.8.2020, p. 14,

— Commission Implementing Regulation (EU) 2021/97, OJ L 31, 29.1.2021, p. 208; article 1 of Regulation (EU) 2021/97 is applicable in Switzerland since 26.02.2021, except for point (1) of Annex I, which is applicable in Switzerland since 16.02.2021.

Commission Implementing Regulation (EU) 2015/1018 of 29 June 2015 laying down a list classifying occurrences in civil aviation to be mandatorily reported according to Regulation (EU) No 376/2014 of the European Parliament and of the Council (text with EEA relevance), OJ L 163, 30.6.2015, p. 1.

Commission Decision (EU) 2016/2357 of 19 December 2016 regarding the lack of effective compliance with Regulation (EC) No 216/2008 of the European Parliament and of the Council and its implementing rules in respect of certificates issued by the Hellenic Aviation Training Academy (HATA), and Part-66 licenses issued on the basis thereof (notified under document C(2016) 8645), OJ L 348, 21.12.2016, p. 72.

Commission Regulation (EU) 2018/395 of 13 March 2018 laying down detailed rules for the operation of balloons as well as for the flight crew licensing for balloons pursuant to Regulation (EU) 2018/1139 of the European Parliament and of the Council, OJ L 71, 14.3.2018, p. 10, as amended by:

— Commission Implementing Regulation (EU) 2020/357, OJ L 67, 5.3.2020, p. 34.

Commission Implementing Regulation (EU) 2018/1976 of 14 December 2018 laying down detailed rules for the operation of sailplanes as well as for the flight crew licensing for sailplanes pursuant to Regulation (EU) 2018/1139 of the European Parliament and of the Council, OJ L 326, 20.12.2018, p. 64, as amended by:

— Commission Implementing Regulation (EU) 2020/358, OJ L 67, 5.3.2020, p. 57.

Regulation (EU) 2019/494 of the European Parliament and of the Council of 25 March 2019 on certain aspects of aviation safety with regard to the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the Union (text with EEA relevance), OJ L 85 I, 27.3.2019, p. 11.

Commission Implementing Decision (EU) 2019/1128 of 1 July 2019 on access rights to safety recommendations and responses stored in the European Central Repository and repealing Decision 2012/780/EU (Text with EEA relevance), OJ L 177, 2.7.2019, p. 112.

Commission Delegated Regulation (EU) 2020/2034 of 6 October 2020 supplementing Regulation (EU) No 376/2014 of the European Parliament and of the Council as regards the common European risk classification scheme (Text with EEA relevance), OJ L 416, 11.12.2020, p. 1.

4. **Aviation Security**

Regulation (EC) No 300/2008 of the European Parliament and of the Council of 11 March 2008 on common rules in the field of civil aviation security and repealing Regulation (EC) No 2320/2002 (text with EEA relevance), OJ L 97, 9.4.2008, p. 72.

Commission Regulation (EC) No 272/2009 of 2 April 2009 supplementing the common basic standards on civil aviation security laid down in the Annex to Regulation (EC) No 300/2008 of the European Parliament and of the Council, OJ L 91, 3.4.2009, p. 7, as amended by:

— Commission Regulation (EU) No 297/2010, OJ L 90, 10.4.2010, p. 1,

— Commission Regulation (EU) No 720/2011, OJ L 193, 23.7.2011, p. 19,

— Commission Regulation (EU) No 1141/2011, OJ L 293, 11.11.2011, p. 22,

— Commission Regulation (EU) No 245/2013, OJ L 77, 20.3.2013, p. 5.

Commission Regulation (EU) No 1254/2009 of 18 December 2009 setting criteria to allow Member States to derogate from the common basic standards on civil aviation security and to adopt alternative security measures (text with EEA relevance), OJ L 338, 19.12.2009, p. 17, as amended by:

— Commission Regulation (EU) 2016/2096, OJ L 326, 1.12.2016, p. 7.

Commission Regulation (EU) No 18/2010 of 8 January 2010 amending Regulation (EC) No 300/2008 of the European Parliament and of the Council as far as specifications for national quality control programmes in the field of civil aviation security are concerned, OJ L 7, 12.1.2010, p. 3.

Commission Regulation (EU) No 72/2010 of 26 January 2010 laying down procedures for conducting Commission inspections in the field of aviation security (text with EEA relevance), OJ L 23, 27.1.2010, p. 1, as amended by:

— Commission Implementing Regulation (EU) 2016/472, OJ L 85, 1.4.2016, p. 28.

Commission Implementing Regulation (EU) 2015/1998 of 5 November 2015 laying down detailed measures for the implementation of the common basic standards on aviation security (text with EEA relevance), OJ L 299, 14.11.2015, p. 1, as amended by:

— Commission Implementing Regulation (EU) 2015/2426, OJ L 334, 22.12.2015, p. 5,

— Commission Implementing Regulation (EU) 2017/815, OJ L 122, 13.5.2017, p. 1,

— Commission Implementing Regulation (EU) 2018/55, OJ L 10, 13.1.2018, p. 5,

— Commission Implementing Regulation (EU) 2019/103, OJ L 21, 24.1.2019, p. 13, as amended by:

  — Commission Implementing Regulation (EU) 2020/910, OJ L 208, 1.7.2020, p. 43,

— Commission Implementing Regulation (EU) 2019/413, OJ L 73, 15.3.2019, p. 98,

— Commission Implementing Regulation (EU) 2019/1583, OJ L 246, 26.9.2019, p. 15, as amended by:

  — Commission Implementing Regulation (EU) 2020/910, OJ L 208, 1.7.2020, p. 43.

