



---

Trade Policy Review Body

TRADE POLICY REVIEW

REPORT BY THE SECRETARIAT

THE EUROPEAN UNION

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

Any technical questions arising from this report may be addressed to Messrs John Finn (tel: 022 739 5081), Mario Kakabadse (tel: 022 739 5172), Pierre Latrille (tel: 022 739 5266), Ms Denby Probst (tel: 022 739 5847), Ms Takako Ikezuki (tel: 022 739 5534) and Mr. Roger Kampf (tel: 022 739 6218).

Document WT/TPR/G/357 contains the policy statement submitted by the European Union.

---

Note: This report is subject to restricted circulation and press embargo until the end of the first session of the meeting of the Trade Policy Review Body on the European Union. This report was drafted in English.

## CONTENTS

<b>SUMMARY .....</b>	<b>9</b>
<b>1 ECONOMIC ENVIRONMENT .....</b>	<b>13</b>
1.1 Recent Economic Developments.....	13
1.1.1 Balance of payments .....	16
1.1.2 Monetary and exchange rate policies .....	17
1.1.3 Fiscal position .....	18
1.1.4 EU economic governance and structural reforms .....	19
1.2 Trade Performance .....	21
1.2.1 Goods .....	21
1.2.2 Services .....	25
1.3 Foreign Direct Investment .....	27
<b>2 TRADE AND INVESTMENT REGIME .....</b>	<b>31</b>
2.1 Legal and Institutional Framework .....	31
2.2 Trade Policy Objectives .....	32
2.3 Trade Agreements and Arrangements.....	34
2.3.1 WTO .....	34
2.3.2 Regional and preferential agreements.....	34
2.3.2.1 Reciprocal preferences.....	34
2.3.3 Unilateral preferences .....	36
2.4 Foreign Investment Policy.....	37
2.5 Aid for Trade.....	38
<b>3 TRADE POLICIES AND PRACTICES BY MEASURE.....</b>	<b>39</b>
3.1 Measures Directly Affecting Imports .....	39
3.1.1 Customs procedures and requirements .....	39
3.1.1.1 Trade facilitation .....	42
3.1.1.1.1 Advance rulings, i.e. Binding Tariff Information/Binding Origin Information .....	43
3.1.1.1.2 Electronic systems.....	43
3.1.2 Customs valuation .....	44
3.1.3 Rules of origin .....	46
3.1.4 Tariffs .....	47
3.1.4.1 Nomenclature and WTO bindings.....	47
3.1.4.2 Applied rates .....	48
3.1.4.3 Duty suspensions and special tariff treatment .....	51
3.1.4.4 Tariff quotas (TQ) and administration.....	52
3.1.4.5 Preferential tariffs .....	53
3.1.5 Other charges affecting imports .....	53
3.1.6 Import prohibitions, restrictions, and licensing .....	57
3.1.7 Anti-dumping, countervailing, and safeguard measures .....	58
3.1.7.1 Anti-dumping and anti-subsidy measures .....	58

---

3.1.7.2	Safeguards .....	62
3.2	Measures Directly Affecting Exports.....	64
3.2.1	Export procedures and requirements .....	64
3.2.2	Export taxes, charges and levies .....	64
3.2.3	Export prohibitions, restrictions, and licensing.....	64
3.2.3.1	Dual-use items export control regime.....	65
3.2.4	Export credit, insurance and promotion.....	66
3.2.5	Waste shipment trade regime .....	68
3.2.6	Other measures.....	69
3.3	Measures Affecting Production and Trade .....	70
3.3.1	Standards and other technical requirements .....	70
3.3.1.1	Institutional framework.....	73
3.3.1.1.1	ESOs .....	73
3.3.1.1.2	European Commission.....	75
3.3.1.2	New Legislative Framework .....	76
3.3.1.3	Conformity assessment.....	77
3.3.1.3.1	Product marking.....	77
3.3.1.4	Accreditation .....	78
3.3.1.5	Transparency .....	78
3.3.2	Sanitary and phytosanitary measures .....	78
3.3.2.1	Plants and plant products .....	81
3.3.2.2	Live animals and animal products .....	82
3.3.2.3	Rapid Alert System for Food and Feed .....	83
3.3.2.4	SPS Committee in the WTO .....	84
3.3.3	Subsidies and other government assistance .....	84
3.3.3.1	EU level subsidies .....	84
3.3.3.2	State aid in the member States.....	85
3.3.3.2.1	State aid reform: implementation phase .....	85
3.3.3.2.2	Non-crisis state aid.....	87
3.3.3.2.3	Crisis-related aid .....	89
3.3.4	Competition policy .....	90
3.3.4.1	Anti-trust.....	91
3.3.4.1.1	Anti-competitive agreements .....	91
3.3.4.1.2	Abuse of dominant position.....	94
3.3.4.2	Mergers and acquisitions.....	95
3.3.4.3	International cooperation .....	96
3.3.5	Taxation.....	96
3.3.5.1	Income tax .....	97
3.3.5.2	Corporation tax.....	98
3.3.5.3	Value Added Tax.....	99

---

3.3.6	State trading, state-owned enterprises, and privatization.....	100
3.3.6.1	State trading .....	100
3.3.6.2	State-owned enterprises .....	101
3.3.6.3	Privatization .....	103
3.3.7	Government procurement .....	104
3.3.7.1	EU directives on public procurement .....	104
3.3.7.2	The Government Procurement Agreement .....	109
3.3.8	Intellectual property rights.....	109
3.3.8.1	Copyright and related rights .....	112
3.3.8.2	Industrial property .....	114
3.3.8.2.1	Patents.....	114
3.3.8.2.1.1	Unitary patent.....	114
3.3.8.2.1.2	Biotechnological inventions .....	116
3.3.8.2.1.3	Standard-essential patents .....	117
3.3.8.2.2	Supplementary protection certificates.....	117
3.3.8.2.3	Plant variety rights .....	118
3.3.8.2.4	Trademarks.....	119
3.3.8.2.5	Geographical indications.....	121
3.3.8.2.5.1	Agricultural products.....	121
3.3.8.2.5.2	Non-agricultural products .....	125
3.3.8.2.6	Industrial designs.....	125
3.3.8.2.7	Undisclosed information .....	127
3.3.8.2.7.1	Trade secrets .....	127
3.3.8.2.7.2	Clinical trial data .....	128
3.3.8.3	Enforcement.....	129
3.3.8.3.1	Economic impact .....	129
3.3.8.3.2	Enforcement within the EU.....	130
3.3.8.3.3	Enforcement at the EU's external borders .....	132
3.3.8.3.4	International cooperation .....	134
<b>4</b>	<b>TRADE POLICIES BY SECTOR.....</b>	<b>136</b>
4.1	Agriculture .....	136
4.1.1	Trade.....	137
4.1.2	Agricultural policies.....	138
4.1.2.1	Domestic support.....	139
4.1.2.1.1	Direct payments.....	139
4.1.2.1.2	Internal market support measures .....	143
4.1.2.1.3	Rural development .....	149
4.1.2.2	Export subsidies.....	151
4.1.2.3	Market access.....	151
4.1.3	Domestic support levels.....	152

4.1.4	WTO notifications.....	152
4.1.5	OECD monitoring and evaluation of agricultural policies.....	154
4.2	Fisheries .....	155
4.2.1	Fisheries in the EU .....	155
4.2.2	Fish catches and aquaculture.....	156
4.2.3	Trade.....	158
4.2.4	Policies.....	161
4.2.4.1	The maximum sustainable yield (MSY) .....	162
4.2.4.2	Discards and the landing obligation.....	162
4.2.4.3	Regionalization .....	163
4.2.4.4	Management of fishing capacity .....	163
4.2.4.5	External policy.....	164
4.2.4.6	Aquaculture .....	165
4.2.4.7	Common Market Organisation .....	165
4.2.4.8	Science and data collection.....	166
4.2.4.9	Structural support.....	166
4.3	Services.....	167
4.3.1	Audiovisual services .....	167
4.3.2	E-commerce in the Digital Single Market.....	169
4.3.3	Financial services.....	172
4.3.3.1	Market size and structure .....	172
4.3.3.1.1	Banking .....	172
4.3.3.1.2	Insurance.....	173
4.3.3.1.3	Securities.....	174
4.3.3.2	Regulatory developments .....	175
4.3.4	Transport services .....	178
4.3.4.1	Maritime transport services and port services.....	178
4.3.4.2	Air transport services.....	180
4.3.4.3	Road transport services .....	183
4.3.4.3.1	Road passenger transport services.....	183
4.3.4.3.2	Road freight transport.....	184
4.3.4.4	Rail transport .....	185
<b>5</b>	<b>APPENDIX TABLES .....</b>	<b>190</b>

## CHARTS

Chart 1.1	Contribution to GDP, 2012 Q1-2016 Q3.....	15
Chart 1.2	Balance of the current account as a % of GDP.....	17
Chart 1.3	General government deficit as a % of GDP, 2013-15 .....	19
Chart 1.4	Direction of merchandise trade, 2013 and 2015.....	23
Chart 1.5	Composition of merchandise trade, 2013 and 2015 .....	24

Chart 1.6 Intra- and extra-EU exports of goods, 2015 .....	25
Chart 3.1 Applied MFN tariff rates distribution, 2016 .....	51
Chart 3.2 Overview of anti-dumping and anti-subsidy activity, 2013-16 .....	60
Chart 3.3 Anti-dumping and anti-subsidy measures in force, by region, 2013-16 .....	61
Chart 3.4 Anti-dumping and anti-subsidy investigations initiated by product sector, 2013-16 .....	61
Chart 3.5 Outcome of expiry reviews concluded, 2014 and 2016 .....	62
Chart 3.6 Number of dual-use items listed in categories of Annex 1 further to the adoption of Regulation (EU) No. 2015/2420, compared to Regulation (EU) No. 1382/2014 .....	66
Chart 3.7 CEN-CENELEC Portfolio of Harmonized Standards per business domain .....	74
Chart 3.8 State aid in EU member States .....	89
Chart 4.1 Domestic support in the EU, 2003/04-2013/14 .....	153
Chart 4.2 Fish production in the EU-28, 2000-14 .....	156
Chart 4.3 Trade balance, 2010-15 .....	159
Chart 4.4 Fish imports by EU member States, 2010-15 .....	160

## TABLES

Table 1.1 Selected indicators, 2013-15 .....	14
Table 1.2 Extra-EU trade in services, by sector and partner, 2013-15 .....	26
Table 1.3 Extra-EU FDI flows, 2013-15 .....	28
Table 1.4 Extra-EU FDI stocks, 2013-15 .....	29
Table 1.5 FDI stocks by major partner, 2013-15 .....	30
Table 3.1 Main changes to customs procedures introduced by the UCC .....	40
Table 3.2 Customs electronic systems pursuant to the UCC, 2016 .....	44
Table 3.3 Main customs valuation changes, CCC compared to UCC .....	45
Table 3.4 Modifications to the CN not incorporated in its WTO bound commitments .....	48
Table 3.5 Structure of MFN tariffs in the EU, 2016 .....	48
Table 3.6 EU's applied MFN tariff summary, 2016 .....	49
Table 3.7 Excise duties other than on EU harmonized products (alcohol, tobacco, and energy products), by member State, 2016/2017 .....	54
Table 3.8 EU prohibitions or restrictions on imports, 2017 .....	57
Table 3.9 Products subject to import licensing, 2017 .....	58
Table 3.10 Selected official export credit agencies and their activities .....	67
Table 3.11 Legal basis for technical requirements, standards, conformity assessment, and accreditation in the EU at end-2014 .....	70
Table 3.12 Roles of main actors in setting and executing EU standardization policy (Commission-requested standardization) .....	75
Table 3.13 Principal SPS legislation in the EU in 2017 .....	79
Table 3.14 RASFF notifications, 2012-15 .....	83
Table 3.15 Non-crisis related state aid .....	88
Table 3.16 Use of crisis-related aid .....	90

---

Table 3.17 Competition policy legislative framework – selected rules .....	91
Table 3.18 Anti-trust cases, investigations, decisions, and fines .....	93
Table 3.19 Merger notifications and decisions 2013-16 .....	96
Table 3.20 Taxes and social contributions in the EU-28, 2012-15 .....	97
Table 3.21 Personal income taxes and actual social contributions in the EU-28, 2015.....	97
Table 3.22 Taxes on the income or profits of corporations including holding gains and employer social contributions.....	99
Table 3.23 VAT in the EU-28.....	100
Table 3.24 Liabilities of public corporations in EU member States, 2015.....	103
Table 3.25 Public procurement thresholds in the EU from 1 January 2016 .....	105
Table 3.26 Estimated value of public procurement by general government in the EU 2014-15 .....	106
Table 3.27 EU GPA thresholds 2016-17 .....	109
Table 3.28 EU procurement and GPA key figures, 2009-12.....	109
Table 3.29 Contribution of IP industries to EU employment, GDP and trade and average wage premium of IP-intensive industries, 2011-13 average.....	110
Table 3.30 Status of EU participation in WIPO conventions and treaties .....	111
Table 3.31 EUIPO - quantification of IPR infringement by sector.....	130
Table 3.32 Enforcement of IPRs, 2013-15.....	134
Table 4.1 Total production value of agricultural products in the EU, 2011-15 .....	136
Table 4.2 Selected indicators of agricultural structure in the EU, 2013 .....	136
Table 4.3 Exports and imports of agricultural products (HS2012 4 digit), 2012-15.....	137
Table 4.4 Net amounts for direct payments, 2015-20.....	139
Table 4.5 Crop-specific payments for cotton.....	142
Table 4.6 Implementation of direct payments .....	142
Table 4.7 Intervention and private storage aid .....	144
Table 4.8 Temporary measures for dairy and livestock producers, 2014-16 .....	145
Table 4.9 Temporary exceptional aid to producers of milk and milk products, beef and veal, and pig, sheep, and goat meat by member State.....	147
Table 4.10 Temporary exceptional measures for fruits and vegetables, 2014-16 .....	148
Table 4.11 National envelopes for rural development, 2014-20.....	149
Table 4.12 Rural development priorities and focus areas.....	150
Table 4.13 Tariff quotas in the EU in 2016 .....	152
Table 4.14 OECD indicators for support to agriculture in the EU, 2009-15 .....	154
Table 4.15 Summary of fishery production, 2010-15.....	156
Table 4.16 Overview of the EU fleet by member State, 2015 .....	158
Table 4.17 European Union's applied MFN tariff summary, 2016 .....	160
Table 4.18 List of fisheries agreements .....	165
Table 4.19 Main economic indicators of the audiovisual services sector .....	168
Table 4.20 Consolidated banking indicators, 2014 and 2015.....	172
Table 4.21 Performance indicators, 2014 and 2015.....	173
Table 4.22 Main economic indicators of the insurance sector (EU level).....	173

Table 4.23 Number of insurance companies, by type, origin and location of activity, 2015 .....	173
Table 4.24 EU security market capitalization .....	174
Table 4.25 Total assets under management by pension funds, 2015-2016.....	175

### BOXES

Box 2.1 Objectives of the updated trade and investment policy strategy .....	33
Box 3.1 Standards .....	72
Box 3.2 New Legislative Framework.....	76
Box 3.3 State aid - tax rulings .....	87

### APPENDIX TABLES

Table A1.1 Selected indicators, 2013-16.....	190
Table A1.2 Merchandise exports by destination, 2013-15.....	191
Table A1.3 Merchandise imports by origin, 2013-15 .....	192
Table A1.4 Merchandise exports by product group, 2013-15.....	193
Table A1.5 Merchandise imports by product group, 2013-15 .....	194
Table A1.6 Intra- and extra-EU trade by member State, 2013-15 .....	195
Table A2.1 Selected notifications to the WTO, April 2015–February 2017 .....	197
Table A2.2 Status of dispute-related WTO matters involving the EU, March 2015-February 2017 .....	199
Table A3.1 Tariffs under preferential agreements, 2016.....	204
Table A3.2 Official export credit agencies in EU member States .....	206
Table A3.3 Summary of the European Union's main legislative measures on intellectual property rights, 2017 .....	207
Table A3.4 Term of protection of major intellectual property rights, 2017.....	210
Table A3.5 SOEs in EU member States, 2015.....	213
Table A4.1 Extra-EU-28 trade by major partner in 2010-15.....	219



---

## SUMMARY

1. The EU is a large, open economy with a GDP of €14,711 billion and a total population of 508 million. Trade is very important to the economy, with exports and imports of goods valued at €3,518 billion and services at €1,517 billion. The EU has competence over the customs union and commercial policy. There is free movement of goods, capital, and labour within the EU, and 19 of the 28 member States share a common currency. Since the last Trade Policy Review of the EU in 2015, the EU economy continued to grow, but trade and economic developments varied considerably from one member State to another.

2. Exports and imports increased between 2013 and 2015, reaching €1,789 billion and €1,729 respectively, but were expected to have declined slightly in 2016. The EU remains critically important to world trade as the second-largest exporter and importer of goods, the largest exporter and importer of services, and the largest trading partner for 80 countries. The EU is also important as a destination for, and source of, investment, although foreign direct investment, both inward and outward, fluctuated over the 2013-2015 period.

3. In October 2015, the European Commission issued a new trade and investment policy for the EU – *Trade for all: Towards a more responsible trade and investment policy*. The new policy is intended to support the growth of global value chains, services trade, and e-commerce. The main objectives include reducing non-tariff barriers and increasing trade in services, while benefiting from improved technology to facilitate cross-border provision of services and recognizing the importance of labour mobility and mutual recognition of professional qualifications. While actively participating in the WTO, the EU has also continued to negotiate trade agreements, which cover trade in goods and services, intellectual property, investment, government procurement, access to energy and raw materials, customs and trade facilitation, competition, and regulatory cooperation. The Comprehensive Economic and Trade Agreement between Canada and the EU was signed in October 2016. The EU-Singapore Free Trade Agreement awaits approval, pending an opinion of the Court of Justice of the EU on a question of EU competence. Negotiations on a number of other trade and investment agreements are also under way.

4. The EU has exclusive competence over the customs union, while the customs administration authorities of the member States are responsible for applying the common customs legislation. Practically all customs procedures are electronic and cleared within one hour; paper forms are rarely required. On 1 May 2016, the main provisions of the new Union Customs Code (UCC) became applicable, replacing the Community Customs Code of 1992. The UCC aims to simplify and modernize customs procedures, bringing the rules into line with the EU treaties, and to move towards harmonized IT processes.

5. Among the changes introduced by the UCC are: improvements to the Authorised Economic Operator (AEO) programme (which, in 2015, already covered 14,000 operators accounting for 71% of imports); simplification of the systems for customs warehouses, free zones, and temporary storage; improving the common risk management framework; reducing the validity of binding tariff information to 3 years and making it binding on the importer; phasing in electronic systems for customs by 2020; and streamlining and reorganizing rules of origin and customs valuation.

6. The simple average applied MFN tariff, at 6.3%, was slightly lower in 2016 than in 2014, as the EU applied the expanded list of ITA products and adjusted its nomenclature. Tariffs on agricultural products (WTO definition) remain higher (simple average of 14.1%) than on non-agricultural products (4.3%). In addition, more agricultural products are subject to non-*ad valorem* tariffs, and tend to vary considerably within and among product groups. The EU has a comprehensive network of arrangements for preferential trade with free trade agreements and non-reciprocal preferences under the GSP, GSP+, and Everything-but-Arms regimes. GSP and GSP+ apply to over 6,000 of the EU's 9,414 tariff lines, with most of these products duty free under GSP+ and about half of them duty free under GSP. The coverage for specific countries varies based on the triennial reviews by the EU, the most recent of which was conducted in 2016 and resulted in graduation of some product sections for India, Indonesia, Kenya, and Ukraine.

7. New regulations relating to anti-dumping and countervailing measures were introduced in 2016, although these were essentially a consolidation of earlier regulations and amendments. The EU is among the WTO's most frequent users of contingency measures. However, from 2009 to 2013, there was a downward trend in investigations and the number of measures in force has remained fairly constant since then (varying between 121 and 137, with 136 in force at end 2016). New regulations on safeguards were introduced in 2015, which, like the regulations on anti-dumping and countervailing duties, were essentially a consolidation of existing regulations and amendments. No safeguard investigations were initiated during the review period, although surveillance measures were invoked in 2016 for some iron and steel products.

8. Under the Animal and Plant Health Package, which was adopted by the Commission in 2013, new legislation on animal health, plant pests, and official controls were introduced in 2016. The Package aims to simplify and modernize existing legislation on the food chain by condensing nearly 70 different legislative acts down to four.

9. There was no major change to the laws on technical requirements, standards, and related issues. The approach remains unchanged of setting out the essential requirements for products in legislation, while establishing the technical means to meet those requirements through standards. In 2016, the Commission adopted a Standardization Package and issued a Communication on standardization priorities for ICT for the Digital Single Market. Harmonized product legislation applies to many categories of products, with cableway installations, personal protective equipment, and gas appliances added in 2016. Once work has commenced on a European standard, members of the standards bodies cannot commence or continue national work on the same subject, and once a European standard has been developed, any conflicting national standards must be withdrawn.

10. As part of the State Aid Modernisation (SAM) initiative, a new General Block Exemption Regulation came into force on 1 July 2014 and covered about 40% of the total value of aid measures in 2015. On 1 July 2016, new transparency requirements came into force and these are accompanied by an annual monitoring exercise by the Commission to review a sample of block-exempted aid measures. Aid not falling under the block exemption or *de minimis* regulations is subject to Commission guidelines. In addition, in May 2016, the Commission issued a Notice on the notion of state aid which included clarification on state measures concerning infrastructure, culture and heritage conservation, and tax rules that could give an enterprise or group of enterprises a selective advantage. Total state aid (excluding transport and agriculture) by member States increased from €60 billion in 2012 to €91 billion in 2014, largely due to an increase in aid for environmental protection (including energy saving). During the review period, the Commission reached final decisions on a number of tax planning practices in Luxembourg, the Netherlands, Belgium, and Ireland, which are currently under appeal before the Court of Justice of the EU.

11. The basic legislation on competition policy in the EU was not changed during the review period. Responsibility is shared between the EU and the member States, with the European Competition Network helping to ensure efficient and consistent application of the legislation across the EU by the Commission and the national authorities. Several important cases have been dealt with over the past two years covering cartels, abuse of dominant position, and mergers and acquisitions.

12. The EU and the member States are parties to the Government Procurement Agreement and adopted the revised GPA through Council Decision 2014/115/EU. Under the revised GPA, the EU extended its commitments to provide for further market access opportunities for suppliers offering goods and services originating in GPA parties' economies. New sectors and contracting authorities/entities were included in the EU schedules, for example, the European External Action Service at EU level and a number of central government contracting authorities and sub-central entities of member States. Government procurement above the thresholds in the Classical, Utilities, and Concessions Directives must be published on the online Tenders Electronic Daily (TED) and member States may advertise tenders on TED below these thresholds. Below these thresholds, national rules apply and these must respect general principles of EU law, including the principles of non-discrimination, equal treatment, transparency, mutual recognition, and proportionality set out in the Treaty on the Functioning of the EU. About 17% of the total value of public procurement (excluding utilities) was advertised on the TED, but the proportion varied, from 6% in Germany to 65% in Latvia.

13. Intellectual property rights continue to be very important for the EU economy with over 40% of GDP generated by IPR-intensive industries (2011-2013). Under the Commission's 2011 strategy for IP, a number of legislative measures were adopted, including a trademark reform package and a directive on trade secrets. Based on the Digital Single Market Strategy for Europe, presented by the Commission in May 2015, work was under way during the review period to further modernize the legal framework for copyright protection and enforcement, in particular as regards copyright-protected goods in the online environment. While the entry into force of the Agreement on the Unified Patent Court was still pending, significant steps were made to advance the administrative framework for the unitary patent. Comprehensive sections on the protection of geographical indications for agricultural products were included in the more recent generation of FTAs that the EU concluded with a number of its trading partners. Modernization of the EU's regime regarding IPR enforcement also continued to be under consideration. Meanwhile, a number of studies were released by the EU Intellectual Property Office that map the economic impact of counterfeiting and piracy in the EU, including a series of studies that quantify IPR infringements by sector.

14. Agricultural policies did not change significantly over the review period, but the reforms of the Common Agricultural Policy (CAP) adopted in 2013 have been fully applied since 2015. Under the CAP, member States have some flexibility within their national envelopes to decide the level of funding they apply to different direct payments schemes and to rural development. While most of the direct payment schemes are decoupled from current production, voluntary coupled support is permitted up to 15% of the national envelope, or a higher percentage with approval from the Commission; alternatively, under a derogation, member States are permitted to use up to €3 million. In addition, payments for cotton are also provided for in three member States. In response to measures taken by the Russian Federation banning imports of some products from the EU, a number of temporary measures were introduced to support dairy, livestock, fruit and vegetable producers, which included market support measures. Export refunds have not been granted since July 2013, although sugar produced outside the production quota is notified in the EU's export subsidy notifications. However, production quotas for sugar are to be abolished from end-September 2017. Production quotas for milk were abolished from end-March 2015.

15. The latest reform of the Common Fisheries Policy, which took effect on 1 January 2014, established a legal commitment to sustainable fishing levels, a ban on discards (the landing obligation), and measures to reduce overcapacity while continuing the use of multi-annual recovery and management plans. In February 2017, there were 12 plans combining different fisheries management tools, including a maximum sustainable yield, the landing obligation, technical measures, and total allowable catches (TACs) and fishing quotas. In 2014, 31 stocks out of 59 were fished in accordance with estimates of the maximum sustainable yield (MSY) and, by 2020, the TAC for all stocks are to be based on MSY estimates. EU fishing outside of EU waters is to be based on Regional Fisheries Management Organizations and through Sustainable Fisheries Partnership Agreements, while the EU cooperates with third countries and international organizations on illegal, unreported and unregulated fishing worldwide.

16. In financial services, the reforms undertaken following the 2008-09 financial crises were largely completed by 2015, but some new measures were introduced during the period under review. The legislation is grouped into three pillars: rules for the global financial system; rules to establish a safe, responsible, and growth-enhancing financial sector in Europe; and rules to complete the banking union to strengthen the euro. Under the first pillar, in 2015, a new regulation on securities financing transactions was adopted to improve transparency, and identify and quantify risks. In 2017, a new regulation was adopted which is intended to improve the liquidity profile and stability of money market funds domiciled or sold in Europe. Under the second pillar, new directives were adopted on insurance distribution, payment services in the internal market, interchange fees for card-based payment transactions, money laundering and terrorist financing, and occupational pension funds. In addition, regulations were adopted on long-term investment funds and financial benchmarks (e.g. LIBOR and EURIBOR).

17. In maritime transport, a new regulation was adopted in March 2017 establishing a framework for the provision of port services and common rules on financial transparency of ports which will apply from 2019. The regulation applies to the 319 ports identified by the Commission (out of a total of over 1,200) that carry 96% of all freight and 93% of all passengers and covers bunkering, cargo handling, mooring, passenger services, port reception facilities, pilotage and towage.

18. Regarding rail transport, in mid-2016, the EU adopted the "technical pillar" and, at end-2016, the "market pillar" of the "4th railway package", which is intended to create a single European rail area. These packages of directives and regulations essentially open domestic passenger services to competition through a system of open access for commercial services by 2020 and the introduction of the principle of competitive awards of rail public services contracts by 2023. They also reinforce independence requirements for infrastructure managers so as to avoid distortions of competition and ensure the progressive harmonization of technical and safety norms.

19. To a very large extent, the EU functions as a single economy with common import duties, import and export procedures, and rules on investment. Furthermore, the harmonization across the EU of many measures, including customs procedures, technical requirements, and SPS measures can facilitate access to the EU market and reduce the cost of developing and complying with regulations. However, in some cases, complying with EU requirements may add to the cost of doing business. Furthermore, agriculture remains relatively highly protected and the EU is a significant user of trade defence measures. The EU and its member States are important Members of the WTO and the development of their policies, politics, and economy affects many other countries. Therefore, the trade and investment policies of the EU are important to other countries and the multilateral trading system, and how the EU addresses current challenges are of interest to the WTO as a whole, including low average economic growth with large differences in growth among the member States, and the negotiations under Article 50 of the TFEU with the U.K. (Brexit).

## 1 ECONOMIC ENVIRONMENT

1.1. The European Union's population stood at 508 million in 2015 with a GDP per capita of €28,900.<sup>1</sup> The EU has exclusive competence over the customs union, commercial policy, and – for those using the euro<sup>2</sup> – monetary policy pursuant to the Treaty on the Functioning of the European Union (TFEU). The main sources of funding of the Union are small percentages of each country's gross national income, a small percentage of each member State's VAT revenues, and a large share of the import duties.<sup>3</sup> The EU has an Economic and Monetary Union (EMU) designed to further its objectives and improve the lives of its citizens by coordinating economic and fiscal policies and ensuring smooth operation of the single market. When examining the EU as a whole, it represents the world's largest trader in commercial services, second-largest merchandise trader, and second-largest in terms of GDP.<sup>4</sup> Among the 28 member States, Germany, the U.K., and France are the largest in terms of GDP and trade. Like other developed economies, the EU services sector is the largest contributor to GDP, followed by industry (Table 1.1).

### 1.1 Recent Economic Developments

1.2. During the review period, the EU economy has continued its gradual albeit uneven economic recovery since the financial crisis, with an interim recovery followed by a euro area recession and then another recovery. However, it has not rebounded as fast as some other large economies, nor as fast as in previous downturns. It has been marked by an improvement in real GDP growth up to an annual rate of 2.2% in 2015 (Table 1.1). Since mid-2014, the expansion has benefitted from historically low energy prices, a less restrictive fiscal policy stance, and a very accommodative monetary policy which included non-standard policy measures. The recovery has continued to be mainly driven by private consumption.

1.3. Exports of both goods and services have increased more than GDP over the period. The observed increase in the current account surplus is related to the lower costs of energy imports and the substantial depreciation of the euro against major currencies during 2015 which, despite reversing slightly in 2016, raised the price competitiveness of companies in the euro area. In 2016, these effects remained in place, but the expansion of exports and imports was slower than in preceding years. Inflation remained low or negative during the period, partly as a result of falling energy and commodity prices and a large output gap.

1.4. As measured in terms of gross value added for 2015, the main drivers of the EU economy are industry<sup>5</sup> (19.3%); public administration, defence, education, human health and social work activities (19.1%); and wholesale and retail trade, transport, accommodation and food services (18.9%).<sup>6</sup> There were some reductions in manufacturing output during the period due to slow external growth that affected the sector's exports.<sup>7</sup> The financial sector remains under pressure due to the persisting need for restructuring and balance sheet repair in the banking sector; and due to high non-performing loans in certain member States.<sup>8</sup>

<sup>1</sup> Eurostat online information. Viewed at: <http://ec.europa.eu/eurostat/web/national-accounts/data/main-tables> and <http://ec.europa.eu/eurostat/web/population-demography-migration-projections/population-data/main-tables>.

<sup>2</sup> Currently 19 of the 28 member States use the euro currency (Austria, Belgium, Cyprus, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Portugal, Slovakia, Slovenia, and Spain), seven do not (Bulgaria, Croatia, Czech Republic, Hungary, Poland, Romania, and Sweden), and two have utilized the opt-out procedure (Denmark and the U.K.).

<sup>3</sup> European Commission online information. Viewed at: [https://europea.eu/european-union/about-eu/money/revenue-income\\_en](https://europea.eu/european-union/about-eu/money/revenue-income_en).

<sup>4</sup> WTO, *World Trade Statistical Review, 2016*. Viewed at: [https://www.wto.org/english/res\\_e/statis\\_e/wts2016\\_e/wts2016\\_e.pdf](https://www.wto.org/english/res_e/statis_e/wts2016_e/wts2016_e.pdf); and IMF, online information. Viewed at: <https://www.imf.org/external/pubs/ft/weo/2016/02/weodata/index.aspx>.

<sup>5</sup> Excluding construction.

<sup>6</sup> Eurostat online information. Viewed at: <http://ec.europa.eu/eurostat/news/themes-in-the-spotlight/gva-employment>.

<sup>7</sup> European Commission online information. Viewed at: [http://ec.europa.eu/economyfinance/publications/eeip/pdf/ip025\\_en.pdf](http://ec.europa.eu/economyfinance/publications/eeip/pdf/ip025_en.pdf).

<sup>8</sup> IMF, *2016 Article IV Consultation: Euro Area*, online information. Viewed at: <https://www.imf.org/external/pubs/ft/scr/2016/cr16219.pdf>.

Table 1.1 Selected indicators, 2013-15

	GDP at current prices (2015)	Real GDP growth (%)			GDP per capita (2015)		Share in gross value added, % (2015) <sup>a</sup>		
	€ billion	2013	2014	2015	€ at current prices	PPS <sup>b</sup>	Agriculture, forestry and fishing	Industry <sup>c</sup>	Services
EU-28	14,711	0.2	1.6	2.2	28,900	28,900	1.6	24.3	73.9
Austria	340	0.1	0.6	1	39,400	36,900	1.3	28.3	70.4
Belgium	410	-0.1	1.7	1.5	36,600	34,200	0.7	22.2	77.1
Bulgaria	45	0.9	1.3	3.6	6,300	13,600	4.8	27.9	67.3
Croatia	44	-1.1	-0.5	1.6	10,400	16,700	4.1	26.6	69.2
Cyprus	18	-6	-1.5	1.7	20,800	23,500	2.3	10.6	87.2
Czech Republic	167	-0.5	2.7	4.5	15,800	25,200	2.5	37.8	59.7
Denmark	272	0.9	1.7	1.6	47,800	36,600	1.2	22.9	75.8
Estonia	20	1.4	2.8	1.4	15,400	21,600	3.4	27.4	69.2
Finland	210	-0.8	-0.6	0.3	38,200	31,600	2.5	26.9	70.6
France	2,181	0.6	0.6	1.3	32,800	30,600	1.7	19.5	78.8
Germany	3,033	0.5	1.6	1.7	37,100	35,800	0.6	30.5	68.9
Greece	176	-3.2	0.4	-0.2	16,200	19,600	4.1	15.7	80.2
Hungary	110	2.1	4	3.1	11,100	19,700	4.1	31.9	64
Ireland	256	1.1	8.5	26.3	55,100	51,100	1	41.7	57.3
Italy	1,642	-1.7	0.1	0.7	27,000	27,800	2.2	23.5	74.2
Latvia	24	2.9	2.1	2.7	12,300	18,600	3.2	23.1	73.7
Lithuania	37	3.5	3.5	1.8	12,900	21,600	3.6	29.8	66.5
Luxembourg	51	4.2	4.7	3.5	89,900	76,100	0.2	12.1	87.7
Malta	9	4.6	8.4	7.4	21,400	26,700	1.3	15.2	83.5
Netherlands	677	-0.2	1.4	2	40,000	37,000	1.8	20	78.2
Poland	430	1.4	3.3	3.9	11,200	19,800	2.6	34.1	63.3
Portugal	180	-1.1	0.9	1.6	17,300	22,200	2.3	22.3	75.4
Romania	160	3.5	3.1	3.9	8,100	16,500	4.7	33.7	61.6
Slovakia	79	1.5	2.6	3.8	14,500	22,300	3.7	34.8	61.5
Slovenia	39	-1.1	3.1	2.3	18,700	23,900	2.4	32.7	64.9
Spain	1,076	-1.7	1.4	3.2	23,200	25,900	2.6	23.6	73.8
Sweden	447	1.2	2.6	4.1	45,600	35,700	1.3	25.7	72.9
United Kingdom	2,580	1.9	3.1	2.2	39,600	31,200	0.7	19.4	79.9

a 2014 instead of 2015 for EU-28, Croatia, and Sweden.

b In €, measured on the basis of purchasing power standards (PPS).

c Including construction.

Source: Eurostat online database (nama\_10\_gdp), (nama\_10\_pc), and (nama\_10\_a64). Viewed at: <http://ec.europa.eu/eurostat/web/main/home> (database accessed: February 2017).

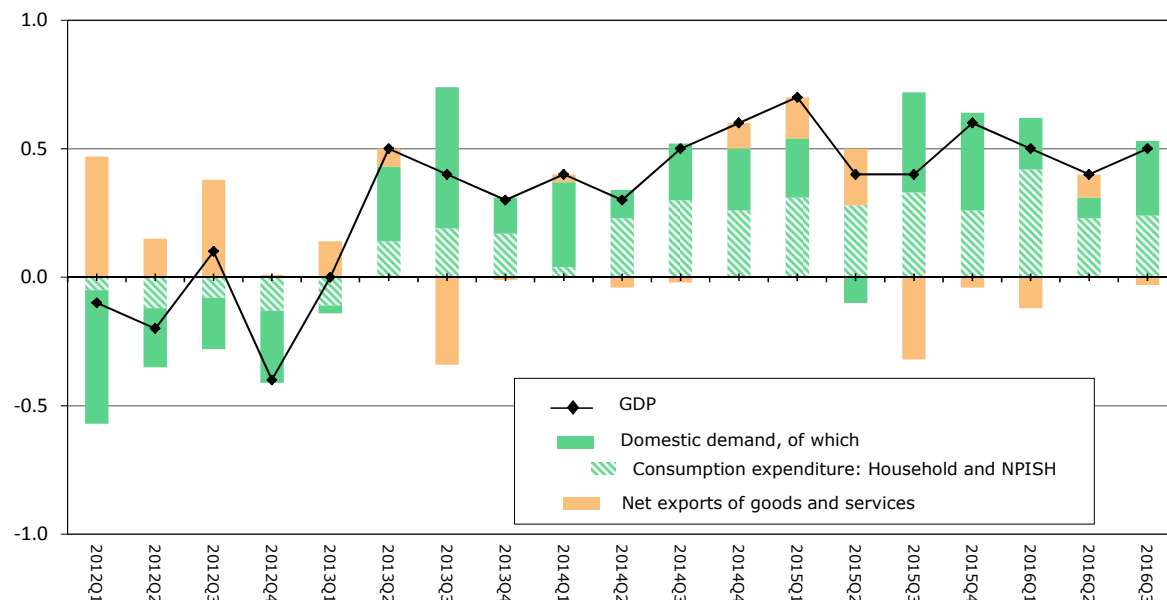
1.5. The EU's GDP growth was driven by private consumption during the review period (Chart 1.1). Household disposable income increased due to low energy prices, a general improvement in employment, and to a lesser extent, from increases in labour incomes. The extended period of low consumer price inflation implied that increases in nominal disposable incomes translated into gains in purchasing power that supported private consumption. Investment remained relatively weak but began to pick up during the period. Net exports detracted from GDP growth in the latter part of the review period mainly due to weak foreign demand. There were significant differences in GDP growth rates across the member States during the period, with Ireland having the highest growth rate (26.3%) due almost entirely to methodological reasons<sup>9</sup>, and Greece the lowest (-0.2%) in 2015.<sup>10</sup> Two member States showed their first positive economic growth since the latest recession, thus contributing to the recovery.

<sup>9</sup> The exceptional growth rate in 2015 was primarily due to the relocation to Ireland of a limited number of big economic operators. Eurostat online information. Viewed at: [http://ec.europa.eu/eurostat/documents/24987/6390465/Irish\\_GDP\\_communication.pdf](http://ec.europa.eu/eurostat/documents/24987/6390465/Irish_GDP_communication.pdf).

1.6. The EU economy has also been impacted by external factors and remains at risk to external shocks. There has been weak global growth and global trade which has weighed on economic growth for the EU during the period. Emerging-economy demand in particular has been downcast and EU exports to some major markets have fallen as a result.

**Chart 1.1 Contribution to GDP, 2012 Q1-2016 Q3**

(%age points)



Note: Seasonally and calendar-adjusted data.

Source: Eurostat online database. Viewed at: <http://ec.europa.eu/eurostat/web/main/home> (database accessed in February 2017).

1.7. There were a number of challenges or risks that impacted the EU economy during the review period and will likely continue in the near future. The referendum in the U.K. (Brexit), high levels of refugees, oil price movements, terrorism, and elections/political uncertainty have all had an impact.<sup>11</sup> The issue of refugees has increased fiscal outlays in many countries and has prompted additional border controls.<sup>12</sup> The impact on the U.K. and EU economies from the Brexit referendum is still unclear and a lot will depend on the outcome of the exit negotiations as regards how it will impact trade and investment flows<sup>13</sup> (see Section 2.1).

1.8. Unemployment has seen declines as rates continue a gradual fall from an all-time high of 11% in April 2013 to 9% in late 2015 (Table A1.1). In 2016, the unemployment rate reached 8.5%, and the lowest rate of 8.2% was reached in December of 2016, the lowest since February 2009. Between October 2015 and 2016, 24 member States exhibited declines in unemployment

<sup>10</sup> Eurostat online information. Viewed at: [http://ec.europa.eu/eurostat/statistics-explained/index.php/National\\_accounts\\_and\\_GDP](http://ec.europa.eu/eurostat/statistics-explained/index.php/National_accounts_and_GDP).

<sup>11</sup> European Commission online information. Viewed at: [https://ec.europa.eu/info/publications/european-economic-forecast-autumn-2016\\_en](https://ec.europa.eu/info/publications/european-economic-forecast-autumn-2016_en), [https://ec.europa.eu/info/business-economy-euro/economic-performance-and-forecasts/economic-forecasts/winter-2017-economic-forecast\\_en](https://ec.europa.eu/info/business-economy-euro/economic-performance-and-forecasts/economic-forecasts/winter-2017-economic-forecast_en), and [https://ec.europa.eu/info/publications/economic-take-refugee-crisis-macroeconomic-assessment-eu\\_en](https://ec.europa.eu/info/publications/economic-take-refugee-crisis-macroeconomic-assessment-eu_en). European Central Bank online information. Viewed at: <https://www.ecb.europa.eu/pub/pdf/ecbu/eb201607.en.pdf>. IMF, *Euro Area, 2016 Article IV Consultation*. Viewed at: <https://www.imf.org/external/pubs/ft/scr/2016/cr16219.pdf>.

<sup>12</sup> European Commission online information. Viewed at: [https://ec.europa.eu/info/publications/economic-take-refugee-crisis-macroeconomic-assessment-eu\\_en](https://ec.europa.eu/info/publications/economic-take-refugee-crisis-macroeconomic-assessment-eu_en). IMF, *Euro Area, 2016 Article IV Consultation*. Viewed at: <https://www.imf.org/external/pubs/ft/scr/2016/cr16219.pdf>.

<sup>13</sup> European Commission online information. Viewed at: [https://ec.europa.eu/info/publications/european-economic-forecast-autumn-2016\\_en](https://ec.europa.eu/info/publications/european-economic-forecast-autumn-2016_en) and [https://ec.europa.eu/info/business-economy-euro/economic-performance-and-forecasts/economic-forecasts/winter-2017-economic-forecast\\_en](https://ec.europa.eu/info/business-economy-euro/economic-performance-and-forecasts/economic-forecasts/winter-2017-economic-forecast_en).



rates.<sup>14</sup> However, in several member States unemployment rates still remain at relatively high levels, and persistent issues such as high rates of long-term unemployment and youth unemployment remain concerns.<sup>15</sup> Further, statistics verify that the working hours per employee have not recovered from the drop during the crisis and show an increase of part-time work. There are also increases in the potential additional labour force and in the number of underemployed part-time workers. This signals that there remains substantial slack in the labour market. Unemployment rates also vary considerably among the member States, with the Czech Republic recording the lowest at 3.5% and Greece the highest at 23% in the last quarter of 2016.

1.9. As of February, the outlook for the EU economy for 2017 is one of continued steady growth; GDP growth for the euro area is expected to be 1.6% in 2017, and about 1.7% in 2016.<sup>16</sup> Private consumption, which has been the main driver, is expected to continue to be the main driver of GDP growth for 2017. Inflation in the euro area, which has been picking up since mid-2016, is expected to continue in the short term due to the end of falling energy prices, the rise in energy prices, and increases in import prices. It is expected that the EU economy will no longer be able to rely on the exceptional level of support from factors such as low oil prices, the lagged effects of the euro's past depreciation, and the start of very accommodative monetary policy. Monetary policy, however, is expected to remain supportive of growth over the coming years, and fiscal policy, which has significantly eased in recent years, is not forecast to become restrictive again. Unemployment rates are expected to fall further. However, in several member States, legacies from the crisis, such as high unemployment, non-performing loans, high private and public debt and deleveraging processes, as well as an ongoing process of balance sheet repair in the banking sector, also are expected to continue to weigh on growth.

### 1.1.1 Balance of payments

1.10. The EU's current account surplus declined slightly in 2014, expanded to €167 billion in 2015 and increased to €216 billion in 2016.<sup>17</sup> This accounts for a growing percentage of GDP, rising to 1.1% in 2015 and 1.5% in 2016. Historically this follows a gradual growing positive balance since 2012, prior to which the balance was negative. The goods and services balances remained positive throughout the review period, with a particular increase in the goods balance to €133 billion in 2015 mainly driven by low commodity prices and favourable exchange rates. The balance in goods increased to €156.8 billion in 2016. The EU generally maintained positive current account balances with the United States, Switzerland, Brazil, and Hong Kong, China; while maintaining deficits with China, the Russian Federation, and Japan during the review period.

1.11. At the level of the individual EU member States in 2015, 20 had current account surpluses and 8 had deficits. Germany in particular stands out for having growing surpluses that significantly surpass the others (€253 billion in 2015); the Netherlands has the next largest surplus at €59 billion.<sup>18</sup> The largest deficit was recorded in the United Kingdom (€111 billion in 2015).<sup>19</sup> Germany's growing surplus reflects, *inter alia*, weak domestic demand, a strong fiscal position, and relatively weak investment. For the U.K. whose current account deficit reached a record high in 2015, the main reasons were increasing deficits in trade in goods and investment income.<sup>20</sup>

1.12. The situation is relatively similar when examining the current account in relation to GDP (Chart 1.2). Ireland, Denmark, the Netherlands and Germany had current account surpluses in excess of 8% of GDP for 2015; while the U.K. and Cyprus had the largest deficits of 4.3% and

<sup>14</sup> Eurostat online information. Viewed at: <http://ec.europa.eu/eurostat/documents/3217494/7883557/KS-BJ-17-002-EN-N.pdf> and [http://ec.europa.eu/eurostat/statistics-explained/index.php/Unemployment\\_statistics](http://ec.europa.eu/eurostat/statistics-explained/index.php/Unemployment_statistics).

<sup>15</sup> Eurostat online information. Viewed at: [http://ec.europa.eu/eurostat/statistics-explained/index.php/Unemployment\\_statistics](http://ec.europa.eu/eurostat/statistics-explained/index.php/Unemployment_statistics).

<sup>16</sup> European Commission online information. Viewed at: [https://ec.europa.eu/info/business-economy-euro/economic-performance-and-forecasts/economic-forecasts/winter-2017-economic-forecast\\_en](https://ec.europa.eu/info/business-economy-euro/economic-performance-and-forecasts/economic-forecasts/winter-2017-economic-forecast_en).

<sup>17</sup> Eurostat online information. Viewed at: <http://appsso.eurostat.ec.europa.eu/nui/submitViewTableAction.do>.

<sup>18</sup> Eurostat online information. Viewed at: <http://appsso.eurostat.ec.europa.eu/nui/submitViewTableAction.do>.

<sup>19</sup> Eurostat online information. Viewed at: <http://appsso.eurostat.ec.europa.eu/nui/submitViewTableAction.do>.