— Commission Implementing Regulation (EU) 2020/111, OJ L 21, 27.1.2020, p. 1,

— Commission Implementing Regulation (EU) 2020/910, OJ L 208, 1.7.2020, p. 43,

— Commission Implementing Regulation (EU) 2021/255, OJ L 58, 19.2.2021, p. 23; points 15, 18 to 19 and 32 of the Annex to Regulation (EU) 2021/255 are applicable in Switzerland since 11.03.2021.

Commission Implementing Decision C(2015) 8005 of 16 November 2015 laying down detailed measures for the implementation of the common basic standards on aviation security containing information, as referred to in point (a) of Article 18 of Regulation (EC) No 300/2008 (not published in the OJ) as amended by:

— Commission Implementing Decision C(2017) 3030,

— Commission Implementing Decision C(2018) 4857,

— Commission Implementing Decision C(2019) 132, as amended by:

  — Commission Implementing Decision C(2020) 4241,

— Commission Implementing Decision C(2021) 0996.

5. **Air traffic management**

Regulation (EC) No 549/2004 of the European Parliament and of the Council of 10 March 2004 laying down the framework for the creation of the Single European Sky (the Framework Regulation) (text with EEA relevance), OJ L 96, 31.3.2004, p. 1, as amended by:

— Regulation (EC) No 1070/2009, OJ L 300, 14.11.2009, p. 34.

The Commission shall enjoy in Switzerland the powers granted to it pursuant to Articles 6, 8, 10, 11 and 12.

Article 10 shall be amended as follows:

In paragraph 2, the words 'at Community level' should be replaced by words 'at Community level, involving Switzerland'.

Notwithstanding the horizontal adjustment referred to in the second indent of the Annex to the Agreement between the European Community and the Swiss Confederation on Air Transport, the references to the 'Member States' made in Article 5 of Regulation (EC) No 549/2004 or in the provisions of Decision 1999/468/EC mentioned in that provision shall not be understood to apply to Switzerland.

Regulation (EC) No 550/2004 of the European Parliament and of the Council of 10 March 2004 on the provision of air navigation services in the Single European Sky (the Service Provision Regulation) (text with EEA relevance), OJ L 96, 31.3.2004, p. 10, as amended by:

— Regulation (EC) No 1070/2009, OJ L 300, 14.11.2009, p. 34.

The Commission shall enjoy towards Switzerland the powers granted to it pursuant to Articles 9a, 9b, 15, 15a, 16 and 17.

The provisions of the Regulation shall, for the purposes of this Agreement, be amended as follows:

(a) Article 3 shall be amended as follows:

In paragraph 2, the words 'and Switzerland' shall be inserted after the words 'the Community'.

(b) Article 7 is amended as follows:

In paragraph 1 and paragraph 6, the words 'and Switzerland' shall be inserted after the words 'the Community'.

(c) Article 8 is amended as follows:

In paragraph 1, the words 'and Switzerland' shall be inserted after the words 'the Community'.

(d) Article 10 is amended as follows:

In paragraph 1, the words 'and Switzerland' shall be inserted after the words 'the Community'.

(e) Article 16(3) is replaced by the following:

'3. The Commission shall address its decision to the Member States and inform the service provider thereof, in so far as it is legally concerned.'

Regulation (EC) No 551/2004 of the European Parliament and of the Council of 10 March 2004 on the organisation and use of the airspace in the Single European Sky (the Airspace Regulation) (text with EEA relevance), OJ L 96, 31.3.2004, p. 20, as amended by:

— Regulation (EC) No 1070/2009, OJ L 300, 14.11.2009, p. 34.

The Commission shall enjoy in Switzerland the powers granted to it pursuant to Articles 3a, 6 and 10.

Regulation (EC) No 552/2004 of the European Parliament and of the Council of 10 March 2004 on the interoperability of the European Air Traffic Management network (the Interoperability Regulation) (text with EEA relevance), OJ L 96, 31.3.2004, p. 26, as amended by:

— Regulation (EC) No 1070/2009, OJ L 300, 14.11.2009, p. 34.

The Commission shall enjoy in Switzerland the powers granted to it pursuant to Articles 4, 7 and 10(3).

The provisions of the Regulation shall, for the purposes of this Agreement, be amended as follows:

(a) Article 5 is amended as follows:

In paragraph 2, the words 'or Switzerland' shall be inserted after the words 'the Community'.

(b) Article 7 is amended as follows:

In paragraph 4, the words 'or Switzerland' shall be inserted after the words 'the Community'.

(c) Annex III shall be amended as follows:

In section 3, second and last indents, the words 'or Switzerland' shall be inserted after the words 'the Community'.

In accordance with Article 139 of Regulation (EU) 2018/1139, Regulation (EC) No 552/2004 is repealed with effect from 11 September 2018. However, Articles 4, 5, 6, 6a and 7 of that Regulation and Annexes III and IV thereto shall continue to apply until the date of application of the delegated acts referred to in Article 47 of Regulation 2018/1139 and insofar as those acts cover the subject matter of the relevant provisions of Regulation (EC) No 552/2004, and in any case not later than 12 September 2023.