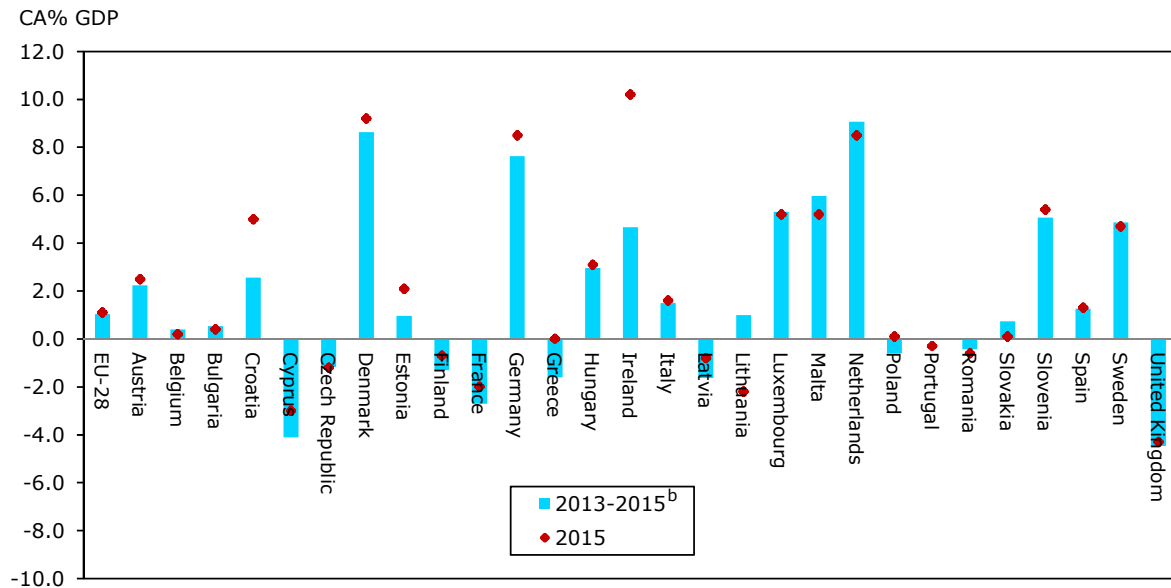
<sup>20</sup> IMF, *United Kingdom, 2016 Article IV Consultation*. Viewed at: <https://www.imf.org/external/pubs/ft/scr/2016/cr16168.pdf>.



3.0% of GDP respectively. The U.K.'s large current account deficit in terms of GDP stood out, not only in Europe but also as it was the largest among all advanced economies.<sup>21</sup> For those with surpluses, the situation was further magnified for most in 2015 compared to previous years.

1.13. The financial account situation was in deficit largely due to portfolio debt outflows during the period. Germany was by far the largest net lender in terms of the financial account (€225 billion).<sup>22</sup>

**Chart 1.2 Balance of the current account as a % of GDP<sup>a</sup>**



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

b Simple average of three years.

Source: European Commission, European Economic Forecast Winter 2017, February 2017.

### 1.1.2 Monetary and exchange rate policies

1.14. The Eurosystem, which consists of the European Central Bank (ECB) and the national central banks of the euro area member States, is responsible for defining and implementing monetary policy for the euro area. National central banks of the EU member States outside the euro area are part of the European System of Central Banks (ESCB) and are in charge of the conduct of monetary policy in their respective jurisdictions. The Eurosystem's main objective is to ensure price stability, operationalized through its inflation rate target of close to, but below 2%. The main instruments at its disposal are open market operations, standing facilities, and minimum reserve requirements. In addition, since the financial crisis, the ECB has utilized several non-standard measures, most prominently asset purchase programmes. During the review period, the ECB lowered its key policy rates to historically low levels, with the deposit facility rate set at -0.40% since March 2016, and conducted purchases of private and public sector securities from October 2014 and March 2015 respectively.

1.15. In the context of the lower bound on interest rates, the ECB has been using various asset purchase programmes (APP), i.e. quantitative easing, during the review period in order to achieve its price stability objective. The ECB commenced two programmes<sup>23</sup> in September 2014 and launched its expanded APP in March 2015, which continued throughout 2016<sup>24</sup>. The goal of the

<sup>21</sup> IMF, *United Kingdom, 2016 Article IV Consultation*. Viewed at: <https://www.imf.org/external/pubs/ft/scr/2016/cr16168.pdf>.

<sup>22</sup> Eurostat online information. Viewed at: [http://ec.europa.eu/eurostat/statistics-explained/index.php/alance\\_of\\_payment\\_statistics#Financial\\_account](http://ec.europa.eu/eurostat/statistics-explained/index.php/alance_of_payment_statistics#Financial_account).

<sup>23</sup> Third covered bond purchase programme (CBPP3) and asset-backed securities purchase programme (ABSPP).

<sup>24</sup> Public sector purchase programme (PSPP) and corporate sector purchase programme (CSPP).

expanded APP was to address risks related to long periods of low inflation and encourage momentum of the euro area's economic recovery. The monthly purchases were set at €60 billion during the early part of the review period, and have been raised to €80 billion since April 2016. In December 2016, the APP was extended until December 2017, while the amount of monthly purchases is intended to be lowered back to €60 billion per month from April 2017.<sup>25</sup> While public debt instruments account for the majority of APP purchases, investment-grade euro corporate debt instruments were added to the pool of the APP-eligible securities in June 2016.<sup>26</sup> In February 2017, the total APP holdings amounted to €1,698 billion.<sup>27</sup>

1.16. Of the 28 member States, 19 are using the euro<sup>28</sup>, two have their currency pegged to the euro, and the remaining seven have free-floating currencies. The Eurosystem conducts foreign exchange interventions and holds and manages the euro area's foreign currency reserves. There is also the possibility that the Economic and Financial Affairs Council (ECOFIN Council) can conclude formal exchange rate agreements. For countries inside the EU but not using the euro, the Exchange Rate Mechanism (ERMII) can ensure that currency rate fluctuations do not impact economic stability by fixing the exchange rate with the euro within set limits. During the review period, only Denmark participated in the ERMII by keeping its currency within +/- 2.25% of the euro.<sup>29</sup>

1.17. During the review period, the euro weakened gradually against most currencies in 2015 and appreciated moderately for most of 2016. In 2015, the euro declined 3% in nominal effective terms against a basket of 38 currencies, but declined more substantially by 11% against its major trading partner's currency, the U.S. dollar. The euro also depreciated albeit to a lesser degree against the U.K. pound sterling and the Chinese renminbi. At the same time, the euro strengthened against the Brazilian real and the South African rand.<sup>30</sup> In 2016, the euro appreciated slightly on balance against the basket of 38 currencies. The euro appreciated in particular against the U.K. pound sterling while it weakened slightly against the U.S. dollar. The euro remains important beyond EU borders as it remains the second most important currency in the international monetary system, accounting for about 30% of global payments in 2016, and remains an important invoicing or settlement currency for extra-EU trade.<sup>31</sup> However, the use of the euro as a foreign exchange reserve and in international debt markets declined slightly during the review period.<sup>32</sup>

### 1.1.3 Fiscal position

1.18. There was a gradual improvement of the fiscal situation across the EU during the review period, although the pace was expected to be slower in 2016 compared to 2015. Both the government deficit to GDP ratio (-3% to -2.4%), and the debt to GDP ratio (86.7% to 85%) improved between 2014 and 2015 and, according to the Commission's winter 2017 forecast, were projected to have reached -1.9% and 85.1% of GDP respectively in 2016 (Table A1.1).<sup>33</sup> However, government debt levels remain historically high due to the relatively modest recovery. A reduction in the deficit occurred between 2014 and 2015 for nearly all member States except Denmark and Greece; Germany, Estonia, Luxembourg, and Sweden had positive government balances and Slovakia and Romania remained unchanged (Chart 1.3).

<sup>25</sup> ECB online information. Viewed at: <https://www.ecb.europa.eu/mopo/implement/omt/html/index.en.html>.

<sup>26</sup> The corporate sector purchase programme (CSPP) was added in June 2016.

<sup>27</sup> ECB online information. Viewed at: <https://www.ecb.europa.eu/mopo/implement/omt/html/index.en.html>.

<sup>28</sup> Lithuania was the last member State to join the euro area, on 1 January 2015.

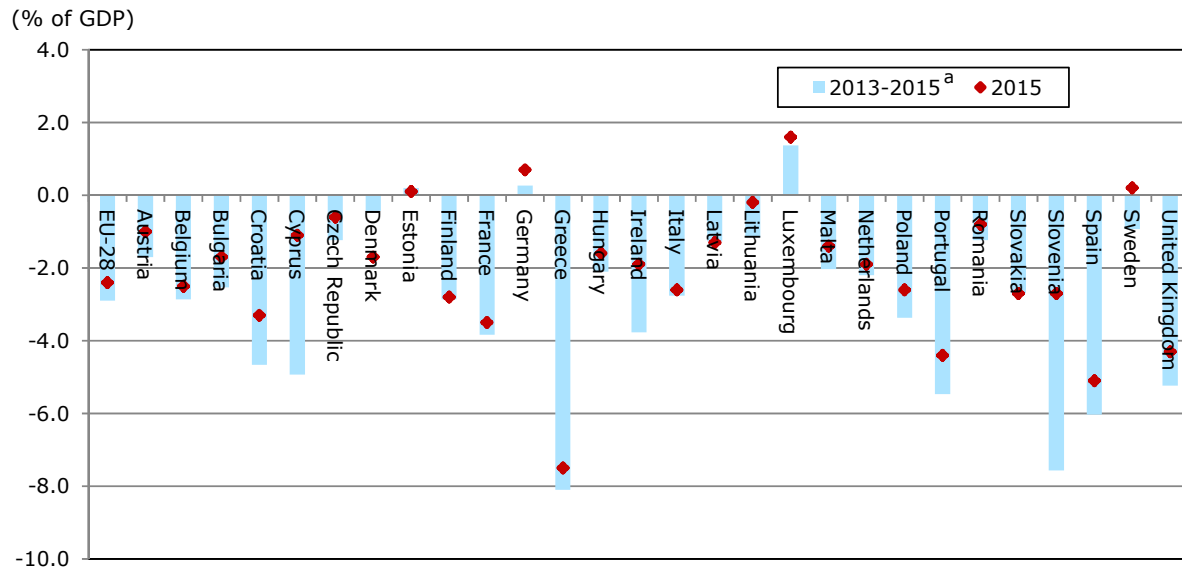
<sup>29</sup> European Commission online information. Viewed at: [http://ec.europa.eu/economy\\_finance/euro/adoption/erm2/index\\_en.htm](http://ec.europa.eu/economy_finance/euro/adoption/erm2/index_en.htm).

<sup>30</sup> ECB, *Annual Report 2015*. Viewed at: <https://www.ecb.europa.eu/pub/pdf/annrep/ar2015en.pdf?51b9735eed394d1acf8eef58bb0452e>.

<sup>31</sup> ECB online information. Viewed at: <https://www.ecb.europa.eu/pub/pdf/other/euro-international-role-201606.en.pdf> and <https://www.ecb.europa.eu/pub/pdf/ecbu/eb201607.en.pdf>.

<sup>32</sup> ECB online information. Viewed at: <https://www.ecb.europa.eu/pub/pdf/other/euro-international-role-201606.en.pdf>.

<sup>33</sup> Eurostat online information. Viewed at: [http://ec.europa.eu/eurostat/statistics-explained/index.php/Government\\_finance\\_statistics](http://ec.europa.eu/eurostat/statistics-explained/index.php/Government_finance_statistics) and European Commission online information. Viewed at: [https://ec.europa.eu/info/business-economy-euro/economic-performance-and-forecasts/economic-forecasts/winter-2017-economic-forecast\\_en](https://ec.europa.eu/info/business-economy-euro/economic-performance-and-forecasts/economic-forecasts/winter-2017-economic-forecast_en).

**Chart 1.3 General government deficit as a % of GDP, 2013-15**

a Average is for 2013-15 period.

Source: Eurostat online database. Viewed at: <http://ec.europa.eu/eurostat/web/main/home> (database accessed in February 2017).

1.19. In 2015, deficit ratios were greater than the nominal deficit target of -3% of GDP for six member States – Croatia, France, Greece, Portugal, Spain, and the United Kingdom; and 17 had a debt to GDP ratio above 60%.<sup>34</sup> Although fiscal policy generally eased over the review period, fiscal space is still limited in a number of EU member States and remains a national policy instrument although subject to more EU coordination.<sup>35</sup> Thus there has been more reliance and use of monetary policies. The EU Commission has been encouraging member States to use their available fiscal space to increase investment and encourage growth.<sup>36</sup>

1.20. The EU had slight increases in absolute terms of total government revenues and expenditures between 2014 and 2015, but decreases relative to GDP. Revenues decreased to 44.9% of GDP from 45.1%, and expenditures to 47.3% of GDP from 48.1%. Across EU member States in 2015, most revenues were in the form of taxes (59.4% of total revenue) and net social contributions (29.4%); while expenditures were mainly social transfers (44.4%) and compensation of employees (21.4%).<sup>37</sup>

### 1.1.4 EU economic governance and structural reforms

1.21. The EU has had a number of policies over the years aimed at coordinating national and fiscal economic policies of the member States. In 1998, the Stability and Growth Pact (SGP) was introduced to operationalize observance of the Maastricht fiscal criteria after the completion of the monetary union and to strengthen the monitoring of fiscal policies. Subsequently, after the crisis, the EU fiscal framework was revised in 2011 with new Stability Pact regulations, a directive on fiscal governance, a regulation on fiscal statistics, and regulations on surveillance of macroeconomic imbalances ("Six Pack"). The Treaty on Stability Coordination and Governance further strengthened the EU fiscal framework by incorporating the requirements for member

<sup>34</sup> Austria, Belgium, Croatia, Cyprus, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Malta, Netherlands, Portugal, Slovenia, Spain, and the United Kingdom. Eurostat online information. Viewed at: [http://ec.europa.eu/eurostat/statistics-explained/index.php/Government\\_finance\\_statistics](http://ec.europa.eu/eurostat/statistics-explained/index.php/Government_finance_statistics).

<sup>35</sup> ECB online information. Viewed at: [http://www.ecb.europa.eu/pub/pdf/other/eb201604\\_article02.en.pdf?725c92b88a3f74b5239d290ea2250a32](http://www.ecb.europa.eu/pub/pdf/other/eb201604_article02.en.pdf?725c92b88a3f74b5239d290ea2250a32).

<sup>36</sup> European Commission online information. Viewed at: [http://ec.europa.eu/economy\\_finance/publications/eeip/pdf/ip038\\_en.pdf](http://ec.europa.eu/economy_finance/publications/eeip/pdf/ip038_en.pdf).

<sup>37</sup> Eurostat online information. Viewed at: [http://ec.europa.eu/eurostat/statistics-explained/index.php/Government\\_finance\\_statistic](http://ec.europa.eu/eurostat/statistics-explained/index.php/Government_finance_statistic) and [http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=gov\\_10dd\\_edpt1&lang=en](http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=gov_10dd_edpt1&lang=en).

States to introduce a mechanism for achieving the medium-term objective for fiscal policy into their legislation. Finally, the "Two Pack" aimed at strengthening budgetary surveillance and providing a framework for countries under financial distress.<sup>38</sup> More recently, in 2015, the European Commission issued a Communication on how to make use of flexibility within the rules of the SGP. This flexibility concerns, in particular, three aspects: (i) investment, in particular national contributions to the newly-established European Fund for Strategic Investment and other eligible instruments; (ii) structural reforms and their potential long-term positive impact on the budget and (iii) cyclical conditions.<sup>39</sup>

1.22. Since 2011, the EU has introduced a Macroeconomic Imbalance Procedure (MIP)<sup>40</sup> to identify, prevent, and address potentially harmful macroeconomic imbalances in member States. For countries that have excessive imbalances, enhanced surveillance is normally required and possibly followed by enforcement or sanctions. In its latest report from 2017<sup>41</sup>, the EU carried out in-depth reviews of 13 member States: imbalances were found in six countries<sup>42</sup>, excessive imbalances in six countries<sup>43</sup>, and no evidence of imbalance in one case.<sup>44</sup> Greece was not reviewed as it was under a macroeconomic adjustment programme. Thus, specific monitoring is currently being carried out for six countries in order to measure the progress of implementation of recommended policy measures.<sup>45</sup>

1.23. The EU continues to follow its Europe 2020 strategy for smart, sustainable and inclusive growth.<sup>46</sup> As such, it has set priorities and targets for certain aspects of the economy, these are:

- Employment: 75% employment level for people aged 20-64;
- R&D: 3% of EU GDP invested in R&D;
- Climate change and energy sustainability: greenhouse gas emissions 20% lower than 1990 levels, 20% of energy coming from renewables, 20% increase in energy efficiency;
- Education: reduce early school leavers to below 10%, at least 40% of 30-34 year-olds having completed higher education; and
- Fighting poverty and social exclusion: at least 20 million fewer people in or at risk.<sup>47</sup>

1.24. The EU has also identified three major economic priorities, these are: investment, fiscal responsibility, and structural reforms.<sup>48</sup> Broadly speaking, structural reforms include making labour markets more adaptable, liberalizing services (see Section 1.2.2), improving the business environment, increasing competition, and boosting innovation. These reforms are being implemented through each member States' National Reform Programmes and according to country-specific recommendations of the European Semester, often with financial help provided through the European Cohesion Policy.<sup>49</sup> Regarding Europe 2020 goals, most of the progress has

<sup>38</sup> See previous report, WT/TPR/S/317/Rev.1 for information on the "Six Pack" and "Two Pack".

<sup>39</sup> European Commission online information. Viewed at: [http://ec.europa.eu/economy\\_finance/economic\\_governance/sgp/pdf/2015-01-13\\_communication\\_sgp\\_flexibility\\_guidelines\\_en.pdf](http://ec.europa.eu/economy_finance/economic_governance/sgp/pdf/2015-01-13_communication_sgp_flexibility_guidelines_en.pdf).

<sup>40</sup> Regulation (EU) No. 1176/2011 of the European Parliament and of the Council of 16 November 2011 on the prevention and correction of macroeconomic imbalances. OJ 306/25 of 23.11.2011. European Commission online information. Viewed at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011R1176&from=en>.

<sup>41</sup> European Commission, *2017 Alert Mechanism Report*. Viewed at: [https://ec.europa.eu/info/publications/2017-european-semester-alert-mechanism-report\\_en](https://ec.europa.eu/info/publications/2017-european-semester-alert-mechanism-report_en).

<sup>42</sup> Germany, Ireland, the Netherlands, Slovenia, Spain, and Sweden.

<sup>43</sup> Bulgaria, Croatia, Cyprus, France, Italy, and Portugal.

<sup>44</sup> Finland.

<sup>45</sup> Bulgaria, Spain, France, Croatia, Ireland, Italy, Portugal and Slovenia. European Commission online information. Viewed at: [http://ec.europa.eu/economy\\_finance/economic\\_governance/macroeconomic\\_imbalance\\_procedure/specific\\_monitoring/index\\_en.htm](http://ec.europa.eu/economy_finance/economic_governance/macroeconomic_imbalance_procedure/specific_monitoring/index_en.htm).

<sup>46</sup> European Commission online information. Viewed at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52010DC2020&from=EN>.

<sup>47</sup> European Commission online information. Viewed at: [http://ec.europa.eu/europe2020/europe-2020-in-a-nutshell/targets/index\\_en.htm](http://ec.europa.eu/europe2020/europe-2020-in-a-nutshell/targets/index_en.htm).

<sup>48</sup> European Commission online information. Viewed at: [http://ec.europa.eu/economy\\_finance/structural\\_reforms/index\\_en.htm](http://ec.europa.eu/economy_finance/structural_reforms/index_en.htm).

<sup>49</sup> It has a budget of €352 billion for 2014-20. European Commission online information. Viewed at: <https://cohesiondata.ec.europa.eu/>.

been observed in the areas of climate change and energy sustainability and education.<sup>50</sup> As for structural reforms, progress remains slow in general, and more recently the reform momentum has overall slowed down. As a result, the full potential benefits of growth are not being grasped.<sup>51</sup> Reforms remain particularly sluggish in areas related to strengthening the business environment, employment, female labour market participation, and reducing barriers to competition in services.<sup>52</sup>

1.25. In 2015, the Council of the EU issued a recommendation on broad guidelines for the economic policies of the member States and of the European Union, and a recommendation on guidelines for employment policies, which together form the integrated guidelines for implementing the Europe 2020 strategy ("Europe 2020 integrated guidelines").<sup>53</sup> The broad guidelines include: promoting investment, enhancing growth through member States' implementation of structural reforms, removing key barriers to sustainable growth and jobs at Union level, and improving the sustainability and growth-friendliness of public finances. The guidelines for the employment policies aim at a coordinated strategy for promoting a skilled and adaptable workforce by boosting demand for labour; enhancing labour supply, skills, and competences; enhancing the functioning of labour markets; and fostering social inclusion by promoting equal opportunities.<sup>54</sup> In this respect, Country-Specific Recommendations (CSRs) issued within the European Semester also cover the labour market and social inclusion. Moreover, the EU has established, as a policy priority, the development of a European Pillar of Social Rights to create equal opportunities and access to the labour market, fair working conditions, and adequate and sustainable social protection in the EU.<sup>55</sup>

## 1.2 Trade Performance

### 1.2.1 Goods

1.26. The importance of the EU in world merchandise trade is very significant as it ranks second overall in terms of both imports and exports (excluding intra-EU trade).<sup>56</sup> Further, it is important to many of the world's smaller countries, as it is the largest trading partner for 80 countries.<sup>57</sup> The total value of imports and exports climbed slightly over the period 2013-15, by 2.5% and 3.1% respectively, thus increasing slightly the merchandise trade surplus (Chart 1.4). According to the 2016 provisional figures, EU exports will have declined slightly (2%) due to weak demand and imports will also have fallen slightly, by about 1%, compared to 2015.<sup>58</sup> The EU accounted for 14.4% of world imports and 15.2% of world exports in 2015.<sup>59</sup>

1.27. There were no major shifts in trade among partner countries during the period 2013-15 (Chart 1.4). The United States remained the main export market, followed by China and Switzerland. Exports to the United States increased during the period, from 16.7% to 20.8% of total exports, mainly due to increases in exports of machinery and transport equipment, and chemical products (Table A1.2). Exports to China also increased slightly from 8.5% to 9.5% of total exports. There were slight decreases in exports to the Russian Federation, Switzerland, and

<sup>50</sup> Eurostat online information. Viewed at: <http://ec.europa.eu/eurostat/web/europe-2020-indicators/europe-2020-strategy>.

<sup>51</sup> European Commission, *Annual Growth Survey 2016*. Viewed at: [http://ec.europa.eu/europe2020/pdf/2016/ags2016\\_annual\\_growth\\_survey.pdf](http://ec.europa.eu/europe2020/pdf/2016/ags2016_annual_growth_survey.pdf).

<sup>52</sup> IMF, *Euro Area, 2016 Article IV Consultation*. Viewed at: <https://www.imf.org/external/pubs/ft/scr/2016/cr16219.pdf>.

<sup>53</sup> European Commission online information. Viewed at: [http://ec.europa.eu/europe2020/pdf/Europe2020\\_guidelines\\_part1\\_en.pdf](http://ec.europa.eu/europe2020/pdf/Europe2020_guidelines_part1_en.pdf).

<sup>54</sup> European Commission online information. Viewed at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015D1848&from=EN>.

<sup>55</sup> European Commission online information. Viewed at: [https://ec.europa.eu/commission/priorities/deeper-and-fairer-economic-and-monetary-union/towards-european-pillar-social-rights\\_en](https://ec.europa.eu/commission/priorities/deeper-and-fairer-economic-and-monetary-union/towards-european-pillar-social-rights_en).

<sup>56</sup> WTO, *International Trade Statistics 2015*. Viewed at: [https://www.wto.org/english/res\\_e/statis\\_e/its2015\\_e/its2015\\_e.pdf](https://www.wto.org/english/res_e/statis_e/its2015_e/its2015_e.pdf).

<sup>57</sup> European Commission online information. Viewed at: <http://ec.europa.eu/trade/policy/eu-position-in-world-trade/>.

<sup>58</sup> Eurostat online information. Viewed at: [http://trade.ec.europa.eu/doclib/docs/2013/december/tradoc\\_151969.pdf](http://trade.ec.europa.eu/doclib/docs/2013/december/tradoc_151969.pdf).

<sup>59</sup> WTO, *World Trade Statistical Review 2016*. Viewed at: [https://www.wto.org/english/res\\_e/statis\\_e/wts2016\\_e/wts2016\\_e.pdf](https://www.wto.org/english/res_e/statis_e/wts2016_e/wts2016_e.pdf) and information provided by the authorities.

Africa during the period. Exports to Switzerland fluctuated due to trade in non-monetary gold and exports to Africa declined as a share of total exports but remained stable in absolute terms.<sup>60</sup>

1.28. In terms of merchandise imports, the main sources were China (20.3%), the United States (14.4%), and the Russian Federation (7.9%). Imports from China and the United States both increased, while those from the Russian Federation and Africa decreased (Chart 1.4, Table A1.3). China accounted for one fifth of EU imports with machinery contributing to the increase in imports. The decreases in imports from the Russian Federation and Africa can be attributed to lower prices and demand for energy and fuel products.

1.29. Trade by sector remained relatively stable since the last review, with the exception of a significant decline in fuel imports due to low world fuel prices (Chart 1.5). Imports of fuel products declined from 29.6% of imports in 2013 to 19% in 2015. Manufactured products account for about 80% of EU exports, with transport equipment (18%) and chemicals (17.6%) the most significant subsectors exported (Table A1.4). Imported products are also concentrated in manufactured products (66%) but with a dispersed group of subsectors including chemicals, office and telecommunication equipment, transport, other machinery, and clothing; followed by the mining sector, mainly fuels (23%) (Table A1.5). Agricultural products accounted for 8.7% of imports and 7.9% of exports in 2015.

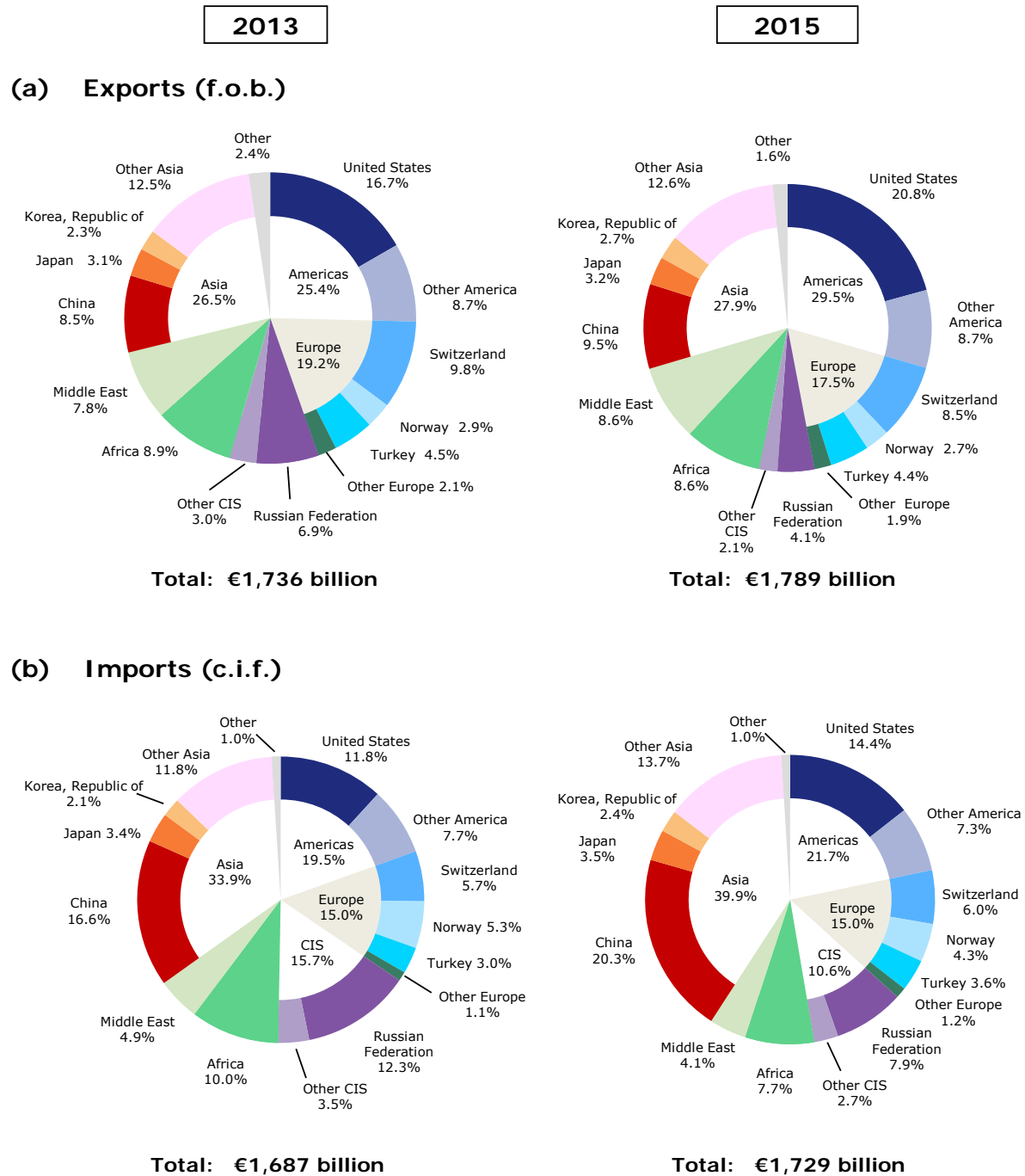
1.30. In 2015, the EU had a record deficit in merchandise trade with China of €180 billion, and a record surplus with the United States of €122 billion.<sup>61</sup>

---

<sup>60</sup> Information provided by the authorities.

<sup>61</sup> European Commission online information. Viewed at: [http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc\\_113465.pdf](http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_113465.pdf) and Eurostat online information. Viewed at: <http://ec.europa.eu/eurostat/documents/2995521/7553974/6-12072016-BP-EN.pdf/67bbb626-d55f-4032-8c24-48e4c9f78c3a>.

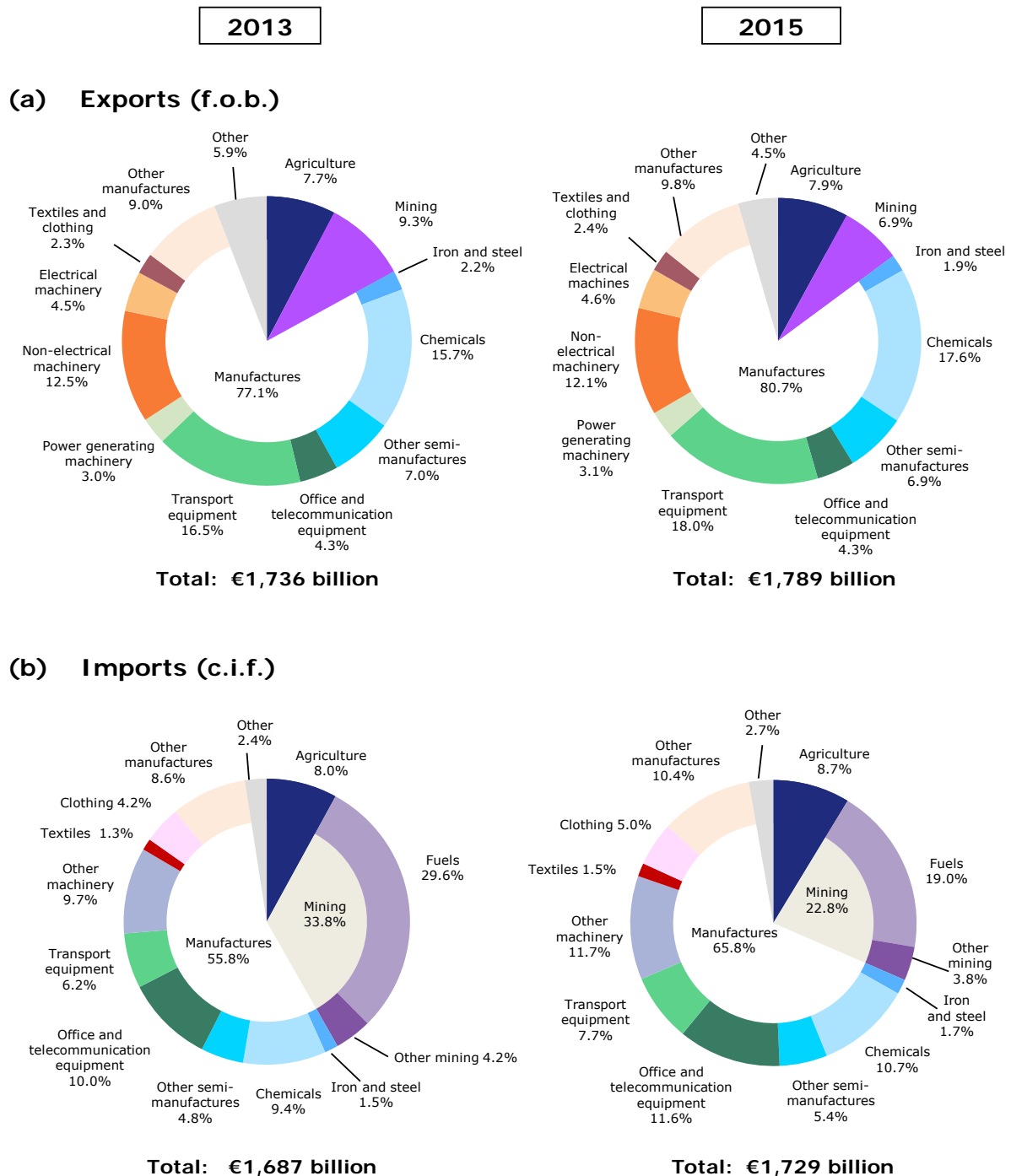
Chart 1.4 Direction of merchandise trade, 2013 and 2015



Source: WTO Secretariat calculations, based on Eurostat data.



Chart 1.5 Composition of merchandise trade, 2013 and 2015



Source: WTO Secretariat calculations, based on Eurostat data.

1.31. Intra-EU trade is also important to many member States of the EU as their trade within the bloc is larger than extra-EU trade (Chart 1.6, Table A1.6). In 2015, intra-EU trade was valued at €3,068 billion, increasing 4.6% from 2014, thus significantly greater than EU external exports and with a higher growth rate.<sup>62</sup> The EU member States with the highest amounts of intra-EU imports and exports were Germany, France (imports), and Netherlands (exports) (Table A1.6). In 2015,

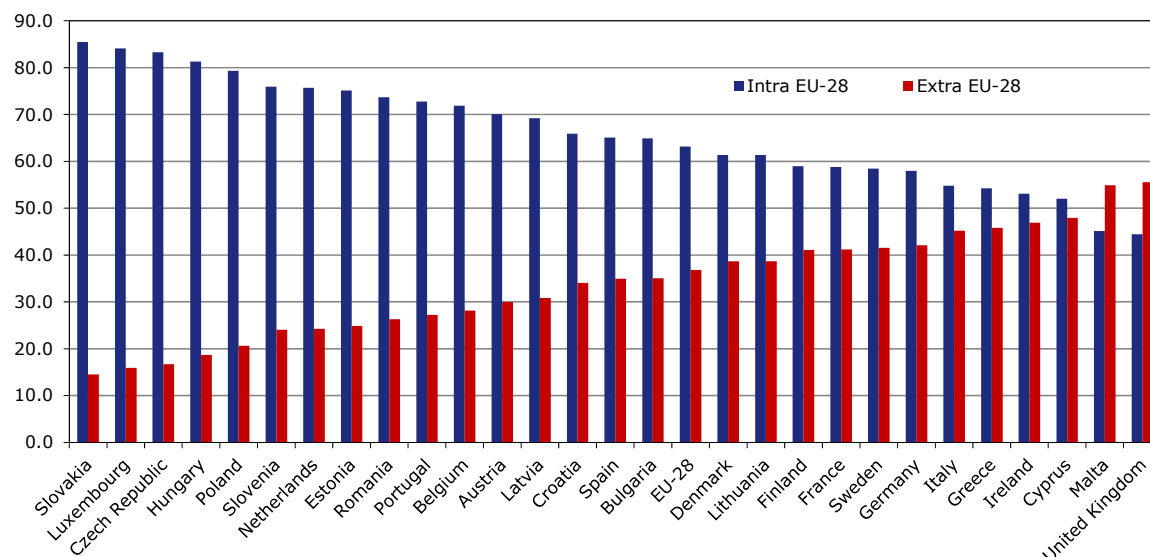
<sup>62</sup> Eurostat online information. Viewed at: [http://ec.europa.eu/eurostat/statistics-explained/index.php/International\\_trade\\_in\\_goods](http://ec.europa.eu/eurostat/statistics-explained/index.php/International_trade_in_goods).



intra-EU trade was larger than extra-trade for all member States except the United Kingdom.<sup>63</sup> Member States with the highest percentage of intra-EU exports in 2015 were Slovakia, Luxembourg, and the Czech Republic (Chart 1.6).

**Chart 1.6 Intra- and extra-EU exports of goods, 2015**

(%)



Source: Eurostat database. Viewed at: <http://ec.europa.eu/eurostat/web/international-trade-in-goods/data/database> (database accessed in February 2017).

### 1.2.2 Services

1.32. The EU's services sector, as in similar developed countries, continues to play a dominant role in the economy and in trade. In 2015, services contributed 73.9% of the EU's total gross value added, and 73.5% to employment.<sup>64</sup> The EU continued to be the world's largest services importer and exporter (excluding intra-EU trade).<sup>65</sup> Intra-EU trade in services is also very important to the EU and its economy, as it is larger than external services trade, accounting for more than 55% of EU member States' international transactions.<sup>66</sup>

1.33. Extra-EU trade in services continued its upward trend during 2014-15 in both imports and exports. However exports grew at a slower pace compared to imports, thus the services trade balance, while remaining positive, actually contracted in the last two years from €178 billion in 2013 to €146 billion in 2015 (Table 1.2). The category of "charges for the use of intellectual property" contributed significantly to this trend as their imports increased. The United Kingdom was the largest exporter of services outside the EU in 2015, amounting to €189 billion, and Germany was the largest importer with €118 billion.<sup>67</sup> The United Kingdom also had the largest services trade surplus of €93 billion and Ireland the largest deficit of €34 billion.<sup>68</sup>

1.34. Extra-EU services trade, both imports and exports, was concentrated in other business services (30% and 28% respectively) and transport (19% and 17%, respectively) in 2015; this did not change significantly during the review period. Both imports and exports of transport services

<sup>63</sup> Eurostat online information. Viewed at: [http://ec.europa.eu/eurostat/statistics-explained/index.php/International\\_trade\\_in\\_goods](http://ec.europa.eu/eurostat/statistics-explained/index.php/International_trade_in_goods).

<sup>64</sup> Eurostat online information. Viewed at: [http://ec.europa.eu/eurostat/statistics-explained/index.php/National\\_accounts\\_and\\_GDP](http://ec.europa.eu/eurostat/statistics-explained/index.php/National_accounts_and_GDP).

<sup>65</sup> WTO, *International Trade Statistics 2015*. Viewed at: [https://www.wto.org/english/res\\_e/statis\\_e/its2015\\_e/its2015\\_e.pdf](https://www.wto.org/english/res_e/statis_e/its2015_e/its2015_e.pdf).

<sup>66</sup> Eurostat online information. Viewed at: [http://ec.europa.eu/eurostat/statistics-explained/index.php/International\\_trade\\_in\\_services](http://ec.europa.eu/eurostat/statistics-explained/index.php/International_trade_in_services).

<sup>67</sup> Eurostat online information. Viewed at: [http://ec.europa.eu/eurostat/statistics-explained/index.php/International\\_trade\\_in\\_services](http://ec.europa.eu/eurostat/statistics-explained/index.php/International_trade_in_services).

<sup>68</sup> Information provided by the authorities.

declined slightly during 2013-15, while other business services showed a slight increase during the same period. Within other business services, the largest component was technical, trade-related and other business services (this group comprises also services in the areas of R&D, professional and management consultancy, etc.), comprising 48% of imports and 58% of exports in 2015. Within the transport sector, sea transport was the largest component (comprising 43% of transport imports and 52% of transport exports), followed by air transport for both imports and exports.<sup>69</sup>

1.35. The main external trading partners for services are the United States and Switzerland, for both imports and exports; the United States accounted for 31% of EU imports and 27% of exports and Switzerland for 11% of imports and 14% of exports in 2015 (Table 1.2). Both the United States' and Switzerland's services trade with the EU have a similar profile, the largest category of both imports and exports is other business services, followed by charges for the use of intellectual property on the import side and transport services on the export side. The U.K. was the EU's largest services exporter, accounting for about 23% of EU services exports in 2015, and also accounted for the EU's largest services surplus of €93.4 billion.<sup>70</sup> The largest services importer was Germany, accounting for 18% of imports.<sup>71</sup>

1.36. EU services sector trade has been influenced by gradual liberalization and reforms resulting from the 2006 Services Directive. In 2012, the European Commission estimated that the Directive would generate 0.8% of GDP growth over five to ten years.<sup>72</sup> The benefit to services trade and FDI flows was also expected, with estimated increases of 7% and 4%, respectively.<sup>73</sup>

**Table 1.2 Extra-EU trade in services, by sector and partner, 2013-15**

(€ million)

	Exports			Imports		
	2013	2014	2015	2013	2014	2015
<b>Total</b>	<b>721,251</b>	<b>772,531</b>	<b>831,529</b>	<b>543,503</b>	<b>602,159</b>	<b>685,657</b>
	(% of total)					
<b>By sector</b>						
Manufacturing services on physical inputs owned by others	2.9	2.6	2.4	1.4	1.2	1.2
Maintenance and repair services n.i.e.	1.3	1.3	1.4	1.5	1.3	1.4
Transport	19.5	18.2	17.3	21.9	20.1	18.5
Sea transport	10.4	9.6	8.9	9.5	8.7	8.0
Air transport	5.9	5.7	5.6	8.2	7.5	6.9
Other modes of transport	2.8	2.6	2.5	3.5	3.4	3.2
Postal and courier services	0.3	0.3	0.2	0.6	0.5	0.4
Travel	14.4	14.1	13.5	16.8	16.3	14.5
Business	2.4	2.4	2.4	3.7	3.8	3.5
Personal	12.0	11.7	11.1	13.0	12.5	11.0
Construction	1.8	1.8	1.6	1.0	0.8	0.8
Insurance and pension services	4.2	4.3	3.1	2.1	2.2	2.1
Financial services	10.6	10.3	10.5	6.9	6.3	6.0
Charges for the use of intellectual property n.i.e.	5.5	6.5	7.3	8.4	11.5	14.3
Telecommunications, computer, and information services	11.9	12.5	12.7	8.9	9.2	8.7
Telecommunications services	2.5	2.3	2.2	2.4	2.3	2.2
Computer services	8.7	9.5	9.7	6.0	6.3	6.0
Information services	0.6	0.6	0.7	0.5	0.6	0.5
Other business services	25.5	26.5	28.3	28.1	28.1	30.2
Research and development services	4.1	4.3	4.3	5.2	5.7	7.3
Professional and management consulting services	7.4	8.1	7.7	7.8	7.7	8.3
Technical, trade-related, and other business services	14.0	14.1	16.3	15.1	14.7	14.7
Personal, cultural, and recreational services	1.1	1.0	0.9	1.8	1.9	1.6

<sup>69</sup> Eurostat online information. Viewed at: [http://ec.europa.eu/eurostat/statistics-explained/index.php/International\\_trade\\_in\\_services](http://ec.europa.eu/eurostat/statistics-explained/index.php/International_trade_in_services).

<sup>70</sup> Eurostat online information. Viewed at: [http://ec.europa.eu/eurostat/statistics-explained/index.php/International\\_trade\\_in\\_services](http://ec.europa.eu/eurostat/statistics-explained/index.php/International_trade_in_services) and information provided by the authorities.

<sup>71</sup> Information provided by the authorities.

<sup>72</sup> European Commission online information, "Assessment of the economic impact of the Services Directive – Update of the 2012 Study". Viewed at: <http://ec.europa.eu/DocsRoom/documents/13327/attachments/1/translations/en/renditions/native>.

<sup>73</sup> European Commission online information, "The economic impact of the Services Directive: A first assessment following implementation". Viewed at: [http://ec.europa.eu/economy\\_finance/publications/economic\\_paper/2012/pdf/ecp\\_456\\_en.pdf](http://ec.europa.eu/economy_finance/publications/economic_paper/2012/pdf/ecp_456_en.pdf).

	Exports			Imports		
	2013	2014	2015	2013	2014	2015
Government goods and services n.i.e.	1.2	0.9	0.9	1.3	1.1	0.7
<b>By selected trading partners/regions</b>						
European Free Trade Association	17.8	18.2	17.7	12.8	13.5	13.2
Iceland	0.1	0.2	0.1	0.2	0.2	0.2
Liechtenstein	0.1	0.1	0.1	0.1	0.1	0.1
Norway	3.8	3.6	3.4	2.6	2.7	2.4
Switzerland	13.9	14.3	14.0	9.9	10.6	10.6
Turkey	1.4	1.4	1.5	2.8	2.6	2.4
Russian Federation	4.3	3.9	3.0	2.6	2.1	1.7
Africa	6.1	6.0	6.0	6.1	6.0	5.5
Northern Africa	1.6	1.6	1.6	2.8	2.6	2.3
Egypt	0.5	0.5	0.6	0.9	0.8	0.8
Morocco	0.4	0.4	0.4	0.8	0.9	0.7
Central and South Africa	4.5	4.4	4.4	3.4	3.4	3.2
South Africa	1.0	0.9	0.9	0.8	0.7	0.7
Nigeria	0.7	0.6	0.5	0.3	0.2	0.2
America	36.4	35.9	36.7	41.5	44.4	44.9
Northern America	27.9	27.9	29.3	32.7	33.4	32.8
Canada	2.4	2.1	2.2	2.1	1.9	1.8
United States	25.4	25.8	27.2	30.5	31.4	31.0
Central America	3.8	3.7	3.3	6.1	8.4	9.6
Mexico	1.1	1.1	1.1	0.7	0.7	0.7
South America	4.6	4.2	4.0	2.6	2.6	2.5
Argentina	0.6	0.5	0.6	0.4	0.3	0.3
Brazil	2.1	2.0	1.9	1.2	1.2	1.3
Chile	0.4	0.4	0.5	0.3	0.3	0.3
Uruguay	0.2	0.2	0.1	0.1	0.1	0.1
Venezuela	0.4	0.3	0.2	0.1	0.1	0.1
Gulf Arabian Countries	4.2	4.1	4.3	2.8	2.6	2.7
China	3.8	3.8	4.5	3.9	3.8	3.8
Hong Kong, China	1.3	1.4	1.3	1.9	1.8	1.7
Japan	3.4	3.4	3.4	2.7	2.5	2.3
Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei)	0.6	0.6	0.6	0.6	0.5	0.5
India	1.6	1.6	1.7	2.3	2.0	2.0
Indonesia	0.6	0.5	0.5	0.4	0.3	0.3
Malaysia	0.7	0.6	0.5	0.6	0.5	0.5
Philippines	0.2	0.2	0.2	0.3	0.3	0.3
Singapore	2.4	2.7	3.1	2.7	2.7	3.1
Thailand	0.5	0.4	0.4	1.1	0.9	0.8
Australia	2.7	2.4	2.4	1.5	1.3	1.4
New Zealand	0.3	0.3	0.3	0.2	0.2	0.2

Note: Data reported according to BPM6.