Commission Regulation (EC) No 2150/2005 of 23 December 2005 laying down common rules for the flexible use of airspace (text with EEA relevance), OJ L 342, 24.12.2005, p. 20.

Commission Regulation (EC) No 1033/2006 of 4 July 2006 laying down the requirements on procedures for flight plans in the pre-flight phase for the Single European Sky (text with EEA relevance), OJ L 186, 7.7.2006, p. 46, as amended by:

— Commission Implementing Regulation (EU) No 923/2012, OJ L 281, 13.10.2012, p. 1, as amended by:

  — Commission Implementing Regulation (EU) 2020/886, OJ L 205, 29.6.2020, p. 14,

  — Commission Implementing Regulation (EU) 2020/469, OJ L 104, 3.4.2020, p. 1, as amended by:

    — Commission Implementing Regulation (EU) 2020/1177, OJ L 259, 10.8.2020, p. 12,

— Commission Implementing Regulation (EU) No 428/2013, OJ L 127, 9.5.2013, p. 23,

— Commission Implementing Regulation (EU) 2016/2120, OJ L 329, 3.12.2016, p. 70,

— Commission Implementing Regulation (EU) 2018/139, OJ L 25, 30.1.2018, p. 4.

Commission Regulation (EC) No 1032/2006 of 6 July 2006 laying down requirements for automatic systems for the exchange of flight data for the purpose of notification, coordination and transfer of flights between air traffic control units (text with EEA relevance), OJ L 186, 7.7.2006, p. 27, as amended by:

— Commission Regulation (EC) No 30/2009, OJ L 13, 17.1.2009, p. 20.

Council Regulation (EC) No 219/2007 of 27 February 2007 on the establishment of a Joint Undertaking to develop the new generation European air traffic management system (SESAR), OJ L 64, 2.3.2007, p. 1, as amended by:

— Council Regulation (EC) No 1361/2008, OJ L 352, 31.12.2008, p. 12,

— Council Regulation (EU) No 721/2014, OJ L 192, 1.7.2014, p. 1.

Commission Regulation (EC) No 633/2007 of 7 June 2007 laying down requirements for the application of a flight message transfer protocol used for the purpose of notification, coordination and transfer of flights between air traffic control units (text with EEA relevance), OJ L 146, 8.6.2007, p. 7, as amended by:

— Commission Regulation (EU) No 283/2011, OJ L 77, 23.3.2011, p. 23.

Commission Implementing Regulation (EU) 2017/373 of 1 March 2017 laying down common requirements for providers of air traffic management/air navigation services and other air traffic management network functions and their oversight, repealing Regulation (EC) No 482/2008, Implementing Regulations (EU) No 1034/2011, (EU) No 1035/2011 and (EU) 2016/1377 and amending Regulation (EU) No 677/2011 (text with EEA relevance), OJ L 62, 8.3.2017, p. 1, as amended by:

— Commission Implementing Regulation (EU) 2020/469, OJ L 104, 3.4.2020, p. 1, as amended by:

  — Commission Implementing Regulation (EU) 2020/1177, OJ L 259, 10.8.2020, p. 12,

— Commission Implementing Regulation (EU) 2021/1338, OJ L 289, 12.8.2021, p. 12.

Commission Regulation (EC) No 29/2009 of 16 January 2009 laying down requirements on data link services for the Single European Sky (text with EEA relevance), OJ L 13, 17.1.2009, p. 3, as amended by:

— Commission Implementing Regulation (EU) 2015/310, OJ L 56, 27.2.2015, p. 30,

— Commission Implementing Regulation (EU) 2019/1170, OJ L 183, 9.7.2019, p. 6,

— Commission Implementing Regulation (EU) 2020/208, OJ L 43, 17.2.2020, p. 72.

The text of the Regulation shall, for the purposes of this Agreement, be read with the following adaptation:

'Switzerland UIR' is added in Annex I, part A.

Commission Regulation (EC) No 262/2009 of 30 March 2009 laying down requirements for the coordinated allocation and use of Mode S interrogator codes for the Single European Sky (text with EEA relevance), OJ L 84, 31.3.2009, p. 20, as amended by:

— Commission Implementing Regulation (EU) 2016/2345, OJ L 348, 21.12.2016, p. 11.

Commission Regulation (EU) No 73/2010 of 26 January 2010 laying down requirements on the quality of aeronautical data and aeronautical information for the Single European Sky (text with EEA relevance), OJ L 23, 27.1.2010, p. 6, as amended by:

— Commission Implementing Regulation (EU) No 1029/2014, OJ L 284, 30.9.2014, p. 9.

Regulation (EU) No 73/2010 is repealed with effect from 27.1.2022.

Commission Regulation (EU) No 255/2010 of 25 March 2010 laying down common rules on air traffic flow management (text with EEA relevance), OJ L 80, 26.3.2010, p. 10, as amended by:

— Commission Implementing Regulation (EU) No 923/2012, OJ L 281, 13.10.2012, p. 1, as amended by:

  — Commission Implementing Regulation (EU) 2020/886, OJ L 205, 29.6.2020, p. 14,

  — Commission Implementing Regulation (EU) 2020/469, OJ L 104, 3.4.2020, p. 1, as amended by:

    — Commission Implementing Regulation (EU) 2020/1177, OJ L 259, 10.8.2020, p. 12,

— Commission Implementing Regulation (EU) 2016/1006, OJ L 165, 23.6.2016, p. 8,

— Commission Implementing Regulation (EU) 2017/2159, OJ L 304, 21.11.2017, p. 45.

Commission Decision No C(2010)5134 of 29 July 2010 on the designation of the Performance Review Body of the Single European Sky (not published in the OJ).

Commission Regulation (EU) No 176/2011 of 24 February 2011 on the information to be provided before the establishment and modification of a functional airspace block, OJ L 51, 25.2.2011, p. 2.

Commission Decision No C(2011) 4130 of 7 July 2011 on the nomination of the Network Manager for the air traffic management (ATM) network functions of the single European sky (text with EEA relevance) (not published in the OJ).

Commission Implementing Regulation (EU) No 1206/2011 of 22 November 2011 laying down requirements on aircraft identification for surveillance for the single European sky (text with EEA relevance), OJ L 305, 23.11.2011, p. 23, as amended by:

— Commission Implementing Regulation (EU) 2020/587, OJ L 138, 30.4.2020, p. 1.

The text of Implementing Regulation (EU) No 1206/2011 shall, for the purposes of this Agreement, be read with the following adaptation:

'Switzerland UIR' is added in Annex I.

Commission Implementing Regulation (EU) No 1207/2011 of 22 November 2011 laying down requirements for the performance and the interoperability of surveillance for the single European sky (text with EEA relevance), OJ L 305, 23.11.2011, p. 35, as amended by:

— Commission Implementing Regulation (EU) No 1028/2014, OJ L 284, 30.9.2014, p. 7,

— Commission Implementing Regulation (EU) 2017/386, OJ L 59, 7.3.2017, p. 34,

— Commission Implementing Regulation (EU) 2020/587, OJ L 138, 30.4.2020, p. 1.

Commission Implementing Regulation (EU) No 923/2012 of 26 September 2012 laying down the common rules of the air and operational provisions regarding services and procedures in air navigation and amending Implementing Regulation (EU) No 1035/2011 and Regulations (EC) No 1265/2007, (EC) No 1794/2006, (EC) No 730/2006, (EC) No 1033/2006 and (EU) No 255/2010 (text with EEA relevance), OJ L 281, 13.10.2012, p. 1, as amended by:

— Commission Regulation (EU) 2015/340, OJ L 63, 6.3.2015, p. 1,

— Commission Implementing Regulation (EU) 2016/1185, OJ L 196, 21.7.2016, p. 3,

— Commission Implementing Regulation (EU) 2020/469, OJ L 104, 3.4.2020, p. 1, as amended by:

  — Commission Implementing Regulation (EU) 2020/1177, OJ L 259, 10.8.2020, p. 12,

— Commission Implementing Regulation (EU) 2020/886, OJ L 205, 29.6.2020, p. 14.

Commission Implementing Regulation (EU) No 1079/2012 of 16 November 2012 laying down requirements for voice channels spacing for the single European sky (text with EEA relevance), OJ L 320, 17.11.2012, p. 14, as amended by:

— Commission Implementing Regulation (EU) No 657/2013, OJ L 190, 11.7.2013, p. 37,

— Commission Implementing regulation (EU) 2016/2345, OJ L 348 , 21.12.2016, p. 11,

— Commission Implementing Regulation (EU) 2017/2160, OJ L 304, 21.11.2017, p. 47.

Commission Implementing Regulation (EU) No 409/2013 of 3 May 2013 on the definition of common projects, the establishment of governance and the identification of incentives supporting the implementation of the European Air Traffic Management Master Plan (text with EEA relevance), OJ L 123, 4.5.2013, p. 1, as amended by:

— Commission Implementing Regulation (EU) 2021/116, OJ L 36, 2.2.2021, p. 10.

Commission Implementing Regulation (EU) 2021/116 of 1 February 2021 on the establishment of the Common Project One supporting the implementation of the European Air Traffic Management Master Plan provided for in Regulation (EC) No 550/2004 of the European Parliament and of the Council, amending Commission Implementing Regulation (EU) No 409/2013 and repealing Commission Implementing Regulation (EU) No 716/2014 (Text with EEA relevance), OJ L 36, 2.2.2021, p. 10.

For the purposes of this Agreement, the Annex to the Regulation shall be read with the following adaptations:

(a) The following point is added after point 1.2.1.r): 's) Zürich Kloten'

(b) The following point is added after point 2.2.1.r): 's) Zürich Kloten'

(c) The following point is added after point 2.2.2.r): 's) Zürich Kloten'

(d) The following points are added after point 2.2.3.bb): 'cc) Geneva; dd) Zürich Kloten'.

Commission Implementing Regulation (EU) 2018/1048 of 18 July 2018 laying down airspace usage requirements and operating procedures concerning performance-based navigation, OJ L 189, 26.7.2018, p. 3.

Commission Implementing Regulation (EU) 2019/123 of 24 January 2019 laying down detailed rules for the implementation of air traffic management (ATM) network functions and repealing Commission Regulation (EU) No 677/2011 (text with EEA relevance), OJ L 28, 31.1.2019, p. 1.

Commission Implementing Regulation (EU) 2019/317 of 11 February 2019 laying down a performance and charging scheme in the single European sky and repealing Implementing Regulations (EU) No 390/2013 and (EU) No 391/2013 (text with EEA relevance), OJ L 56, 25.2.2019, p. 1.