Source: Eurostat online database (bop\_its6\_det) and (bop\_its6\_tot). Viewed at: <http://ec.europa.eu/eurostat/web/international-trade-in-services/data/database> (database accessed in February 2017).

### 1.3 Foreign Direct Investment

1.37. The EU remains in a dominant world position in terms of investment – it has the largest investment inflows and outflows. However it has been impacted significantly by the economic crisis in which its share of world FDI flows fell from about 50% before the crisis to 20% in 2014.<sup>74</sup> From 2009, the EU witnessed a steady increase in FDI that began to reverse in 2013 with FDI flows reaching the lowest levels in recent history in 2014. However, both inflows and outflows rebounded significantly in 2015 (Table 1.3).<sup>75</sup> The decline, in particular in 2014, can be attributed to large disinvestments in/by traditional partner countries.<sup>76</sup> Most of the EU's FDI is attributed to special-purpose foreign-owned financial holding companies engaged in financial transactions. While these financial vehicles usually have little activity in the member State of residence, they are typically used as "European hubs" for their investments – into the EU for non-EU companies, and out of the EU for EU companies. While the share of FDI through special purpose entities varies from year to year, it can be as high as 50% in some years and has been volatile during the period.

<sup>74</sup> Copenhagen Economics (2016), "Towards a Foreign Direct Investment (FDI) Attractiveness Scoreboard", prepared by Copenhagen Economics for the EU Commission. Viewed at: <http://bookshop.europa.eu/en/towards-a-foreign-direct-investment-fdi-attractiveness-scoreboard-pbET0116586/> [May 2017].

<sup>75</sup> UNCTAD, *World Investment Report 2016*. Viewed at: [http://unctad.org/en/PublicationsLibrary/wir2016\\_en.pdf](http://unctad.org/en/PublicationsLibrary/wir2016_en.pdf).

<sup>76</sup> Eurostat online information. Viewed at: [http://ec.europa.eu/eurostat/statistics-explained/index.php/Foreign\\_direct\\_investment\\_statistics](http://ec.europa.eu/eurostat/statistics-explained/index.php/Foreign_direct_investment_statistics).

1.38. In 2014, FDI outflows declined significantly mainly due to large declines for Switzerland, the United States, and Central American countries. These declines in outflows were particularly relevant to Luxembourg and the Netherlands due to investments by special-purpose entities.<sup>77</sup> The EU saw a significant increase in the investment flows to Canada which more than doubled from €11.8 billion in 2013 to €23.4 billion in 2014. The significant decline in inflows was due mainly to disinvestment from the United States, falling from €433 billion in 2013 to €-20 billion in 2014. Declines were also seen from Brazil, Singapore and Hong Kong, China but at much lower levels.<sup>78</sup> 2015 witnessed a reversal whereby both inflows and outflows rebounded to near 2013 levels.

1.39. In 2015, FDI inflows increased significantly for Ireland, Luxembourg, and Belgium while the largest outflows were with respect to Netherlands, Luxembourg, and Ireland (Table 1.3).<sup>79</sup> The Irish economy had a surge in GDP in part due to large FDI flows in 2015. However, reported growth was distorted for several reasons, particularly due to the reclassification of multinational companies or their assets as being resident in Ireland, and actual growth was between 5 and 6%.<sup>80</sup>

**Table 1.3 Extra-EU FDI flows, 2013-15**

(€ million)

	Inward			Outward		
	2013	2014	2015	2013	2014	2015
EU-28	506,799	98,740	466,881	546,778	58,287	529,496
Austria	-4,295	-3,217	2,227	-4,613	-6,226	5,848
Belgium	16,024	3,490	40,987	16,308	-8,934	1,826
Bulgaria	85	288	304	86	183	8
Croatia	155	670	-463	-216	-272	-104
Cyprus	-2,474	-2,094	385	-1,693	31	14,333
Czech Republic	901	139	269	..	..	271
Denmark	-721	3,116	1,412	3,700	953	2,853
Estonia	156	306	-128	85	-5	-9
Finland	1,004	813	1,307	583	-409	1,345
France	12,752	-4,441	25,947	-1,238	13,643	8,030
Germany	13,921	9,163	265	36,192	26,003	31,370
Greece	1,080	1,388	638	230	951	887
Hungary	-4,488	-2,364	-13,473	-1,878	8,385	-22,450
Ireland	14,489	15,052	132,542	930	-8,842	86,696
Italy	6,260	2,734	3,549	2,986	9,851	14,306
Latvia	..	343	393	..	97	-60
Lithuania	-45	-203	350	-42	-39	-3
Luxembourg	279,525	35,013	131,872	235,859	54,149	168,758
Malta	11,362	11,072	3,355	2,119	1,861	-4,884
Netherlands	106,019	-7,111	76,094	191,154	-57,266	237,378
Poland	-2,461	-938	309	281	290	357
Portugal	..	..	..	..	..	..
Romania	-279	-123	..	-306	-271	-94
Slovakia	..	143	-201	..	-4	-78
Slovenia	-15	38	185	-129	4	268
Spain	12,405	6,431	7,450	..	28,757	37,129
Sweden	5,019	-2,334	1,259	8,597	592	14,069
United Kingdom	..	27,948	..	..	..	-68,179

.. Not available.

Source: Eurostat database (bop\_fdi6\_geo). Viewed at: <http://ec.europa.eu/eurostat/web/balance-of-payments/data/database> (database accessed in February 2017).

1.40. In terms of FDI stocks, both inward and outward stocks increased in 2015 by 22.8% and 14.9% respectively, compared to 2014 (Table 1.4). Luxembourg and the Netherlands hold the largest inward and outward stocks due to financial transactions. As of 2015, the main outward and

<sup>77</sup> Mainly financial holding companies, foreign-owned, and principally engaged in cross-border financial transactions, with little or no activity in the member State of residence.

<sup>78</sup> Eurostat online information. Viewed at: [http://ec.europa.eu/eurostat/statistics-explained/index.php/Foreign\\_direct\\_investment\\_statistics](http://ec.europa.eu/eurostat/statistics-explained/index.php/Foreign_direct_investment_statistics).

<sup>79</sup> UNCTAD, *World Investment Report 2016*. Viewed at: [http://unctad.org/en/PublicationsLibrary/wir2016\\_en.pdf](http://unctad.org/en/PublicationsLibrary/wir2016_en.pdf).

<sup>80</sup> National Treasury Management Agency online information. Viewed at: <http://www.ntma.ie/business-areas/funding-and-debt-management/irish-economy/> [November 2016].

inward stocks of FDI were the United States and Switzerland (Table 1.5). The majority of both inward and outward stocks are in the services sector with financial and insurance activities the most prevalent.<sup>81</sup> In recent years there have been increases in inflows to the financial services sector, while manufacturing and non-financial services account for smaller shares of inflows.<sup>82</sup>

1.41. According to a comparative FDI Attractiveness Scorecard assessment carried out on behalf of the European Commission by Copenhagen Economics, EU countries were seen to have a wide range of attractiveness from a high score of 75 to below 50 (out of 100). Finland, Ireland and the Netherlands had the highest scores, while Italy and Greece had the lowest.<sup>83</sup> The assessment was based on four criteria - political, regulatory and legal environment; infrastructure and good market access; knowledge and innovation capacity; and cost competitiveness (including corporate tax rates). Those countries which were ranked lower tended to score poorly in terms of cost competitiveness and the burdensomeness and lack of transparency of the regulatory environment. Not all countries have an identical potential to attract FDI and the study did not take into account the fundamental drivers of FDI, such as the size and affluence of the domestic market and geographical situation, but only those factors which could be influenced by policymakers.

**Table 1.4 Extra-EU FDI stocks, 2013-15**

(€ billion)

	Inward			Outward		
	2013	2014	2015	2013	2014	2015
EU-28	4,130	4,758	5,842	5,456	6,000	6,894
Austria	108	114	124	130	131	146
Belgium	10	4	40	65	64	68
Bulgaria	8	9	9	1	1	1
Croatia	2	3	3	2	2	2
Cyprus	55	41	41	132	125	146
Czech Republic	13	12	12	..	1	..
Denmark	19	24	32	57	59	69
Estonia	3	3	3	1	1	1
Finland	5	7	7	20	17	16
France	152	152	184	389	425	464
Germany	171	168	196	405	458	526
Greece	3	4	5	14	13	13
Hungary	69	66	55	85	90	90
Ireland	77	103	483	144	156	198
Italy	27	30	35	118	130	148
Latvia	4	3	3	0	0	0
Lithuania	2	2	2	0	0	0
Luxembourg	1,023	1,393	1,622	937	1,309	1,603
Malta	126	138	147	57	60	60
Netherlands	1,520	1,591	1,825	1,799	1,777	2,091
Poland	16	15	14	6	7	6
Portugal	..	..	..	..	..	..
Romania	6	6	7	0	0	0
Slovakia	..	5	4	..	0	0
Slovenia	2	2	2	3	3	3
Spain	90	102	108	227	257	273
Sweden	68	57	63	109	114	128
United Kingdom	542	691	803	741	784	824

.. Not available.

Source: Eurostat database (bop\_fdi6\_geo). Viewed at: <http://ec.europa.eu/eurostat/web/balance-of-payments/data/database> (accessed database February 2017).

<sup>81</sup> Eurostat online information. Viewed at: [http://ec.europa.eu/eurostat/statistics-explained/index.php/foreign\\_direct\\_investment\\_statistics](http://ec.europa.eu/eurostat/statistics-explained/index.php/foreign_direct_investment_statistics).

<sup>82</sup> Copenhagen Economics (2016), "Towards a Foreign Direct Investment (FDI) Attractiveness Scoreboard", prepared by Copenhagen Economics for the EU Commission. Viewed at: <http://bookshop.europa.eu/en/towards-a-foreign-direct-investment-fdi-attractiveness-scoreboard-pbET0116586/> [May 2017].

<sup>83</sup> Copenhagen Economics (2016), "Towards a Foreign Direct Investment (FDI) Attractiveness Scoreboard", prepared by Copenhagen Economics for the EU Commission. Viewed at: <http://bookshop.europa.eu/en/towards-a-foreign-direct-investment-fdi-attractiveness-scoreboard-pbET0116586/> [May 2017].

**Table 1.5 FDI stocks by major partner, 2013-15**

(€ billion)

	Inward			Outward		
	2013	2014	2015	2013	2014	2015
Extra EU-28	4,130	4,758	5,842	5,456	6,000	6,894
United States	1,676	1,785	2,436	1,836	2,059	2,561
EFTA	584	611	733	750	782	922
Switzerland	492	502	627	677	692	829
Norway	68	71	76	67	77	85
Liechtenstein	22	36	31	2	4	0
Iceland	3	2	-1	5	8	8
Canada	131	199	228	228	274	249
Japan	151	164	176	81	72	88
Brazil	101	117	127	277	332	327
Hong Kong, China	57	90	80	113	128	119
Bahamas	29	53	69	7	6	6
Russian Federation	53	56	61	192	163	172
Singapore	37	53	59	99	116	154
Israel	32	43	45	11	14	16
United Arab Emirates	34	33	37	31	7	16
Mexico	25	31	35	112	135	162
China	36	24	35	126	143	168
Australia	24	26	25	132	110	146
Qatar	11	16	25	8	8	7
South Korea	15	18	21	32	46	50
South Africa	6	11	12	46	59	79
Malaysia	14	11	11	20	20	19
Turkey	8	9	7	57	67	76
Saudi Arabia	6	7	6	16	17	22
Egypt	7	1	0	43	49	41

Source: Eurostat database (bop\_fdi6\_geo). Viewed at: <http://ec.europa.eu/eurostat/web/balance-of-payments/data/database> (database accessed in February 2017).

## 2 TRADE AND INVESTMENT REGIME

### 2.1 Legal and Institutional Framework

2.1. There have been no significant changes to the legal and institutional framework regarding EU trade and investment policies since the previous Review in 2015. However, the scope of the EU's competence to sign and conclude trade agreements is under review.

2.2. The European Commission is in charge of developing and implementing the common trade policy of the EU in accordance with the objectives set out in Article 207 of the Treaty on the Functioning of the EU (TFEU). The common commercial policy, as it is referred to in the Treaty, is one of the exclusive competences of the EU mandated to the European Commission in accordance with Article 3 of the TFEU.

2.3. Over time, the scope of the common trade policy has been partially extended to include trade in services, the protection of intellectual property rights, and foreign direct investment. The European Commission and the Council of Ministers work together to set the common customs tariff, guide export policy, and decide on trade protection or retaliation measures where necessary. EU rules allow the Council to make trade decisions with qualified majority voting, but in practice the Council tends to employ consensus.

2.4. Regarding negotiating procedures<sup>1</sup>, the European Commission negotiates trade agreements with outside countries and trading blocs on behalf of the Union as a whole. As a result of the Lisbon Treaty, both the Council of Ministers and the European Parliament must approve all such trade agreements before they can enter into force. The process for negotiating and concluding a new international trade agreement begins with discussions among all three EU institutions and a Commission impact assessment, including a public consultation on the content and options for any future trade accord. Provided there is a general agreement to proceed, the Commission initiates an informal scoping exercise with the potential partner country or trade bloc to determine the range and extent of topics to be considered in the negotiations.

2.5. The Commission then formulates the negotiating directives, which set out the Commission's overall objectives for the future agreement. The directives are submitted to the Council for its approval, and shared with the European Parliament. Provided the Council approves them, the Commission then launches formal negotiations for the new trade agreement on behalf of the EU. Within the Commission, the department that handles EU trade policy – the Directorate General for Trade (DG Trade) – is in charge of the negotiations but draws on expertise from across the Commission. Typically, there are a series of negotiation rounds; the duration of the negotiations varies but can range from two to three years or longer.

2.6. During the course of negotiations, the Commission is expected to keep both the Council and the Parliament apprised of its progress. Throughout the negotiations, the Council's Trade Policy Committee<sup>2</sup> acts as the main forum for dialogue between the negotiators and the representatives of the member States. The Parliament may conduct its own oversight hearings through its International Trade Committee (INTA). When negotiations reach the final stage, both parties to the agreement initial the proposed accord. It is then submitted to the Council and the Parliament for review. If the Council approves the accord, it authorizes the Commission to formally sign the agreement.

2.7. Once the new trade accord is officially signed by both parties, the Council submits it to the Parliament for its consent. The Parliament reviews the signed agreement both in the INTA Committee and in plenary session. Although the Parliament is limited to voting up or down to the new accord, it can ask the Commission to review or address any concerns. After Parliament gives

---

<sup>1</sup> See DG Trade, *Trade negotiations step by step*, September 2013. Viewed at: [http://trade.ec.europa.eu/doclib/docs/2012/june/tradoc\\_149616.pdf](http://trade.ec.europa.eu/doclib/docs/2012/june/tradoc_149616.pdf); and Congressional Research Service, *The European Union: Questions and Answers*, RS21372, 24 July 2015. Viewed at: [https://digital.library.unt.edu/ark:/67531/metadc743511/m1/1/high\\_res\\_d/RS21372\\_2015Jul24.pdf](https://digital.library.unt.edu/ark:/67531/metadc743511/m1/1/high_res_d/RS21372_2015Jul24.pdf).

<sup>2</sup> The Committee deals with trade policy matters within three main areas: WTO issues, bilateral trade relations and new trade-related EU legislation when it needs to be examined by the Council. Another configuration of the Committee – the Trade Policy Committee (Services and Investments) – assists and advises the Commission during negotiations on those matters.



its consent and following ratification in the member States (if required), the Council adopts the final decision to conclude the agreement. It may then be officially published and enter into force.

2.8. The text of the trade agreement itself provides the details for the actual entry into force of the agreement. In the case of a "mixed agreement", i.e. including elements falling under Member state competence, the agreement can only enter into force when all parties including the 28 member States have ratified the agreement. If one (or more) of the member States does not ratify the agreement, it will not enter into force. If the Council decides to provisionally apply the agreement, it will remain provisionally applicable until terminated upon notification by the EU to the other negotiating party after the Council has taken that decision.

2.9. Regarding the question of distribution of competences, in July 2015 the Commission requested an opinion from the European Court of Justice (ECJ) to clarify the scope of EU competence to conclude the EU-Singapore Free Trade Agreement (with implications for other trade agreements) under Article 218(11) of the TFEU (Case A – 2/15).<sup>3</sup>

2.10. In this case, the Commission asked which provisions of the agreement with Singapore fall within the EU's exclusive or shared competence and which remain within the EU member States' remit and require approval by national instances. The Commission expressed the view that the Union has exclusive competence to conclude EUSFTA alone and, in the alternative, that it has at least shared competence in those areas where the Union's competence is not exclusive.

2.11. On 30 October 2016, the EU and Canada signed a Comprehensive Economic and Trade Agreement (CETA) alongside the Strategic Partnership Agreement (SPA). The Commission decided to propose CETA as a mixed agreement to facilitate its adoption in the Council. The Council gave its agreement to CETA and its provisional application on 27 October 2016. Following the European Parliament's vote to approve the agreement on 15 February 2017, CETA can be provisionally applied. Both parties first need to notify each other that they have completed the necessary internal requirements. The exact timing for provisional application is therefore not yet certain.

2.12. The European Commission took note of the outcome of the U.K. referendum on EU membership held in June 2016.<sup>4</sup> The Commission has set up a taskforce that will take charge of preparing and conducting Brexit negotiations with the U.K., taking account of the framework for the U.K.'s future relationship with the EU.

## 2.2 Trade Policy Objectives

2.13. In October 2015, the European Commission issued a new trade and investment policy for the EU, entitled *Trade for all: Towards a more responsible trade and investment policy* (Box 2.1.) The EU seeks to incorporate all of the principles set out in this policy document into its trade and investment initiatives, including free trade agreements (FTAs), the outcome of which is subject to the mutual agreement between the parties.

2.14. The new trade policy supports the growth of global value chains, the increased importance of services trade, and the growth of e-commerce, which is seen as a promising area for more opportunities for SMEs to expand their markets.

2.15. Key objectives of EU trade policy are to increase efforts to reduce non-tariff barriers and increase trade in services. Technology has facilitated the cross-border provision of services, and manufacturing operations also heavily depend on all kinds of services, such as training, transport, logistics, insurance, and telecommunications. The EU underlines the importance of placing more emphasis on the need for mobility (e.g. of experts to install or maintain exported goods, senior managers, and other service providers) and the mutual recognition of professional qualifications.

<sup>3</sup> Essentially, the question submitted to the Court was: Does the Union have the requisite competence to sign and conclude alone the Free Trade Agreement with Singapore? More specifically: (i) which provisions of the Agreement fall within the Union's exclusive competence; (ii) which provisions of the Agreement fall within the Union's shared competence; and (iii) is there any provision of the Agreement that falls within the exclusive competence of the member States?

<sup>4</sup> European Commission, Factsheet: "U.K. Referendum on Membership of the European Union: Questions & Answers", 24 June 2016. Viewed at: [http://europa.eu/rapid/press-release\\_MEMO-16-2328\\_de.htm](http://europa.eu/rapid/press-release_MEMO-16-2328_de.htm).



**Box 2.1 Objectives of the updated trade and investment policy strategy**

The EU will focus attention on, *inter alia*, achieving the following:

(i) A more effective policy that tackles new economic realities and lives up to its promises by:

- Updating trade policy to take account of the new economic realities such as global value chains, the digital economy and the importance of services.
- Supporting mobility of technicians, experts and service providers.
- Setting up an enhanced partnership with the member States, the European Parliament and stakeholders to better implement trade and investment agreements.
- Including effective SME provisions in future trade agreements.

(ii) A more transparent trade and investment policy by extending the TTIP transparency initiative to all the EU's trade negotiations.

(iii) A trade and investment policy based on values by:

- Responding to the public's expectations on regulations and investment: a clear pledge on safeguarding EU regulatory protection and a strategy to lead the reform of investment policy globally.
- Expanding measures to support sustainable development, fair and ethical trade, and human rights, including by ensuring effective implementation of related FTA provisions and the Generalised Scheme of Preferences.
- Including anti-corruption rules in future trade agreements.

(iv) Progress in negotiations to shape globalization by:

- Re-energizing multilateral negotiations and designing an open approach to bilateral and regional agreements.
- Strengthening EU presence in Asia and setting ambitious objectives with China.
- Requesting a mandate for FTA negotiations with Australia and New Zealand.
- Exploring launching new investment negotiations with Hong Kong, China; the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei); and the Republic of Korea.
- Starting new ASEAN FTA negotiations with the Philippines and Indonesia, as and when appropriate.

Source: Communication *Trade for All: Towards a more responsible trade and investment policy* adopted by the Commission on 14 October 2015 in document COM(2015)497. Viewed in October 2016 at: [http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc\\_153846.pdf](http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc_153846.pdf).

2.16. Furthermore, the EU wants to integrate investment rules, including liberalization and protection provisions, into its broader trade agreements; prior to the entry into force of the Lisbon Treaty, investment protection agreements were negotiated exclusively by EU member States. A significant challenge for the EU's reformed investment policy is to ensure dispute settlement procedures are fair and independent; this challenge is being addressed through the implementation of a new approach of clarifying the substance of investment protection standards and reforms with respect to the traditional investor-state dispute settlement system, as reflected in recently concluded FTAs with Canada and Viet Nam.

2.17. The new trade policy addresses growing concerns of the general public on transparency<sup>5</sup> and perceived challenges to certain societal values. For example, the EU reiterates that any agreement it negotiates will not require EU member States to reduce the level of any public services such as water, education, health and social services. The Commission will encourage the Council to disclose negotiating mandates, publish draft chapters submitted to its negotiating partner, and reveal finalized texts earlier (even before the so-called "legal scrubbing" of texts). It will also step up its efforts to promote a fact-based debate within the member States and enhance its dialogue with civil society. Significantly, the EU also wants to do more to show the impact of an FTA after it has been applied. In the area of trade defence, the Commission has undertaken to make non-confidential versions of complaints and review requests more available on an improved, dedicated website, starting in the first half of 2016.<sup>6</sup>

<sup>5</sup> European Commission, *Factsheet: Transparency in EU trade negotiations*. Viewed in October 2016 at: [http://trade.ec.europa.eu/doclib/docs/2013/june/tradoc\\_151381.pdf](http://trade.ec.europa.eu/doclib/docs/2013/june/tradoc_151381.pdf).

<sup>6</sup> Since May 2016, the Commission has systematically published executive summaries of all complaints for new investigation or requests for review of existing anti-dumping or anti-subsidy measures. This allows the public to be informed, in more detail, about any starting investigation and improves the possibilities for interested parties to be informed and hence to bring their contribution to the investigations. With regard to the commitment to provide more and easier access to the interested parties through a dedicated web platform, the

## 2.3 Trade Agreements and Arrangements

### 2.3.1 WTO

2.18. While the EU reiterates the importance of the WTO as the central and pre-eminent forum for developing and enforcing the rules of global trade, it has moved away from a "single undertaking" approach by announcing that it will seek more issues-based negotiations at the multilateral level and limited plurilateral initiatives (still ultimately open to all WTO countries) to achieve gradual improvements to international trade rules. The international negotiations with other WTO Members on the plurilateral Trade in Services Agreement (TiSA)<sup>7</sup>, the Information Technology Agreement (ITA) and the Environmental Goods Agreement (EGA)<sup>8</sup> are also seen by the Commission as stepping stones to further liberalization in this area of trade in goods and services as well as trade-related aspects of intellectual property.

2.19. The EU is an original Member of the WTO and each EU member State is also a WTO Member. The EU, through the European Commission, represents all the member States in the WTO. The EU is a contracting party to the Agreement on Government Procurement (GPA), a participant in the ITA, and a signatory to the Agreement on Trade in Civil Aircraft. The trade policies of the EU have been reviewed 12 times by the WTO; the last Review was in July 2015.