Commission Implementing Decision (EU) 2019/709 of 6 May 2019 on the appointment of the network manager for air traffic management (ATM) network functions of the single European sky (notified under document C(2019) 3228), OJ L 120, 8.5.2019, p. 27.

Commission Implementing Decision (EU) 2021/891 of 2 June 2021 setting revised Union-wide performance targets for the air traffic management network for the third reference period (2020-2024) and repealing Implementing Decision (EU) 2019/903 (Text with EEA relevance), OJ L 195, 3.6.2021, p. 3.

Commission Implementing Decision (EU) 2019/2167 of 17 December 2019 approving the Network Strategy Plan for the air traffic management network functions of the single European sky for the period 2020-2029, OJ L 328, 18.12.2019, p. 89.

Commission Implementing Decision (EU) 2019/2168 of 17 December 2019 on the appointment of the chairperson and the members and their alternates of the Network Management Board and of the members and their alternates of the European Aviation Crisis Coordination Cell for the air traffic management network functions for the third reference period 2020-2024, OJ L 328, 18.12.2019, p. 90.

Commission Implementing Decision (EU) 2019/2012 of 29 November 2019 on exemptions under Article 14 of Commission Regulation (EC) No 29/2009 laying down requirements on data link services for the single European sky (Text with EEA relevance), OJ L 312, 3.12.2019, p. 95.

Commission Implementing Regulation (EU) 2020/1627 of 3 November 2020 on exceptional measures for the third reference period (2020-2024) of the single European sky performance and charging scheme due to the COVID-19 pandemic, OJ L 366, 4.11.2020, p. 7.

6. **Environment and noise**

Directive 2002/30/EC of the European Parliament and of the Council of 26 March 2002 on the establishment of rules and procedures with regard to the introduction of noise-related operating restrictions at Community airports (text with EEA relevance) (Articles 1-12, and 14-18), OJ L 85, 28.3.2002, p. 40.

(The amendments to Annex I, arising from Annex II, Chapter 8 (Transport policy), Section G (Air transport), point 2 of the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded, shall apply).

Council Directive 89/629/EEC of 4 December 1989 on the limitation of noise emissions from civil subsonic jet aeroplanes, OJ L 363, 13.12.1989, p. 27.

(Articles 1-8).

Directive 2006/93/EC of the European Parliament and of the Council of 12 December 2006 on the regulation of the operation of aeroplanes covered by Part II, Chapter 3, Volume 1 of Annex 16 to the Convention on International Civil Aviation, second edition (1988) (codified version) (text with EEA relevance), OJ L 374, 27.12.2006, p. 1.

7. **Consumer protection**

Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours, OJ L 158, 23.6.1990, p. 59 (Articles 1-10).

Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, OJ L 95, 21.4.1993, p. 29 (Articles 1-11), as amended by:

— Directive 2011/83/EU, OJ L 304, 22.11.2011. p. 64.

Council Regulation (EC) No 2027/97 of 9 October 1997 on air carrier liability in respect of the carriage of passengers and their baggage by air in the event of accidents, OJ L 285, 17.10.1997, p. 1 (Articles 1-8), as amended by:

— Regulation (EC) No 889/2002, OJ L 140, 30.5.2002, p. 2.

Regulation (EC) No 261/2004 of the Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (text with EEA relevance), OJ L 46, 17.2.2004, p. 1.

(Articles 1-18).

Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the right of disabled persons and persons with reduced mobility when travelling by air (text with EEA relevance), OJ L 204, 26.7.2006, p. 1.

8. **Miscellaneous**

Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity (text with EEA relevance), OJ L 283, 31.10.2003, p. 51.

(Article 14(1)(b), and Article 14(2).

9. **Annexes:**

A: Protocol on the Privileges and Immunities of the European Union

B: Provisions on financial control by the European Union as regards Swiss participants in activities of the EASA

ANNEX A

PROTOCOL ON THE PRIVILEGES AND IMMUNITIES OF THE EUROPEAN UNION

THE HIGH CONTRACTING PARTIES,

(2) CONSIDERING that, in accordance with Article 343 of the Treaty on the Functioning of the European Union and Article 191 of the Treaty establishing the European Atomic Energy Community ('EAEC'), the European Union and the EAEC shall enjoy in the territories of the Member States such privileges and immunities as are necessary for the performance of their tasks,

HAVE AGREED upon the following provisions, which shall be annexed to the Treaty on European Union, the Treaty on the Functioning of the European Union and the Treaty establishing the European Atomic Energy Community:

CHAPTER I

PROPERTY, FUNDS, ASSETS AND OPERATIONS OF THE EUROPEAN UNION

Article 1

The premises and buildings of the Union shall be inviolable. They shall be exempt from search, requisition, confiscation or expropriation. The property and assets of the Union shall not be the subject of any administrative or legal measure of constraint without the authorisation of the Court of Justice.

Article 2

The archives of the Union shall be inviolable.

Article 3

The Union, its assets, revenues and other property shall be exempt from all direct taxes.

The governments of the Member States shall, wherever possible, take the appropriate measures to remit or refund the amount of indirect taxes or sales taxes included in the price of movable or immovable property, where the Union makes, for its official use, substantial purchases the price of which includes taxes of this kind. These provisions shall not be applied, however, so as to have the effect of distorting competition within the Union.

No exemption shall be granted in respect of taxes and dues which amount merely to charges for public utility services.

Article 4

The Union shall be exempt from all customs duties, prohibitions and restrictions on imports and exports in respect of articles intended for its official use: articles so imported shall not be disposed of, whether or not in return for payment, in the territory of the country into which they have been imported, except under conditions approved by the government of that country.

The Union shall also be exempt from any customs duties and any prohibitions and restrictions on import and exports in respect of its publications.

CHAPTER II

COMMUNICATIONS AND *LAISSEZ-PASSER*

Article 5

For their official communications and the transmission of all their documents, the institutions of the Union shall enjoy in the territory of each Member State the treatment accorded by that State to diplomatic missions.

Official correspondence and other official communications of the institutions of the Union shall not be subject to censorship.

Article 6

Laissez-passer in a form to be prescribed by the Council, acting by a simple majority, which shall be recognised as valid travel documents by the authorities of the Member States, may be issued to members and servants of the institutions of the Union by the Presidents of these institutions. These *laissez-passer* shall be issued to officials and other servants under conditions laid down in the Staff Regulations of officials and the Conditions of Employment of other servants of the Union.

The Commission may conclude agreements for these *laissez-passer* to be recognised as valid travel documents within the territory of third countries.

CHAPTER III

MEMBERS OF THE EUROPEAN PARLIAMENT

Article 7

No administrative or other restriction shall be imposed on the free movement of Members of the European Parliament travelling to or from the place of meeting of the European Parliament.

Members of the European Parliament shall, in respect of customs and exchange control, be accorded:

(a) by their own government, the same facilities as those accorded to senior officials travelling abroad on temporary official missions;

(b) by the government of other Member States, the same facilities as those accorded to representatives of foreign governments on temporary official missions.

Article 8

Members of the European Parliament shall not be subject to any form of inquiry, detention or legal proceedings in respect of opinions expressed or votes cast by them in the performance of their duties.

Article 9

During the sessions of the European Parliament, its Members shall enjoy:

(a) in the territory of their own State, the immunities accorded to members of their parliament;

(b) in the territory of any other Member State, immunity from any measure of detention and from legal proceedings.

Immunity shall likewise apply to Members while they are travelling to and from the place of meeting of the European Parliament.

Immunity cannot be claimed when a Member is found in the act of committing an offence and shall not prevent the European Parliament from exercising its right to waive the immunity of one of its Members.

CHAPTER IV

REPRESENTATIVES OF MEMBER STATES TAKING PART IN THE WORK OF THE INSTITUTIONS OF THE EUROPEAN UNION

Article 10

Representatives of Member States taking part in the work of the institutions of the Union, their advisers and technical experts shall, in the performance of their duties and during their travel to and from the place of meeting, enjoy the customary privileges, immunities and facilities.

This Article shall also apply to members of the advisory bodies of the Union.

CHAPTER V

OFFICIALS AND OTHER SERVANTS OF THE EUROPEAN UNION

Article 11

In the territory of each Member State and whatever their nationality, officials and other servants of the Union shall:

(a) subject to the provisions of the Treaties relating, on the one hand, to the rules on the liability of officials and other servants towards the Union and, on the other hand, to the jurisdiction of the Court of Justice of the European Union in disputes between the Union and its officials and other servants, be immune from legal proceedings in respect of acts performed by them in their official capacity, including their words spoken or written. They shall continue to enjoy this immunity after they have ceased to hold office;

(b) together with their spouses and dependent members of their families, not be subject to immigration restrictions or to formalities for the registration of aliens;

(c) in respect of currency or exchange regulations, be accorded the same facilities as are customarily accorded to officials of international organisations;

(d) enjoy the right to import free of duty their furniture and effects at the time of first taking up their post in the country concerned, and the right to re-export free of duty their furniture and effects, on termination of their duties in that country, subject in either case to the conditions considered to be necessary by the government of the country in which this right is exercised;

(e) have the right to import free of duty a motor car for their personal use, acquired either in the country of their last residence or in the country of which they are nationals on the terms ruling in the home market in that country, and to re-export it free of duty, subject in either case to the conditions considered to be necessary by the government of the country concerned.

Article 12

Officials and other servants of the Union shall be liable to a tax for the benefit of the Union on salaries, wages and emoluments paid to them by the Union, in accordance with the conditions and procedure laid down by the European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure and after consultation of the institutions concerned.

They shall be exempt from national taxes on salaries, wages and emoluments paid by the Union.

Article 13

In the application of income tax, wealth tax and death duties and in the application of conventions on the avoidance of double taxation concluded between Member States of the Union, officials and other servants of the Union who, solely by reason of the performance of their duties in the service of the Union, establish their residence in the territory of a Member State other than their country of domicile for tax purposes at the time of entering the service of the Union, shall be considered, both in the country of their actual residence and in the country of domicile for tax purposes, as having maintained their domicile in the latter country provided that it is a member of the Union. This provision shall also apply to a spouse, to the extent that the latter is not separately engaged in a gainful occupation, and to children dependent on and in the care of the persons referred to in this Article.

Movable property belonging to persons referred to in the preceding paragraph and situated in the territory of the country where they are staying shall be exempt from death duties in that country; such property shall, for the assessment of such duty, be considered as being in the country of domicile for tax purposes, subject to the rights of third countries and to the possible application of provisions of international conventions on double taxation.