2.20. On 5 October 2015, the EU finalized the ratification process of the Trade Facilitation Agreement, following the approval of the Agreement by the European Parliament and the EU member States on 9 September and 1 October 2015, respectively.<sup>9</sup>

2.21. The EU submitted numerous notifications to the WTO during the review period (August 2015 to February 2017), covering, *inter alia*, agriculture, trade remedies, technical regulations, regional trade agreements, and preferential rules of origin (Table A2.1). Notifications on measures of trade in services were submitted for the sake of transparency.

2.22. Since the founding of the WTO, the EU has been a major user of the Dispute Settlement Mechanism. It has been involved (as of February 2017) in 181 cases, 97 as complainant and 84 as defendant. In 167 other cases it has requested third-party status.

2.23. During the period under review, the EU was involved in two new dispute settlement cases as a respondent, and in three new cases as a complainant (Table A2.2). In addition, the EU was a third party in 13 cases.

### 2.3.2 Regional and preferential agreements

#### 2.3.2.1 Reciprocal preferences

2.24. Negotiating bilateral agreements with important partner countries remains a key priority for the EU to open up more market opportunities and thus help achieve economic growth and job creation.<sup>10</sup>

2.25. The EU's preferential FTAs go beyond trade in goods. The new generation of EU FTAs cover goods, services, intellectual property, investment, government procurement, access to energy and raw materials, customs and trade facilitation, competition (including subsidies and state-owned

---

Commission has created a web-based platform called TRON which offers the parties involved in each particular procedure instant online access to the entire non-confidential case-related file. TRON provides relief particularly to smaller companies that are no longer obliged to request access to the file through a Brussels-based representative. In addition, TRON was extended recently: a pilot phase, called "TRON notification", now enables the Commission to send all communications and notifications – for example preliminary investigation findings – to the interested parties.

<sup>7</sup> In February 2013, the Commission received the green light from the Council for negotiations covering all services sectors. Currently, 23 WTO Members are taking part in the negotiations.

<sup>8</sup> Since July 2014, the EU and 16 other WTO Members have been negotiating the EGA to remove barriers to trade in environmental or "green" goods.

<sup>9</sup> DG Trade, *The EU ratifies WTO Trade Facilitation Agreement*, 5 October 2015. Viewed at: <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1374>.

<sup>10</sup> DG Trade, *Strategic Plan 2016-2020*. Viewed in October 2016 at: [http://trade.ec.europa.eu/doclib/docs/2016/august/tradoc\\_154919.pdf](http://trade.ec.europa.eu/doclib/docs/2016/august/tradoc_154919.pdf).

enterprises), and regulatory cooperation. They contain commitments on customs duty reduction, access to services markets – to be able to fully take advantage of the tariff engagements, and tools to reduce or eliminate "non-tariff barriers" such as technical regulations or unjustified sanitary barriers. In addition, the EU emphasizes areas which are important in terms of values such as sustainable development and the protection of human rights.

2.26. The Commission also states that any new trade agreements, concluded in the period 2016-2020, will also include a special focus on SMEs.

2.27. In order to ensure enforcement of the agreements, the EU aims to include provisions for an effective state-to-state dispute settlement system. With regard to investor-state dispute settlement, an effective and balanced investment court system will be included in new agreements to enforce investment protection provisions. Reforms have also been made to these provisions, to ensure that the standards are clearer and more precise, thus ensuring a high level of protection while preserving States' right to regulate in the public interest.

2.28. As noted above, regarding the draft agreement for a comprehensive FTA with Singapore, the Commission is awaiting the ECJ's opinion on the question of EU competence to sign and ratify the FTA. Regarding the EU-Viet Nam FTA, for which negotiations were concluded, the legal review of the text is under way and is due to be presented to the Council for ratification and to the European Parliament for consent in 2017. Also during the review period, as already noted, the CETA agreement was signed in October 2016 (see paragraph 2.11 above).

2.29. The conclusion in 2017 of the negotiations with Japan that began in 2013 on an FTA remains a strategic priority. The EU has also opened FTA negotiations with the Philippines and Indonesia. FTA negotiations with Malaysia, Thailand and India are on hold. In 2016, the EU and Mexico began negotiations to modernize the EU-Mexico Global Agreement. Negotiations to update and expand the existing FTA into a Deep and Comprehensive Free Trade Area (DCFTA) are underway with Tunisia; comparable negotiations have also been launched with Morocco, but have not advanced significantly since the last review.

2.30. Regarding Kazakhstan, negotiations for an Enhanced Partnership and Cooperation Agreement (EPCA) to upgrade the current PCA were successfully concluded and the EPCA started to apply provisionally on 1 May 2016.

2.31. The EU has also launched negotiations for stand-alone bilateral investment treaties with China and Myanmar. Negotiations for a comprehensive EU-China investment agreement aim to replace the 27 existing BITs between individual EU member States and China with one comprehensive investment agreement.

2.32. As from 2017, an annual report on the implementation of the EU FTAs will be produced. The reports are intended to give greater visibility and coherence to the work already under way in this area for each individual FTA in place between the EU and a given third-country or region.

2.33. The EU maintains the European Economic Area (EEA) Agreement with Iceland, Liechtenstein and Norway, permitting these countries to participate in the internal market for free movement of goods, services, capital and labour. Negotiations on further liberalization for agriculture and fisheries are part of the EEA agreement. The EU also has customs unions with Andorra, San Marino and Turkey. Regarding Switzerland, the EU has several bilateral agreements covering, *inter alia*, trade in industrial and agricultural and processed agricultural products, public procurement, research, taxation of savings, technical barriers to trade, and free movement of persons; agricultural negotiations with Switzerland are on hold.

2.34. The EU's reciprocal trade relations with the African, Caribbean and Pacific (ACP) countries and regions aim at promoting ACP-EU trade and investment. Trade with ACP countries represents more than 4% of EU imports and exports.<sup>11</sup> The EU is the main destination for agricultural and processed goods from ACP partners, where commodities (e.g. oil) still form a large part of ACP-EU trade. The Economic Partnership Agreements (EPAs), which have replaced the trade regime of the

---

<sup>11</sup> DG Trade's Integrated Statistical Database. Viewed at: [https://webgate.ec.europa.eu/isdb/new\\_gui/index.jsp#input=/isdb\\_static/isdb\\_menu/isdb\\_cfs/cfs\\_ce.html&output=https%3A//webgate.ec.europa.eu/isdb\\_results/isdb\\_rsg/factsheets/country\\_factsheets/ce\\_cfs/regions/main/ce\\_cfs\\_main\\_2016\\_1031.pdf](https://webgate.ec.europa.eu/isdb/new_gui/index.jsp#input=/isdb_static/isdb_menu/isdb_cfs/cfs_ce.html&output=https%3A//webgate.ec.europa.eu/isdb_results/isdb_rsg/factsheets/country_factsheets/ce_cfs/regions/main/ce_cfs_main_2016_1031.pdf).

Cotonou and Lomé Conventions, intend to support trade diversification by shifting ACP countries' reliance on commodities to higher-value products and services. The majority of ACP countries are either implementing an EPA or have concluded EPA negotiations with the EU.

2.35. The EPA process involves seven regional configurations: West Africa, Central Africa, Eastern and Southern Africa (ESA), East African Community (EAC), Southern African Development Community (SADC), CARIFORUM, and the Pacific region. During the review period, the SADC EPA was signed by the EU and the six SADC EPA countries on 10 June 2016. The agreement applies provisionally as of 10 October 2016. Regarding West Africa, the so-called stepping stone EPAs with Côte d'Ivoire and Ghana entered into provisional application in September and December 2016, respectively.

### 2.3.3 Unilateral preferences

2.36. The EU Generalised Scheme of Preferences (GSP), introduced in 1971 and implemented through successive Council regulations, is a trade policy instrument that continues to support sustainable development and good governance in developing countries. As noted in the previous Review, in 2012 the EU reformed the GSP (as set out by Regulation (EU) No. 978/2012 of the European Parliament and the Council of 25 October 2012) in order to focus support on developing countries most in need. The GSP provides a general GSP arrangement and two special arrangements:

- The general arrangement ("Standard GSP") grants duty reductions for circa 66% of all EU tariff lines to countries of low or lower-middle income status, which do not benefit from other preferential trade access to the EU market. There are currently 30 Standard GSP beneficiaries.
- The Special Incentive Arrangement for Sustainable Development and Good Governance ("GSP+") grants complete duty suspension for essentially the same 66% of tariff lines as the Standard GSP, for countries especially vulnerable in terms of their economies' diversification and import volumes. In return, beneficiary countries must ratify and effectively implement 27 core international conventions<sup>12</sup>. As of November 2016, there were nine GSP+ beneficiaries (Armenia, Bolivia, Cabo Verde, Georgia, Mongolia, Pakistan, Paraguay and the Philippines).<sup>13</sup> As set out in the GSP Regulations, the initial lifetime of the GSP+ is 10 years (i.e. it will apply until 31 December 2023).
- The Everything But Arms ("EBA") special arrangement grants full duty-free, quota-free access for all products except arms and ammunition, for countries classified by the UN as LDCs. There are currently 49 EBA beneficiaries.

2.37. To apply for the GSP+ scheme, a country must: meet the thresholds for being considered a vulnerable economy in terms of its import share to the EU and the diversification of those imports; have ratified and implemented the 27 conventions; not have formulated reservations that are prohibited under the conventions or can be considered incompatible with the GSP Regulation; and sign a binding undertaking to cooperate with the UN system and the European Commission in monitoring implementation. Failure to comply with these requirements can result in the suspension of the tariff concession.

2.38. In January 2016, the Commission published its first biannual report<sup>14</sup> to the European Parliament and the Council on the effects of the reformed GSP, in particular the GSP+ arrangement supporting sustainable development and good governance. The report covers 14 countries that benefited from GSP+ preferences in 2014 and 2015 (Armenia, Bolivia, Cabo Verde, Costa Rica, Ecuador, El Salvador, Georgia, Guatemala, Mongolia, Pakistan, Panama, Paraguay, Peru and the Philippines).

<sup>12</sup> There are 7 conventions on human rights, 8 work-related conventions of the ILO, 8 conventions on environmental protection and climate change, and 4 good governance conventions under UN auspices against corruption and the control of illegal drugs.

<sup>13</sup> Georgia ceased to be a GSP+ beneficiary on 1 January 2017.

<sup>14</sup> EU Commission, 28.1.2016 COM (2016) 29 final.

2.39. The report notes the countries' progress and shortcomings. The Commission observes that full implementation of the relevant conventions is not yet achieved and that the EU will continue to provide practical support to achieve this goal. The 14 countries and EU stakeholders were given the opportunity to comment on the report's findings and the Commission intends to update the individual country scorecards regarding their compliance with GSP+ commitments. The next report on the GSP regime is due by December 2017.

2.40. During the review period, other significant developments included the following: first, the November 2015 decision<sup>15</sup> identifying the countries that will cease to benefit from the GSP due to their economic development level or application of an FTA with the EU as from 1 January 2017. Moreover, this decision provides for exclusion of Samoa from the EBA arrangement due to the country's graduation out of the LDC status as of 1 January 2019.

2.41. Second, in March 2016, the EU updated a list of products<sup>16</sup> that had become sufficiently competitive that they no longer need support to be successfully exported to the EU. These products will no longer receive GSP preferences as from 1 January 2017 until 31 December 2019 when the list will be reviewed. This decision, however, will only apply to Standard GSP countries.

## 2.4 Foreign Investment Policy

2.42. As noted above, with the Lisbon Treaty coming into force on 1 December 2009, the EU acquired competence in the field of investment. With a total of almost 1,400 bilateral investment treaties (BITs)<sup>17</sup> with third countries that protect all forms of foreign investment, the EU member States together account for almost half of the investment protection agreements that are currently in force around the world. The agreements generally include investment protection standards which are enforced by investor-state dispute settlement. The differences between the BITs signed with different partners may be significant, which has sometimes led to an uneven playing field for EU companies investing abroad.

2.43. In negotiations, the EU deals with investment rules both in free trade agreements with third countries, for example with Canada and Singapore, and also in stand-alone investment agreements, for example with China and Myanmar. With respect to such agreements, one as yet unresolved question concerns which aspects of investment now fall under exclusive EU competence: on the one hand there is the view that the common commercial policy covers only foreign direct investment and not portfolio investments; on the other hand, there is the view that the EU derives an implicit exclusive competence on portfolio investments from third countries from a rule in the internal market prohibiting the introduction of barriers at member State level to capital and payment flows from third countries.

2.44. The EU's comprehensive investment policy is being introduced on a progressive basis so that the many member State BITs providing investment protection to European investors will be preserved until they are replaced by EU agreements. On 9 January 2013, Regulation (EU) No. 1219/2012 came into force which established transitional arrangements to maintain in force existing member State BITs until their replacement. This Regulation also allows for the Commission to empower member States to negotiate with a third country to amend or conclude a BIT under certain conditions. The relatively high number of authorizations granted shows that member States remain active in negotiating BITs.<sup>18</sup>

<sup>15</sup> Commission delegated regulation (EU) 2015/1979 of 28 August 2015 amending Annexes II, III and IV to Regulation (EU) No. 978/2012 of the European Parliament and of the Council applying a scheme of generalized tariff preferences.

<sup>16</sup> Commission implementing regulation (EU) 2016/330 of 8 March 2016 suspending the tariff preferences for certain GSP beneficiary countries in respect of certain GSP sections in accordance with Regulation (EU) No. 978/2012 applying a scheme of generalized tariff preferences for the period of 2017-2019.

<sup>17</sup> Figure cited in Commission Concept Paper: *Investment in TTIP and beyond – the path for reform*. Viewed at: [http://trade.ec.europa.eu/doclib/docs/2015/may/tradoc\\_153408.PDF](http://trade.ec.europa.eu/doclib/docs/2015/may/tradoc_153408.PDF).

<sup>18</sup> According to the Commission, since entry into force of Regulation 1219/2012, the Commission has adopted 87 authorization decisions, which corresponds to 219 notifications submitted by member States (MS): (i) 40 decisions authorizing MS to open 147 bilateral investment negotiations, of which 101 are new negotiations and 46 are renegotiations (pursuant to Article 9); (ii) 23 decisions authorizing MS to sign and conclude 18 new agreements and 21 protocols to existing agreements (pursuant to Article 11); and (iii) 24

2.45. The EU's investment policies aim to attract FDI by extending and deepening the single market, ensuring open and competitive markets inside and outside Europe, improving European and national regulation, and expanding and upgrading Europe's infrastructure and its scientific base. The EU aims to include high standards of investment protection in EU agreements containing investment provisions, namely: non-discrimination; fair and equitable treatment; guarantees of prompt, effective, and adequate compensation in the event of expropriation; and the free transfer of funds.

## 2.5 Aid for Trade

2.46. As was the case at the time of the previous Review, the EU and its member States are collectively the world's leading providers of Aid for Trade (Aft), covering all six categories: trade policy and regulation; trade development; trade-related infrastructure; building productive capacity; trade-related adjustment, and other trade-related needs.

2.47. The European Commission produces an annual monitoring report on EU Aft. The 2015 edition<sup>19</sup>, reporting on figures from 2014, notably highlighted, *inter alia*, that:

- with a total of €12.7 billion in 2014, the EU and its member States remained by a large margin the most significant Aft donor in the world;
- two categories represent more than 90% of Aft commitments: trade-related infrastructure (covering transport, storage, communication, and energy generation and supply) and building productive capacity (covering projects in agriculture, forestry, fishing, industry, mineral resources and mining, and business in general);
- even if the amounts are relatively small when compared to the two leading categories, commitments for EU and member States' trade-related assistance (TRA) reached €2.9 billion in 2014 – TRA mainly covers trade policy and regulation, and trade development;
- Africa again received the largest share of Aft in 2014, with 34% of the EU and member States' total;
- Aft commitments to LDCs decreased in 2014, reaching €1.8 billion (their level of 2012), as a result of the late entry into force of the new European Development Fund (EDF).

2.48. The EU is currently engaged in updating its 2007 Aft Strategy, which followed the launch of the 2005 WTO Aft Initiative. According to the Commission, the strategy notably included a number of quantitative objectives for financial support to trade-related needs that were, to a considerable extent, achieved in subsequent years.

---

decisions authorizing MS to maintain/enter into force 16 agreements signed after the Lisbon treaty and 17 protocols to pre-Lisbon agreements, which were signed after the Lisbon Treaty (pursuant to Article 12).

<sup>19</sup> European Commission, *Aid for Trade Report 2015*. Viewed at: [https://ec.europa.eu/europeaid/files/aid-for-trade-report-2015\\_en.pdf](https://ec.europa.eu/europeaid/files/aid-for-trade-report-2015_en.pdf).



### 3 TRADE POLICIES AND PRACTICES BY MEASURE

#### 3.1 Measures Directly Affecting Imports

##### 3.1.1 Customs procedures and requirements

3.1. Pursuant to Article 3 of the Treaty on the functioning of the European Union, the EU has exclusive competence with respect to the customs union. The EU's customs legislation provides for its uniform application throughout the customs territory of the Union, but at the same time provides that the customs administrations of the member States are responsible for applying the customs legislation and are primarily responsible for the supervision of the EU's international trade.<sup>1</sup> The individual member States also determine the location of the offices and areas for which they are competent. Thus, there is no central EU customs authority.

3.2. The member State customs authorities collect customs duties on imported goods when they cross the external borders of the EU. In 2015, €23.3 billion was collected in customs and agricultural duties' revenue, of which €18.6 billion was transferred to the EU budget and the balance remained with the member States<sup>2</sup>; this accounted for 13.6% of the EU's budget.<sup>3</sup> Most of the customs procedures are now done electronically, as more than 98% of customs declarations were submitted electronically in 2015.<sup>4</sup> It should also be noted that, in some cases, accompanying documents were required in paper form. According to EU calculations, 91% of import declarations were cleared within one hour. In 2015, 165.7 million import declarations were made, covering 347.3 million declared items.<sup>5</sup>

3.3. During the review period, the EU's new Union Customs Code's (UCC) main substantive provisions became applicable on 1 May 2016.<sup>6</sup> The UCC was implemented with the following accompanying legislation (hereinafter, the acronym UCC refers to the UCC and these related Acts):

- the UCC Delegated Act, and its modifications, provide additional supplements to the UCC<sup>7</sup>;
- the UCC Implementing Act provides for the uniform rules for the implementation of the UCC<sup>8</sup>;

<sup>1</sup> UCC, Articles 1, 3, and 5.

<sup>2</sup> Pursuant to Council Decision on the system of own resources of the European Union (5602/14), the EU member States retain 20% of the amounts collected by them, and the remaining 80% is transferred to the EU budget.

<sup>3</sup> European Commission online information. Viewed at: [https://ec.europa.eu/taxation\\_customs/facts-figures/customs-duties-mean-revenue\\_en](https://ec.europa.eu/taxation_customs/facts-figures/customs-duties-mean-revenue_en).

<sup>4</sup> European Commission online information. Viewed at: [http://ec.europa.eu/taxation\\_customs/facts-figures/customs-is-business-friendly\\_en](http://ec.europa.eu/taxation_customs/facts-figures/customs-is-business-friendly_en) and information provided by the authorities.

<sup>5</sup> European Commission online information. Viewed at: [https://ec.europa.eu/taxation\\_customs/facts-figures/eu-customs-union-unique-world\\_en](https://ec.europa.eu/taxation_customs/facts-figures/eu-customs-union-unique-world_en) and information provided by the authorities.

<sup>6</sup> Regulation (EU) No. 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the UCC. OJ L 269/1, 10 October 2013. European Commission online information. Viewed at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0952&rid=1>.

<sup>7</sup> Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No. 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the UCC. OJ L 343/1, 29 December 2015. European Commission online information. Viewed at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015R2446&from=EN>. Regulation (EU) 2016/341 of 17 December 2015 supplementing Regulation (EU) No. 952/2013 of the European Parliament and of the Council as regards transitional rules for certain provisions of the UCC where the relevant electronic systems are not yet operational, and amending Delegated Regulation (EU) 2015/2446. OJ L 69/1, 15 March 2016. European Commission online information. Viewed at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0341&from=EN>. Regulation (EU) 2016/651 of 5 April 2016 correcting Delegated Regulation (EU) 2015/2446 supplementing Regulation (EU) No. 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the UCC. OJ L 111/1, 27 April 2016. European Commission online information. Viewed at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2016:111:FULL&from=EN>.

<sup>8</sup> Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No. 952/2013 of the European Parliament and of the Council laying down the UCC. OJ L 343/558, 29 December 2015. European Commission online information. Viewed at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015R2447&from=EN>.

- the UCC Transitional Delegated Act, and its correction, provide transitional rules pending the creation of a fully electronic customs environment<sup>9</sup>; and
- the UCC Work Programme provides for the development and deployment of the electronic customs systems.<sup>10</sup>

3.4. Thus, the combination of the enactment and entering into force of these new regulations begins a new era that incorporates many changes and moves towards electronic customs clearance and harmonized IT processes. (See Section 3.1.1.1.2 for developments in IT processes.) The UCC aims to streamline and modernize customs procedures as well as better align the customs rules to new EU treaties. It is envisioned that full implementation of all the changes will be complete by 2020. The UCC replaces the previous Community Customs Code of 1992 that remained in force until 1 May 2016 when all the provisions of the UCC became applicable. The changes to various customs procedures and processes are numerous. However, one of the main changes is a simplification of the customs declaration so that only three options are possible:

- release for free circulation;
- special procedures (i.e. transit, storage, specific use, processing); or
- (re-)export.

3.5. Where no simplified procedures are applied, traders are required to submit a commercial invoice, a customs value declaration, freight documents, and a packing list, pursuant to the Single Administrative Document (SAD) for imports into the EU. Upon completion of the necessary electronic infrastructures, these will change as the key data elements from these separate documents will be inserted directly in the customs declaration. Traders will have to make available supporting documents to customs when required. (See Section 3.1.1.1.2 for customs electronic systems implementation.)

3.6. Other changes as a result of the UCC involve nearly all aspects of customs procedures and processes, as well as modifications to other rules such as customs valuation, origin, etc. (See Sections 3.1.2, 3.1.3). Information provided here is indicative of the major changes and is not exhaustive (Table 3.1).

**Table 3.1 Main changes to customs procedures introduced by the UCC**

Subject	Change
Authorised Economic Operator (AEO)	Further enhancing of the concept; extension of the benefits and a new criterion
Binding tariff and origin information (BTI/BOI)	Binding on the trader; valid for 3 years, not 6
EU establishment criteria	May be waived for inward processing
Electronic customs declaration	Becomes standard (pending the development of IT systems)
Inward processing drawback	Abolished
Warehouses and free zones	Type D warehouses and type II free zones eliminated
Temporary storage	Storage period prolonged to 90 days; movement can be authorized
Simplified proofs of status	Value threshold increased to €15,000

<sup>9</sup> Regulation (EU) 2016/341 of 17 December 2015 supplementing Regulation (EU) No. 952/2013 of the European Parliament and of the Council as regards transitional rules for certain provisions of the UCC where the relevant electronic systems are not yet operational, and amending Delegated Regulation (EU) 2015/2446. OJ L 69/1, 15 March 2016. European Commission online information. Viewed at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2016:069:FULL&from=NL>. Commission Delegated Regulation (EU) 2016/698 of 8 April 2016 correcting Delegated Regulation (EU) 2016/341 supplementing Regulation (EU) No. 952/2013 of the European Parliament and of the Council as regards transitional rules for certain provisions of the UCC where the relevant electronic systems are not yet operational and amending Delegated Regulation (EU) 2015/2446. OJ L 121/1, 11 May 2016. Viewed at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2016:121:FULL&from=EN>.

<sup>10</sup> Commission Implementing Decision (EU) 2016/578 of 11 April 2016 establishing the Work Programme relating to the development and deployment of the electronic systems provided for in the UCC. OJ L 99/6, 15 April 2016. European Commission online information. Viewed at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016D0578&from=EN>.



Subject	Change
Financial guarantees	To be provided for special procedures or under processing regimes; some exceptions for AEO
Customs debt	Simplification of provisions concerning assessment
Processing under customs control	Abolished
Inward processing	Intention to re-export processed products is not required
Bonded warehouses	Remote retail sales allowed from bonded stock
Bill of discharge	New requirement when goods move to end use

Source: UCC.

3.7. The EU maintains a system of free zones and warehousing as part of its customs procedures. Free zones are special areas designated within the EU customs territory where import duties, charges, etc. are not applied until they are formally imported into the territory. With the changes introduced by the UCC, there is now only one type of free zone that has a physical boundary supervised by the customs authorities. Not all member States have free zones; as of early 2017, 19 member States had free zones, of which Croatia, Lithuania, and the Czech Republic had the most.<sup>11</sup> Authorization to set up a free zone rests with the national authorities of the member State concerned. With the changes introduced by the UCC as of 1 May 2016, in accordance with Article 243 of the UCC, type II free zones do not exist anymore. The situation is now equivalent to the customs warehousing procedure. As concerns warehousing, the EU customs legislation has long provided for public and private customs warehouses. With the introduction of the UCC, the types of warehousing have been simplified and there are now three types: public warehouse type I, public warehouse type II, and private; these generally correlate to the previous designations except for one (Table 3.1).<sup>12</sup> There are different responsibilities of the warehouse keepers or the traders depending on the type of warehousing arrangement. Like free zones, customs warehousing allows non-EU goods to be stored in a designated warehouse within the customs territory, while not being subject to import duties, charges, etc. The amount of working or processing is controlled in warehouses. Applicants need to provide a guarantee, demonstrate economic need, and be established in the EU in order to be approved for warehousing.<sup>13</sup>

3.8. The EU has an Authorised Economic Operator (AEO) programme based on the customs-to-business partnership initiative of the WCO. The programme consists of two different statuses, Authorised Economic Operator, Customs (AEOC) for economic operators<sup>14</sup> authorized for simplification of customs procedures, and Authorised Economic Operator, Security and Safety (AEOS), for those entitled to facilitations relating to security and safety. An operator may hold both authorizations at the same time. AEOC status can be granted to any economic operator established in the EU territory who has not committed any serious or repeated infringement of customs or taxation rules, is financially solvent, has appropriate record-keeping, and complies with the new criterion of proven practical or professional competence; an AEOS needs to comply also with appropriate security and safety standards. In principle, applications for AEO status should be submitted to the customs authority in the member State where the economic operator's main accounts for customs purposes are kept. The benefits for traders can include access to customs simplifications, fewer controls, priority treatment, prior notification, choice of place of control, etc. In 2015, AEO status was given to more than 14,000 business operators in the EU, accounting for 71% of imports.<sup>15</sup> The UCC also provides for reciprocity in granting the status to economic operators outside the EU who comply with similar legislation of other countries that are recognized by the EU. As of September 2016, the EU had five such mutual recognition agreements covering

<sup>11</sup> European Commission online information. Viewed at: [http://ec.europa.eu/taxation\\_customs/sites/taxation/files/resources/documents/customs/procedural\\_aspects/imports/free\\_zones/list\\_freezones.pdf](http://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/customs/procedural_aspects/imports/free_zones/list_freezones.pdf) and information provided by the authorities.

<sup>12</sup> Previous warehousing designation Type D has been abolished with the UCC.

<sup>13</sup> Irish Tax and Customs online information. Viewed at: [www.revenue.ie/en/about/foi/s16/customs/economic/customs-warehousing.pdf](http://www.revenue.ie/en/about/foi/s16/customs/economic/customs-warehousing.pdf) and U.K. Government online. Viewed at: <https://www.gov.uk/guidance/customs-warehousing>.

<sup>14</sup> An economic operator is defined as a person who in the course of his/her business is involved in the activities covered by the customs legislation.

<sup>15</sup> European Commission online information. Viewed at: [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/facts\\_figures\\_en.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/facts_figures_en.pdf).

the AEOS status in force with China, Japan, Norway, Switzerland, and the United States.<sup>16</sup> Negotiations have started or are envisaged with other countries as well.

3.9. The EU had introduced a common customs risk management framework into its customs legislation, which is based on the recognition of a need to establish an equivalent level of protection in customs controls for goods brought into or out of the EU, and to ensure a harmonized application of customs controls by the member States.<sup>17</sup> The customs risk management framework (CRMF) was introduced in the previous customs legislation and is now covered by Article 46 of the UCC. In short, the CRMF comprises identification and control of high-risk goods, identification of priority control areas, systematic exchange of risk information, contribution of AEO partners, and pre-arrival/pre-departure security risk analysis.<sup>18</sup> Since 2014, the EU has been working on the implementation of its Strategy and Action Plan for Customs Risk Management in order to provide smooth and safe trade flows while ensuring security and safety.<sup>19</sup> The strategy identifies key priorities to be achieved through an action plan. The main priorities are: data quality, information sharing, efficient controls and risk-mitigation, capacity-building, interagency cooperation, cooperation with traders, and international customs cooperation.<sup>20</sup> Most of the objectives outlined have a gradual phase-in during 2014-20.<sup>21</sup>

3.10. The UCC provides for the right to appeal against any decision taken by the customs authorities of the member States.<sup>22</sup> The appeal has two levels, first, before the customs authorities or judicial authority; and subsequently, before a higher independent body. The actual bodies depend on the specific provisions in force in each member State. The appeal must be lodged in the member State where the decision was taken or was applied for. No information was available on the number of appeals, as member States have no obligation to provide such information.

3.11. In terms of enforcement, for 2015, the EU recorded 7,000 infringements of CITES and more than 19,000 infringements of goods presenting a risk for consumers in terms of sanitary, phytosanitary and veterinary technical standards.<sup>23</sup>

3.12. There was also €394 million in unpaid duties detected in 2015 due to all types of fraud and irregularities discovered by Customs involving entitlements of over €10,000.<sup>24</sup>

#### 3.1.1.1 Trade facilitation

3.13. The EU and its 28 member States presented their instrument of ratification to the WTO Trade Facilitation Agreement on 5 October 2015. The member States and the EU continue to be active in the trade facilitation area, and 10 have become donors to the Trade Facilitation Agreement Facility, thus contributing to needs assessments and capacity-building work for trade facilitation.<sup>25</sup> The EU has prioritized trade facilitation as one of their aid programme priorities, with

<sup>16</sup> European Commission online information. Viewed at: [http://ec.europa.eu/taxation\\_customs/general-information-customs/customs-security/authorised-economic-operator-aeo/authorised-economic-operator-aeo\\_en#what\\_is](http://ec.europa.eu/taxation_customs/general-information-customs/customs-security/authorised-economic-operator-aeo/authorised-economic-operator-aeo_en#what_is).

<sup>17</sup> European Commission online information. Viewed at: [http://ec.europa.eu/taxation\\_customs/general-information-customs/customs-risk-management/measures-customs-risk-management-framework-crmf\\_en](http://ec.europa.eu/taxation_customs/general-information-customs/customs-risk-management/measures-customs-risk-management-framework-crmf_en).

<sup>18</sup> European Commission online information. Viewed at: [http://ec.europa.eu/taxation\\_customs/general-information-customs/customs-risk-management/measures-customs-risk-management-framework-crmf\\_en](http://ec.europa.eu/taxation_customs/general-information-customs/customs-risk-management/measures-customs-risk-management-framework-crmf_en).

<sup>19</sup> COM/2014/527, European Commission online information. Viewed at: [http://eur-lex.europa.eu/resource.html?uri=cellar:a2e8d50b-2914-11e4-8c3c-01aa75ed71a1.0001.03/DOC\\_1&format=PDF](http://eur-lex.europa.eu/resource.html?uri=cellar:a2e8d50b-2914-11e4-8c3c-01aa75ed71a1.0001.03/DOC_1&format=PDF).

<sup>20</sup> European Commission online information. Viewed at: [http://ec.europa.eu/taxation\\_customs/general-information-customs/customs-risk-management/priorities-eu-strategy-action-plan-customs-risk-management\\_en](http://ec.europa.eu/taxation_customs/general-information-customs/customs-risk-management/priorities-eu-strategy-action-plan-customs-risk-management_en).

<sup>21</sup> The progress on achieving the different objectives has been set out in a report. Viewed at: [http://ec.europa.eu/taxation\\_customs/sites/taxation/files/resources/documents/customs/policy\\_issues/risk\\_management/com\\_2016\\_476\\_en.pdf](http://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/customs/policy_issues/risk_management/com_2016_476_en.pdf) and [http://ec.europa.eu/taxation\\_customs/sites/taxation/files/resources/documents/customs/policy\\_issues/risk\\_management/swd\\_2016\\_242\\_en.pdf](http://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/customs/policy_issues/risk_management/swd_2016_242_en.pdf).

<sup>22</sup> UCC, Articles 44 and 45.

<sup>23</sup> Accounting for over 35 million articles of counterfeit goods. European Commission online information. Viewed at: [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/docs/body/customs\\_union\\_factsheet\\_en.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/docs/body/customs_union_factsheet_en.pdf).

<sup>24</sup> European Commission online information. Viewed at: [https://ec.europa.eu/taxation\\_customs/facts-figures/customs-sees-what-you-dont-protects-you\\_en](https://ec.europa.eu/taxation_customs/facts-figures/customs-sees-what-you-dont-protects-you_en).

<sup>25</sup> WTO online information. Viewed at: <http://www.tfafacility.org/>.

30% of all trade-related support including a component focused on trade facilitation.<sup>26</sup> Furthermore, the EU has also contributed to other trade facilitation work in other organizations, e.g. UNCTAD with the Trade Facilitation Implementation for the Economic Community of Central African States.<sup>27</sup>

#### 3.1.1.1.1 Advance rulings, i.e. Binding Tariff Information/Binding Origin Information

3.14. The EU's rules and process for issuing advance rulings, i.e. Binding Tariff Information (BTI) and Binding Origin Information (BOI), have undergone changes with the entry into force of the UCC. In the case of BTI decisions, the main changes relate to the tightening of procedures and the validity period of the information, which has been reduced from six years to three. Furthermore, BTI decisions are now binding on the trader. The UCC Implementing Act provides for a process to deal with divergent BTI decisions.

3.15. The EU has issued BTIs since 1991 and they are stored in a central EBTI database where there were approximately 245,000 valid BTI decisions as of January 2017.<sup>28</sup> There were 50,781 BTIs issued during 2016, an increase of about 2,200 from 2015 figures. In 2016, the highest incidence of BTIs was in HS chapters 85, 39, 84, 64, and 73.

3.16. For BOIs, the main change was that the decision is now binding on the holder of the decision against the EU customs authorities. The relevant details of BOI decisions are communicated to the European Commission on a quarterly basis and compiled in a file which is then made available to all EU customs authorities. Article 23 of the UCC Implementing Act provides for a process to ensure the correct and uniform determination of origin, mainly with the purpose of avoiding the issuance of divergent BOI decisions.

3.17. Each year approximately 1,600 BOIs are issued by all EU customs authorities. It is to be noted that, in 2016, only 12 EU member States issued BOIs, and about 75% of BOIs were issued in one member State. The main HS chapters with the highest incidence are chapters 84, 55, 63, 54 and 20.<sup>29</sup>

#### 3.1.1.1.2 Electronic systems

3.18. The EU has been working towards a single window application for customs to implement a solution in a staged approach. The first stage concerning the automated validation of supporting documents to the customs declaration is well progressed, with the integration of certificates in the phytosanitary area. The next stage will include the incorporation of other certificates, permits, and licences. One of the objectives of the UCC is to achieve EU harmonized IT processes, including streamlining and modernizing customs procedures. Furthermore, the UCC provides that: "All exchanges of information, such as declarations, applications or decisions, between customs authorities and between economic operators and customs authorities, and the storage of such information, as required under the customs legislation, shall be made using electronic data-processing techniques."<sup>30</sup> There is a transitional phase to implement the necessary infrastructure by 2020. Nearly all existing systems are to be updated and integrated. There are 17 electronic systems identified for implementing the UCC, of which 3 are expected to become operational in 2017 (Table 3.2). The others are to be phased-in until 2020.

<sup>26</sup> European Commission online information. Viewed at: [http://trade.ec.europa.eu/doclib/docs/2017/february/tradoc\\_155332.pdf](http://trade.ec.europa.eu/doclib/docs/2017/february/tradoc_155332.pdf).

<sup>27</sup> UNCTAD online information. Viewed at: <http://unctad.org/en/pages/newsdetails.aspx?OriginalVersionID=1356> and information provided by the authorities.

<sup>28</sup> European Commission online information. Viewed at: [http://ec.europa.eu/taxation\\_customs/dds2/ebti/ebti\\_home.jsp?Lang=en](http://ec.europa.eu/taxation_customs/dds2/ebti/ebti_home.jsp?Lang=en).

<sup>29</sup> Information provided by the authorities.

<sup>30</sup> UCC, Article 6.

**Table 3.2 Customs electronic systems pursuant to the UCC, 2016**

Electronic systems	Legal basis	Expected deployment
UCC Registered Exporter System (REX)	Articles 6, 16 and 64	1.1.2017
UCC BTI	Articles 6, 16, 22, 23 26, 27, 28, 33 and 34	1.3.2017 (phase I) 1.10.2018 (phase II)
UCC Customs Decisions	Articles 6, 16, 22, 23 26, 27 and 28	2.10.2017
Direct trader access to the European Information Systems (Uniform User Management and Digital Signature)	Articles 6 and 16	2.10.2017
UCC AEO upgrade	Articles 6, 16, 22, 23 26, 27, 28, 38 and 39	1.03.2018 (phase I) 1.10.2019 (phase II)
UCC Economic Operator Registration and Identification System upgrade (EORI 2)	Articles 6 and 9	1.3.2018
UCC Surveillance 3	Articles 6, 16 and 56	1.10.2018
UCC Proof of Union Status (PoUS)	Articles 6, 16 and 153	1.03.2019
UCC New Computerised Transit System (NCTS) upgrade	Articles 6, 16 and 226-236	1.10.2019
UCC Automated Export System (AES)	Articles 6, 16, 179 and 263-276	1.10.2019 (component 1), 1.3.2017 (component 2)
UCC Information Sheets (INF) for Special Procedures	Articles 6, 16, 215, 237-242 and 250-262	2.3.2020
UCC Special Procedures	Articles 6, 16, 215, 237-242 and 250-262	1.03.2017 (component 1), to be defined (component 2)
UCC Notification of Arrival, Presentation Notification and Temporary Storage	Articles 6, 16 and 133-152	To be defined
UCC National Import Systems upgrade	Articles 6, 16, 53, 56, 77-80, 83-87, 101-105, 108-109, 158-187 and 194-195	To be defined
UCC Centralised Clearance for Import (CCI)	Articles 6, 16 and 179	1.10.2020
UCC Guarantee Management (GUM)	Articles 6, 16 and 89-100	1.10.2020 (component 1), to be defined (component 2)
UCC Import Control System upgrade (ICS 2)	Articles 6, 16, 46 and 127-132	1.10.2020

Source: UCC and UCC Work Programme, online information. Viewed at: [https://ec.europa.eu/taxation\\_customs/business/union-customs-code/ucc-work-programme\\_en](https://ec.europa.eu/taxation_customs/business/union-customs-code/ucc-work-programme_en) and <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016D0578&from=EN>.

### 3.1.2 Customs valuation

3.19. With the entry into force of the UCC provisions on customs valuation in May 2016, EU customs valuation provisions have been streamlined and re-organized since the last review and are now contained in Articles 69 to 74 of the UCC, Articles 127 to 146 of the UCC Implementing Act, and Article 71 of the UCC Delegated Act. The UCC contains a structure for the main elements of customs valuation; it provides for transaction value, elements to be added to the price paid or payable, elements not to be included in the customs value, secondary methods of customs valuation, and simplification. The provisions of the WTO Agreement on the Implementation of Article VII of GATT 1994 (Customs Valuation Agreement) are included in either the UCC or the UCC Implementing Act.

3.20. The UCC provides that the primary method of valuation is transaction value. Articles 71 and 72 of the UCC provide for elements to be added to the price or not to be included in the transaction value, and Articles 128 and 129 of the UCC Implementing Act give further details on how to define the transaction value. The other methods of valuation which may be used are based on, in sequential order, the transaction value of identical or similar goods, the deductive value, the computed value, and a fall-back method as provided for in Article 74 of the UCC and Articles 141 to 144 of the UCC Implementing Act. Provisions on transactions between related parties are laid down in Article 134 of the UCC Implementing Act. Other provisions of the UCC Implementing Act include elements on discounts, partial delivery, price adjustments for defective goods, valuation of conditions and considerations, royalties and licence fees, goods and services used for the

production of the imported goods, the place where goods are brought into the customs territory, transport costs, charges levied on postal consignments, currency conversion, supporting documents, and non-acceptance of declared transaction values.

3.21. In addition, compared to the previous Community Customs Code (CCC), other elements were modified or added by the adoption of the UCC. The EU has clarified the basic rules of customs valuation by adding further supplementing rules, in particular where there was ambiguity or a particular issue. In some cases, provisions that were previously in the CCC were not included in the UCC, but rather in the implementing rules, regulations, or guidelines. Thus, the Commission has indicated that changes that were taken out of the legislation may come back through guidelines. Among these modifications, several are particularly significant (Table 3.3). The new rules provide that the sale occurring immediately before the entry of the goods into the EU customs territory is the relevant sale for the application of the transaction value method; and the notion of "condition of sale" referred to in royalties and licence fees has, according to the Commission, been clarified in accordance with the most recent WCO guidance and thus led to re-alignment of its own rules where there were inconsistencies. As regards simplification, special authorization may be granted to determine value on the basis of specific criterion when they are not quantifiable. According to the Commission, this authorization is granted on the condition that the customs value determined will not significantly differ from that determined in the absence of an authorization.

3.22. As of March 2017, the new legislation had not been notified to the WTO Committee on Customs Valuation. The last modifications of the EU customs valuation laws notified to the WTO were in 1995 and pertained to decisions of the Committee.<sup>31</sup>

**Table 3.3 Main customs valuation changes, CCC compared to UCC**

Subject	CCC	UCC
Transaction value (sale for export rule) <sup>a</sup>	No equivalent provision in case of successive sales before valuation, only the last sale, which led to the introduction of the goods into the customs territory of the Community, or a sale taking place in the customs territory of the Community before entry for free circulation of the goods, shall constitute such indication. Etc.	The transaction value of the goods sold for export to the customs territory of the Union shall be determined at the time of acceptance of the customs declaration on the basis of the sale occurring immediately before the goods were brought into that customs territory.
Royalties and licence fees	A royalty or licence fee in respect of the right to use a trade mark	The price actually paid or payable for the imported goods shall be supplemented by royalties and licence fees related to the goods being valued that the buyer must pay, either directly or indirectly, as a condition of sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable. Etc.
Trademarks	The buyer is not free to obtain such goods from other suppliers unrelated to the seller	No equivalent provision
Discounts	No equivalent provision	When transaction value is used, discounts shall be taken into account if the sales contract provides for their application and gives the amount.
Partial delivery	No equivalent provision	When goods are part of a larger quantity of the same goods purchased in one transaction, the transaction value will be calculated on a <i>pro rata</i> basis.

<sup>31</sup> WTO documents G/VAL/N/1/EEC/1 and G/VAL/N/1/EEC/1/Rev.1.

Subject	CCC	UCC
Simplification	No equivalent provision. The customs authorities may authorize certain elements to be added to the price paid or payable, or certain charges not to be included in the customs value, although non quantifiable at the moment of incurrence of the customs debt, may be determined on the basis of appropriate and specific criteria. Etc.	The customs authorities may, upon application, authorize that amounts constituting elements of the price paid or payable, or amounts to be included in or excluded from the customs value for the price actually paid or payable, including items added to or deducted from it, be determined on the basis of specific criteria. Etc.
Customs warehouse Type D	Customs value could be determined upon entering the warehouse	Provision abolished following the changes in the warehousing procedure.

- a Transitional provision on this first sale rule may be applied that allows valuation based on an earlier sale to be used for contracts concluded prior to 18 January 2016, and may apply up until 31 December 2017 (Article 347, UCC IA).

Source: The UCC, the UCC Implementing Act, and information provided by the authorities.

### 3.1.3 Rules of origin

3.23. The EU's rules of origin have also changed as a result of the implementation of the UCC and its associated implementing rules. In particular, the rules contained in the UCC Delegated Act give detailed provisions for non-preferential origin rules, and the Implementing Act further clarifies many preferential rules.

3.24. Some changes were introduced, in particular for non-preferential rules of origin. The basic principles remain as per the wholly-obtained or substantial transformation definitions in the UCC:

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

3.25. The existing list of goods for which detailed rules for origin determination are included has been extended in the UCC Delegated Act for a few categories of goods, the production of which involves more than one country or territory. Thus, traders are referred to an annex containing lists of substantial processing or working operations conferring origin by HS chapter, heading, sub-heading, or specific sub-divisions called "splits". The lists mirror the work of the WTO Committee on Rules of Origin as per its Harmonised Work Programme (HWP) on harmonizing rules of origin but there are deviations.<sup>32</sup> Where the rule was endorsed at the WTO's Committee on Rules of Origin, this rule was proposed; and where the rule was not endorsed at the WTO, the position of the EU in the HWP was proposed. The rules were adopted on the basis of detailed consultations with the interested industry sectors. In the new rules included in the UCC Delegated Act, the EU reaffirms the principle of the WTO work programme for goods produced in more than one country, i.e. that substantial transformation is first based on the country where the production process has led to a change in tariff classification, and only where that criterion does not allow for the determination should another criterion be used.

3.26. There are 36 HS chapters<sup>33</sup> listed, although most products in the lists are concentrated in the textiles and clothing, and iron and steel sectors, whereby the rules are complete for these sectors. In some cases, this work is not necessarily new as the EU previously had the exact same rules for textiles. Where the list rule or chapter rules are not fulfilled, the residual rules are applied. The residual rules include determining origin based on the origin of the major portion of the materials used to produce the product; the major portion of materials is determined either on the value or the weight of the materials used. Other chapters typically only cover a few products.

<sup>32</sup> WTO document G/RO/W/111/Rev.6.

<sup>33</sup> HS chapters 2, 4, 9, 14, 17, 20, 22, 34, 35, 42, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 69, 71, 72, 73, 82, 84, 85, 90, 91 and 94.



Thus, where the chapter does not have origin-conferring criteria, origin is to be determined where the product underwent its last, substantial, economically-justified processing or working, on a case-by-case basis. As of March 2017, the Commission website had not been updated to reflect the new rules of origin.<sup>34</sup>

3.27. Another element introduced for non-preferential origin determination was a list of minimal operations that may not be used to meet the substantial transformation test. The list includes minor operations, such as packing, putting up in sets, affixing marks or labels, etc. Previously, the list applied only to textile products; now, it will apply to all products.

3.28. For preferential rules, there have been fewer modifications with the introduction of the UCC. Mainly, the rules have been clarified. The UCC Delegated Act and the Implementing Act lay down the rules of origin for the GSP and for Autonomous Trade Measures. Preferential rules of origin continue to be as outlined in the specific agreements. One notable change for the rules of origin in the GSP is the application of a new system of origin certification as from 1 January 2017, progressively replacing the certification of origin with certificates of origin Form A issued by authorities in an exporting country. The new system is based on statements on origin made by exporters who are registered by their competent authorities.