Any domicile acquired solely by reason of the performance of duties in the service of other international organisations shall not be taken into consideration in applying the provisions of this Article.

Article 14

The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure and after consultation of the institutions concerned, shall lay down the scheme of social security benefits for officials and other servants of the Union.

Article 15

The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, and after consulting the other institutions concerned, shall determine the categories of officials and other servants of the Union to whom the provisions of Article 11, the second paragraph of Article 12, and Article 13 shall apply, in whole or in part.

The names, grades and addresses of officials and other servants included in such categories shall be communicated periodically to the governments of the Member States.

CHAPTER VI

PRIVILEGES AND IMMUNITIES OF MISSIONS OF THIRD COUNTRIES ACCREDITED TO THE EUROPEAN UNION

Article 16

The Member State in whose territory the Union has its seat shall accord the customary diplomatic immunities and privileges to missions of third countries accredited to the Union.

CHAPTER VII

GENERAL PROVISIONS

Article 17

Privileges, immunities and facilities shall be accorded to officials and other servants of the Union solely in the interests of the Union.

Each institution of the Union shall be required to waive the immunity accorded to an official or other servant wherever that institution considers that the waiver of such immunity is not contrary to the interests of the Union.

Article 18

The institutions of the Union shall, for the purpose of applying this Protocol, cooperate with the responsible authorities of the Member States concerned.

Article 19

Articles 11 to 14 and Article 17 shall apply to Members of the Commission.

Article 20

Articles 11 to 14 and Article 17 shall apply to the Judges, the Advocates-General, the Registrars and the Assistant Rapporteurs of the Court of Justice of the European Union, without prejudice to the provisions of Article 3 of the Protocol on the Statute of the Court of Justice of the European Union relating to immunity from legal proceedings of Judges and Advocates-General.

Article 21

This Protocol shall also apply to the European Investment Bank, to the members of its organs, to its staff and to the representatives of the Member States taking part in its activities, without prejudice to the provisions of the Protocol on the Statute of the Bank.

The European Investment Bank shall in addition be exempt from any form of taxation or imposition of a like nature on the occasion of any increase in its capital and from the various formalities which may be connected therewith in the State where the Bank has its seat. Similarly, its dissolution or liquidation shall not give rise to any imposition. Finally, the activities of the Bank and of its organs carried on in accordance with its Statute shall not be subject to any turnover tax.

Article 22

This Protocol shall also apply to the European Central Bank, to the members of its organs and to its staff, without prejudice to the provisions of the Protocol on the Statute of the European System of Central Banks and the European Central Bank.

The European Central Bank shall, in addition, be exempt from any form of taxation or imposition of a like nature on the occasion of any increase in its capital and from the various formalities which may be connected therewith in the State where the bank has its seat. The activities of the Bank and of its organs carried on in accordance with the Statute of the European System of Central Banks and of the European Central Bank shall not be subject to any turnover tax.

Appendix to ANNEX A

PROCEDURES FOR THE APPLICATION IN SWITZERLAND OF THE PROTOCOL ON PRIVILEGES AND IMMUNITIES OF THE EUROPEAN UNION

1. Extension of application to Switzerland

Wherever the Protocol on the privileges and immunities of the European Union (hereinafter called 'the Protocol') contains references to Member States, the references are to be understood to apply equally to Switzerland, unless the following provisions determine otherwise.

2. Exemption of the Agency from indirect taxation (including VAT)

Goods and services exported from Switzerland are not to be subject to Swiss value added tax (VAT). In the case of goods and services provided to the Agency in Switzerland for its official use, in accordance with the second paragraph of Article 3 of the Protocol, exemption from VAT is by way of refund. Exemption from VAT shall be granted if the actual purchase price of the goods and services mentioned in the invoice or equivalent document totals at least 100 Swiss francs (inclusive of tax).

The VAT refund is to be granted on presentation to the Federal Tax Administration's VAT Main Division of the Swiss forms provided for the purpose. As a rule, refund applications must be processed within the three months following the date on which they were lodged together with the necessary supporting documents.

3. Procedures for the application of the rules relating to the Agency's staff

As regards the second paragraph of Article 12 of the Protocol, Switzerland shall exempt, according to the principles of its national law, officials and other servants of the Agency within the meaning of Article 2 of Regulation (Euratom, ECSC, EEC) No 549/69 ([1]) from federal, cantonal and communal taxes on salaries, wages and emoluments paid to them by the European Union and subject to an internal tax for its own benefit.

Switzerland shall not be considered as a Member State within the meaning of point 1 above for the application of Article 13 of the Protocol.

Officials and other servants of the Agency and members of their families who are members of the social insurance system applicable to officials and other servants of the European Union are not obliged to be members of the Swiss social security system.

The Court of Justice of the European Union shall have exclusive jurisdiction in any matters concerning relations between the Agency or the Commission and its staff with regard to the application of Council Regulation (EEC, Euratom, ECSC) No259/68 ([2]) and the other provisions of the European Union law laying down working conditions.

([1]) Regulation (Euratom, ECSC, EEC) No 549/69 of the Council of 25 March 1969 determining the categories of officials and other servants of the European Communities to whom the provisions of Article 12, the second paragraph of Article 13 and Article 14 of the Protocol on the Privileges and Immunities of the Communities apply (OJ L 74, 27.3.1969, p. 1). Regulation last amended by Commission Regulation (EC) No 1749/2002 (OJ L 264, 2.10.2002, p. 13.)

([2]) Regulation (EEC, Euratom, ECSC) No 259/68 of the Council of 29 February 1968 laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities and instituting special measures temporarily applicable to officials of the Commission (Conditions of Employment of Other Servants) (OJ L 56, 4.3.1968, p. 1). Regulation last amended by Commission Regulation (EC) No 2104/2005 (OJ L 337, 22.12.2005, p. 7.)

ANNEX B

FINANCIAL CONTROL AS REGARDS SWISS PARTICIPANTS IN ACTIVITIES OF THE EUROPEAN AVIATION AGREEMENT

Article 1

Direct communication

The Agency and the Commission shall communicate directly with all persons or entities established in Switzerland and participating in activities of the Agency, as contractors, participants in Agency programmes, recipients of payments from the Agency or the Community budget, or subcontractors. Such persons may send directly to the Commission and to the Agency all relevant information and documentation which they are required to submit on the basis of the instruments referred to in this Decision and of contracts or agreements concluded and any decisions taken pursuant to them.

Article 2

Checks

1. In accordance with Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities [1] and the Financial Regulation adopted by the Management Board of the Agency on 26 March 2003, with Commission Regulation (EC, Euratom) No 2343/2002 of 23 December 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities [2] and with the other instruments referred to in this Decision, contracts or agreements concluded and decisions taken with beneficiaries established in Switzerland may provide for scientific, financial, technological or other audits to be conducted at any time on the premises of the beneficiaries and of their subcontractors by Agency and Commission officials or by other persons mandated by the Agency and the Commission.

2. Agency and Commission officials and other persons mandated by the Agency and the Commission shall have appropriate access to sites, works and documents and to all the information required in order to carry out such audits, including in electronic form. This right of access shall be stated explicitly in the contracts or agreements concluded to implement the instruments referred to in this Decision.

3. The European Court of Auditors is to have the same rights as the Commission.

4. The audits may take place until five years after the expiry of this Decision or under the terms of the contracts or agreements concluded and the decisions taken.

5. The Swiss Federal Audit Office is to be informed in advance of audits conducted on Swiss territory. This information will not be a legal condition for carrying out such audits.

Article 3

On-the-spot checks

1. Under this Agreement, the Commission (OLAF) is authorised to carry out on-the-spot checks and inspections on Swiss territory, under the terms and conditions set out in Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities. [3]

2. On-the-spot checks and inspections shall be prepared and conducted by the Commission in close cooperation with the Swiss Federal Audit Office or with other competent Swiss authorities appointed by the Swiss Federal Audit Office, which shall be notified in good time of the object, purpose and legal basis of the checks and inspections, so that they can provide all the requisite help. To that end, the officials of the competent Swiss authorities may participate in the on-the-spot checks and inspections.

3. If the Swiss competent authorities concerned so wish, the on-the-spot checks and inspections may be carried out jointly by the Commission and the Swiss competent authorities.

[1] OJ L 248, 16.9.2002, p. 1.
[2] OJ L 357, 31.12.2002, p. 72.
[3] OJ L 292, 15.11.1996, p. 2.

4. Where the participants in the programme resist an on-the-spot check or inspection, the Swiss authorities, acting in accordance with national rules, shall give the Commission inspectors such assistance as they need to allow them to discharge their duty in carrying out an on-the-spot check or inspection.

5. The Commission shall report as soon as possible to the Swiss Federal Audit Office any fact or suspicion relating to an irregularity which has come to its notice in the course of the on-the-spot check or inspection. In any event the Commission is required to inform the aforementioned authority of the result of such checks and inspections.

Article 4

Information and consultation

1. For the purposes of proper implementation of this Annex, the competent Swiss and Community authorities shall exchange information regularly and, at the request of one of the Parties, shall conduct consultations.

2. The competent Swiss authorities shall inform the Agency and the Commission without delay of any fact or suspicion which has come to their notice relating to an irregularity in connection with the conclusion and implementation of the contracts or agreements concluded in application of the instruments referred to in this Decision.

Article 5

Confidentiality

Information communicated or acquired in any form whatsoever pursuant to this Annex will be covered by professional confidentiality and protected in the same way as similar information is protected by the national legislation of Switzerland and by the corresponding provisions applicable to the Community institutions. Such information shall not be communicated to persons other than those within the Community institutions, in the Member States, or in Switzerland whose functions require them to know it, nor may it be used for purposes other than to ensure effective protection of the financial interests of the Contracting Parties.

Article 6

Administrative measures and penalties

Without prejudice to application of Swiss criminal law, administrative measures and penalties may be imposed by the Agency or the Commission in accordance with Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 and Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 and with Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests. ([4])

Article 7

Recovery and enforcement

Decisions taken by the Agency or the Commission within the scope of this Decision which impose a pecuniary obligation on persons other than States shall be enforceable in Switzerland.

The enforcement order must be issued, without any further control than verification of the authenticity of the act, by the authority designated by the Swiss government, which must inform the Agency or the Commission thereof. Enforcement must take place in accordance with the Swiss rules of procedure. The legality of the enforcement decision is subject to control by the Court of Justice of the European Union.

Judgments given by the Court of Justice of the European Union pursuant to an arbitration clause are enforceable on the same terms.

([4]) OJ L 312, 23.12.1995, p. 1.

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