3.29. In terms of WTO notifications, the EU has not notified the latest modifications of its preferential origin rules to the Committee on Rules of Origin. The most recent notifications are from 2014 and concern preferential rules pursuant to the free trade agreements with Moldova, Ukraine, and Georgia.<sup>35</sup>

### 3.1.4 Tariffs

3.30. The EU's Council Regulation (EEC) No. 2658/87 of 23 July 1987 establishes the Combined Nomenclature (CN) as the EU's common customs tariff for imports and exports, and for statistical purposes. It is updated yearly and provides the tariff nomenclature, description and the rates of duty applied by the customs union to external trade. The latest version of the nomenclature, applicable as from 1 January 2017, has been published with Commission Implementing Regulation (EU) 2016/1821 of 6 October 2016. As the EU is a signatory to the International Convention on the Harmonized Commodity Description and Coding System (Harmonized System) under the WCO, the CN is based on the Harmonized System (HS) nomenclature (6-digit level).

3.31. Under the TFEU, common customs tariff duties are set by the European Parliament and the Council, or the Council based on a proposal from the Commission.<sup>36</sup> In addition to publishing tariff information in the L-Series of the Official Journal of the European Union, the EU maintains a public online database (TARIC) that integrates tariff rates and other measures, including quantitative restrictions (QRs) and contingency measures, applied to imports (and exports).

#### 3.1.4.1 Nomenclature and WTO bindings

3.32. There have been several nomenclature changes to the CN since its last review. In 2015, 35 nomenclature changes were introduced, and in 2016, 82 such changes.<sup>37</sup> These were mainly a result of statistical amendments to the nomenclature.

3.33. The EU has submitted the documentation giving proposed HS2007 and HS2012 changes to its WTO schedule; however, these have not been approved nor certified as of March 2017. The EU

<sup>34</sup> European Commission online information. Viewed at: [http://ec.europa.eu/taxation\\_customs/business/calculation-customs-duties/rules-origin/nonpreferential-origin/introduction\\_en](http://ec.europa.eu/taxation_customs/business/calculation-customs-duties/rules-origin/nonpreferential-origin/introduction_en).

<sup>35</sup> WTO documents G/RO/N/121, G/RO/N/122, and G/RO/N/123.

<sup>36</sup> Article 31, TFEU, only in respect of the Council based on a proposal from the Commission.

<sup>37</sup> EU online information. Viewed at: [https://circabc.europa.eu/faces/jsp/extension/wai/navigation/container.jsp?FormPrincipal:\\_idcl=FormPrincipal:\\_id1&FormPrincipal\\_SUBMIT=1&id=360f68dc-1753-4956-a809-8f56857a95fe&javax.faces.ViewState=WxHJC884YT2WE1p7wM9x7QYEEcmoGMBruwWdhPkGSecn07uGiJVLNIYwkFQLX4hu5Vc6tRRHWDi53A8Veh2VDZ1VFawL4M5NyUkzAHZsT9hxU9BSOWA3Vrq7Z8JOuUOqwDpTQtwYrF1iBbGzBy9yPB5Zwx4%3D](https://circabc.europa.eu/faces/jsp/extension/wai/navigation/container.jsp?FormPrincipal:_idcl=FormPrincipal:_id1&FormPrincipal_SUBMIT=1&id=360f68dc-1753-4956-a809-8f56857a95fe&javax.faces.ViewState=WxHJC884YT2WE1p7wM9x7QYEEcmoGMBruwWdhPkGSecn07uGiJVLNIYwkFQLX4hu5Vc6tRRHWDi53A8Veh2VDZ1VFawL4M5NyUkzAHZsT9hxU9BSOWA3Vrq7Z8JOuUOqwDpTQtwYrF1iBbGzBy9yPB5Zwx4%3D); and information provided by the authorities.

is covered by the HS2007, HS2012, and HS2017 waivers in order to implement the nomenclature changes as these have already been implemented in the CN.<sup>38</sup>

3.34. The EU's schedule of tariff commitments was last updated in December 2016 with the certification of Schedule CLXXIII, the schedule of the European Communities' 25 members, and includes the HS2002 nomenclature changes.<sup>39</sup> It also includes the outcome of certain TQ negotiations for chicken and butter.<sup>40</sup> However, there are a number of changes that the EU has made in the CN and continues to apply today but which have either not yet been incorporated in its WTO schedule or not notified to the WTO (Table 3.4).

**Table 3.4 Modifications to the CN not incorporated in its WTO bound commitments**

Subject	WTO reference series
Enlargement to 27	G/SECRET/26
Prepared poultry meat TQ	G/SECRET/32
Enlargement to 28	G/SECRET/35
Additions to the lists of pharmaceutical products	Not notified
ITA expansion	G/MA/TAR/RS/456

Source: WTO document G/MA/W/23/Rev.12 and information provided by the authorities.

### 3.1.4.2 Applied rates

3.35. The EU's applied rates remain largely unchanged since its last Review, with the simple average tariff rate declining slightly from 6.4% in 2014 to 6.3% in 2016 (Table 3.5). This is due to reductions in rates for the expanded list of International Technology Agreement (ITA) products and additional tariff codes in the nomenclature. Applied rates are generally identical to the WTO bindings, and the EU has bound 100% of tariff lines.

**Table 3.5 Structure of MFN tariffs in the EU, 2016**

(%)

		MFN applied		Final bound
		2014 <sup>a</sup>	2016 <sup>b</sup>	2016 <sup>b</sup>
1.	Bound tariff lines (% of all tariff lines)	100.0	100.0	100.0
2.	Simple average tariff rate	6.4	6.3	6.4
	Agricultural products (WTO definition)	14.4	14.1	14.4
	Non-agricultural products (WTO definition)	4.3	4.3	4.4
	Agriculture, hunting, forestry and fishing (ISIC 1)	7.7	7.8	8.7
	Mining and quarrying (ISIC 2)	0.2	0.2	0.3
	Manufacturing (ISIC 3)	6.4	6.3	6.4
3.	Duty-free tariff lines (% of all tariff lines)	25.1	26.1	25.1
4.	Simple average rate of dutiable lines only	8.6	8.6	8.6
5.	WTO tariff quotas (% of all tariff lines) <sup>c</sup>	5.0	4.7	4.7
6.	Non- <i>ad valorem</i> tariffs (% of all tariff lines)	10.6	10.6	10.7
7.	Non- <i>ad valorem</i> tariffs with no AVEs (% of all tariff lines)	3.1	3.0	3.0
8.	Domestic tariff peaks (% of all tariff lines) <sup>d</sup>	5.6	5.7	5.7
9.	International tariff peaks (% of all tariff lines) <sup>e</sup>	8.5	8.5	8.8
10.	Overall standard deviation of applied rates	12.0	12.1	12.2
11.	Nuisance applied rates (% of all tariff lines) <sup>f</sup>	6.9	7.7	7.8

<sup>38</sup> WTO documents WT/L/968, WT/L/969, and WT/L/999.

<sup>39</sup> WTO document WT/Let/1220.

<sup>40</sup> G/SECRET/25 and G/SECRET/30.



		MFN applied		Final bound
		2014 <sup>a</sup>	2016 <sup>b</sup>	2016 <sup>b</sup>
Number of lines		9,379	9,414	9,414
	<i>Ad valorem</i>	8,382	8,416	8,406
	Duty-free lines	2,356	2,461	2,359
	<i>Non-ad valorem</i>	997	998	1,008
	Specific	651	652	662
	Compound	199	199	201
	Mixed	64	64	62
	Other <sup>g</sup>	83	83	83

- a *Ad valorem* equivalents (AVEs) were estimated based on 2013 import data at the 8-digit tariff from the Eurostat database. If unavailable, the *ad valorem* part is used for compound and mixed rates.
- b AVEs were estimated based on 2015 import data at the 8-digit tariff from the Eurostat database. If unavailable, the *ad valorem* part is used for compound and mixed rates.
- c Information based on the *Official Journal* of the European Union L 290 (31 October 2013) and L 285 (30 October 2015).
- d Domestic tariff peaks are defined as those exceeding three times the overall simple average applied rate (indicator 6).
- e International tariff peaks are defined as those exceeding 15%.
- f Nuisance rates are those greater than zero, but less than or equal to 2%.
- g Other includes Agricultural Components (EA), Additional Duties for Sugar (AD S/Z), Additional Duties for Flour (AD F/M) and Entry Prices (EP).

Note: All tariff calculations exclude in-quota lines. Year 2014 and 2016 tariff schedules are based on HS2012. Duty rates under ITA Expansion (as of 1 July 2016) were taken into account in calculations.

Source: WTO Secretariat calculations based on the WTO Integrated Data Base (IDB) and the Eurostat database.

3.36. Agricultural tariffs stand out compared to industrial tariffs for several reasons: significantly higher rates, about three-fold; a higher percentage of non-*ad valorem* rates; and a number of tariff lines for the implementation of tariff rate quotas. Nevertheless, average applied rates for agricultural products have generally declined in the medium term. Furthermore, some of the highest tariff rates and averages for certain sectors are in agriculture (Table 3.6). The dairy sector is particularly noteworthy, with average tariffs of over 35% and the highest rates of all tariffs. Other sectors with particularly high averages include sugar and confectionary, and animals and animal products.

**Table 3.6 EU's applied MFN tariff summary, 2016**

	Number of lines	Simple average (%)	Tariff range (%)	SD <sup>a</sup>	Share of duty-free lines (%)	Share of non- <i>ad valorem</i> tariffs (%)
<b>Total</b>	<b>9,414</b>	<b>6.3</b>	<b>0-695.5<sup>b</sup></b>	<b>12.1</b>	<b>26.1</b>	<b>10.6</b>
<b>HS 01-24</b>	<b>2,456</b>	<b>14.2</b>	<b>0-695.5<sup>b</sup></b>	<b>21.7</b>	<b>15.3</b>	<b>38.3</b>
<b>HS 25-97</b>	<b>6,958</b>	<b>3.7</b>	<b>0-35.6</b>	<b>3.7</b>	<b>30.0</b>	<b>0.8</b>
<b>By WTO category</b>						
<b>WTO agricultural products</b>	<b>2,075</b>	<b>14.1</b>	<b>0-695.5<sup>b</sup></b>	<b>23.7</b>	<b>19.1</b>	<b>46.4</b>
Animals and products thereof	351	19.4	0-132.5	21.3	15.1	68.7
Dairy products	151	35.6	2.8-695.5 <sup>b</sup>	65.0	0.0	100.0
Fruit, vegetables, and plants	508	13.0	0-169.9	13.9	11.8	16.9
Coffee, tea, and cocoa and cocoa preparations	47	11.3	0-18.7	6.7	14.9	51.1
Cereals and preparations	230	14.9	0-76.9	11.9	8.7	80.0
Oilseeds, fats, oil and their products	174	6.0	0-103.5	10.4	35.6	6.9
Sugars and confectionery	44	26.8	0-172.7	37.5	4.5	88.6
Beverages, spirits and tobacco	305	12.8	0-76.8	15.9	18.0	55.4
Cotton	6	0.0	0-0	0.0	100.0	0.0
Other agricultural products, n.e.s.	259	5.8	0-168.7	16.0	51.0	22.0
<b>WTO non-agricultural products</b>	<b>7,339</b>	<b>4.3</b>	<b>0-26.0</b>	<b>4.4</b>	<b>28.1</b>	<b>0.5</b>
Fish and fishery products	500	12.2	0-26.0	6.5	8.0	0.0
Minerals and metals	1,447	2.0	0-12.0	2.6	50.6	0.7

	Number of lines	Simple average (%)	Tariff range (%)	SD <sup>a</sup>	Share of duty-free lines (%)	Share of non- <i>ad valorem</i> tariffs (%)
Chemicals and photographic supplies	1,248	4.4	0-17.3	2.7	25.1	0.3
Wood, pulp, paper and furniture	438	1.2	0-10.5	2.3	73.5	0.0
Textiles	850	6.6	0-12.0	2.4	1.9	0.1
Clothing	341	11.6	6.3-12.0	1.3	0.0	0.0
Leather, rubber, footwear and travel goods	264	5.0	0-17.0	4.7	21.6	0.0
Non-electric machinery	882	1.8	0-9.7	1.4	23.1	0.0
Electric machinery	447	2.6	0-14.0	2.8	24.8	0.0
Transport equipment	253	5.0	0-22.0	5.0	11.9	0.0
Non-agricultural products, n.e.s.	620	2.1	0-12.2	1.9	35.5	3.2
Petroleum	49	2.5	0-4.7	2.0	38.8	0.0
<b>By ISIC sector<sup>c</sup></b>						
ISIC 1 - Agriculture, hunting and fishing	639	7.8	0-168.7	12.8	35.2	18.5
ISIC 2 - Mining and quarrying	115	0.2	0-8.0	1.0	93.0	2.6
ISIC 3 - Manufacturing	8,659	6.3	0-695.5 <sup>b</sup>	12.1	24.6	10.1
<b>By stage of processing</b>						
First stage of processing	1,194	6.3	0-168.7	10.4	43.6	13.2
Semi-processed products	2,771	4.9	0-172.7	7.4	31.5	3.8
Fully processed products	5,449	7.1	0-695.5 <sup>b</sup>	14.2	19.6	13.5

a Standard deviation.

b The tariff peak was calculated on a tariff line for which imports in 2015 were 0.1 tonnes. The next tariff peak in the dairy sector was 187.2%.

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

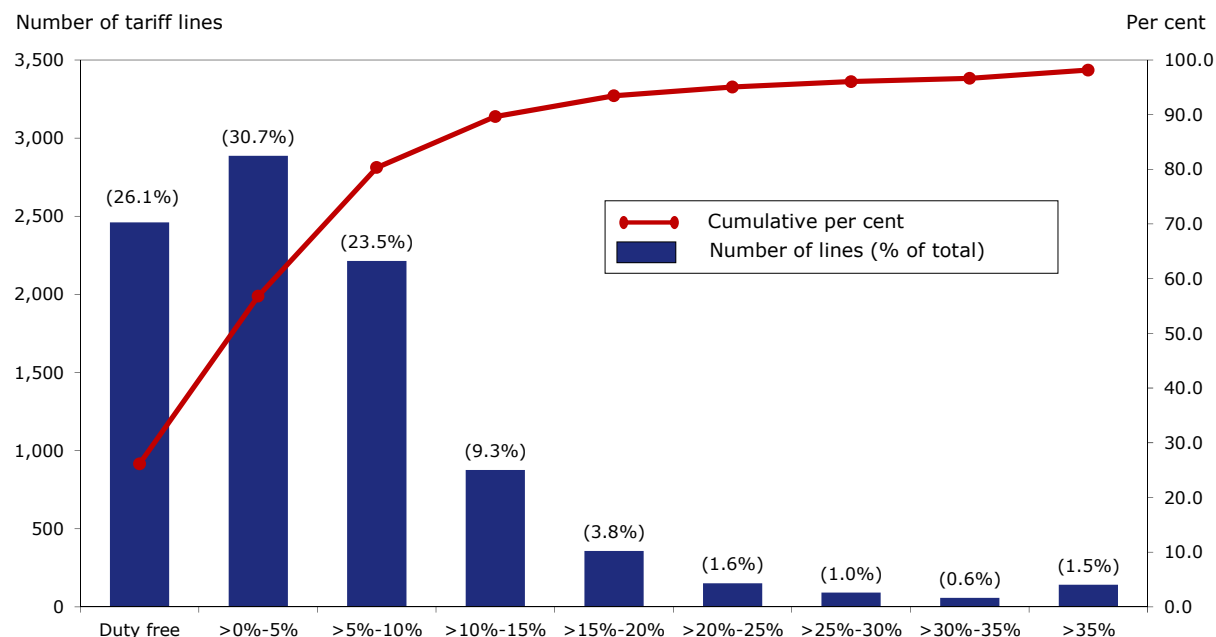
Note: Calculations for averages are based on the national tariff line level (8-digit), excluding in-quota rates. Tariff schedule is based on HS2012. AVEs were estimated based on 2015 import data at the 8-digit tariff from the Eurostat database. If unavailable, the *ad valorem* part is used for compound and mixed rates.

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

3.37. Non-*ad valorem* tariffs constitute about 11% of tariff lines and comprise specific, combined, mixed, and other complex forms. They can be cumbersome, as calculating *ad-valorem* equivalents may not be possible and determining the duty impact can be complex.

3.38. About 26% of tariff lines were duty free in 2016, up from 25% in 2014. The slight rise can be attributed to the expansion of the ITA and nomenclature changes. Duty-free lines are concentrated in areas where the EU participates in plurilateral or similar agreements, i.e. Uruguay Round sectors, ITA, and pharmaceuticals. The sectors with the highest percentages of duty-free lines are for cotton, wood and paper, minerals and metals, and other agricultural products.

3.39. The largest incidences of tariffs are those that are less than 5%, which constitute about 30% of tariff lines (Chart 3.1). Of these, about 8% are considered nuisance tariffs. There is a gradual decline in the incidence as the tariff rates rise, although a slight increase is seen for tariffs above 35%; they account for 1.5% of all tariff lines.

**Chart 3.1 Applied MFN tariff rates distribution, 2016**

Note: Figures in parentheses indicate the share of total lines. Calculations exclude in-quota rates and include AVEs, as available. If unavailable, the *ad valorem* part is used for compound and mixed rates. They do not add to 100% due to the unavailability of AVEs for some tariff lines (representing 1.9% of total tariff lines).

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

### 3.1.4.3 Duty suspensions and special tariff treatment

3.40. Pursuant to Council Regulation (EU) Nos. 1387/2013 and 1388/2013, the EU offers tariff suspensions and quotas to enable enterprises to use raw materials, semi-finished goods or components without being required to pay the normal duties. These suspensions or quotas can be permanent or temporary. As of July 2016, there were 2,497 duty suspensions and 102 quotas in force, which represents an increase compared to recent years. The duty suspensions are concentrated in the chemical or allied sector (HS Section VI), machinery/mechanical appliances and electrical/electronic equipment (Section XVI), and plastics (Section VII). The value of tariff-suspended imports for 2015 was estimated at €1.3 billion.<sup>41</sup>

3.41. In addition to the WTO Civil Aircraft Agreement, the EU also offers temporary duty-free imports for certain parts, components, and other goods of a kind to be incorporated in or used for civil aircraft and imported with airworthiness certificates pursuant to Council Regulation (EC) No. 1147/2002.<sup>42</sup>

3.42. Commission Implementing Regulation (EU) 2016/1894<sup>43</sup> of 26 October 2016 contains provisions on the way the EU applies special additional duty rates for certain poultry meat, eggs, and egg albumin due to fixing representative prices. The previous regulation from 1995 has been amended by the new 2016 regulation, adjusting representative prices and applicable countries.

<sup>41</sup> Information provided by the authorities.

<sup>42</sup> Council Regulation (EC) No. 1147/2002 of 25 June 2002 temporarily suspending the autonomous Common Customs Tariff duties on certain goods imported with airworthiness certificates. OJ L 170/8 of 29 June 2002. European Commission online information. Viewed at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32002R1147>.

<sup>43</sup> Commission Implementing Regulation (EU) 2016/1894 of 26 October 2016 amending Regulation (EC) No. 1484/95 as regards fixing representative prices in the poultry meat and egg sectors and for egg albumin. OJ L 293/28 of 28 October 2016. European Commission online information. Viewed at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R1894>.

3.43. The EU offers favourable tariff treatment for certain products due to their nature, quality or authenticity through the use of certificates. Pursuant to the latest tariff of the EU, such preferential treatment was provided for table grapes (0806), tobacco (2401), and nitrate (3102 and 3105). Certificates are issued by listed bodies authorized to do so in the exporting country. Based on the list of authorized bodies, the benefits of this regime pertain to table grapes from the United States; tobacco from Argentina, Bangladesh, Brazil, Canada, China, Colombia, Cuba, Guatemala, India, Indonesia, Mexico, the Philippines, South Korea, Sri Lanka, Switzerland, Thailand, and the United States; and nitrate from Chile.<sup>44</sup>

3.44. Pursuant to Regulation (EU) 2016/654<sup>45</sup>, the EU has applied additional customs duties<sup>46</sup> on sweetcorn, eye glass frames, crane lorries, and certain clothing from the United States due to the Continued Dumping and Subsidy Offset Act (CDSOA) compliance measures under the WTO. The level of suspension is adjusted annually to match the same level of nullification and impairment caused by the Act.

#### 3.1.4.4 Tariff quotas (TQ) and administration

3.45. The EU maintains tariff quotas (TQ) for three general types of imports: agricultural products, autonomous MFN quotas, and imports from certain countries pursuant to preferential agreements. In addition, pursuant to a 2012 EU regulation<sup>47</sup>, the EU has established tariff quotas for high-quality beef, applying only to imports from certain countries.<sup>48</sup> Many MFN tariff quotas are allocated on a "first-come, first-served" basis. When the quotas of the application period for the products in question are used up, normal import duties are applied. TQs are managed centrally by the Commission, and can be consulted on an internet database which is updated daily.<sup>49</sup> The EU grants preferential TQs in accordance with unilateral or reciprocal trade agreements.

3.46. Many TQs have undergone revision since the last Review as a result of the removal of quotas for certain agricultural products<sup>50</sup> and quotas added for new FTAs. As of October 2016, there were 1,006 categories of TQs applied on a variety of products.<sup>51</sup> The majority of the TQs were country- or regional-specific TQs to implement FTA commitments, and about 230 were open to all importers as autonomous quotas. The TQs open to all importers are mainly applied on fish, agricultural products, chemicals, metals, machinery and equipment. Other TQs apply bilaterally to certain countries for individual products or to certain sectors such as handicrafts.<sup>52</sup>

3.47. The autonomous quotas and those pursuant to preferential arrangements are allocated on a first-come, first-served basis by the Directorate-General (DG) for Taxation and Customs. Agricultural quotas are managed by the European Commission through import licenses.

3.48. In April 2016, the European Parliament and the Council of the European Parliament introduced emergency autonomous trade measures for Tunisia, which resulted in the granting of

<sup>44</sup> Annex 9 of Commission Implementing Regulation (EU) No. 1101/2014 of 16 October 2014. European Commission online information. Viewed at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?ur=i=OJ:L:2015:285:FULL&from=EN>.

<sup>45</sup> Commission Delegated Regulation (EU) 2016/654 of 26 February 2016 amending Council Regulation (EC) No. 673/2005 establishing additional customs duties on imports. OJ L 114/1 of 28 April 2016. European Commission online information Viewed at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:2016R0654>.

<sup>46</sup> Rate of 0.45% in 2016.

<sup>47</sup> Commission Implementing Regulation (EU) No. 481/2012 of 7 June 2012 laying down rules for the management of a tariff quota for high-quality beef. OJ L 148/9 of 8 June 2012. European Commission online information. Viewed at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012R0481&from=EN>.

<sup>48</sup> Argentina, Australia, Canada, New Zealand, the United States, and Uruguay.

<sup>49</sup> European Commission online information. Viewed at: [http://ec.europa.eu/taxation\\_customs/dds2/taric/quota\\_consultation.jsp?Lang=en](http://ec.europa.eu/taxation_customs/dds2/taric/quota_consultation.jsp?Lang=en).

<sup>50</sup> See WTO document G/LIC/N/3/EU/5.

<sup>51</sup> European Commission online information. Viewed at: <https://circabc.europa.eu/faces/jsp/extension/wai/navigation/container.jsp?FormPrincipal: idcl=FormPrincipal: id1&FormPrincipal SUBMIT=1&id=fef41906-43fe-4289-8176-5d2d75b2bea7&javax.faces.ViewState=mAoP%2FBAfhXLC%2BM%2BQID7%2FCqi8CQn%2FzAX83BMa4TdGG3aAIL%2Fzn5NBwO4DO41tsD1Bzwng7%2Fecqiad2rKtZfnxnmeVQj%2FTRoWcl7%2BLZin7BcrPk9VII%2BLJ%2FGavqbmIQxVORG9CQFki%2FU2oNGf0phyfirRhbDI%3D>.

<sup>52</sup> For example, Australia and the United States pursuant to Article XXIV:6 and Article XXVIII negotiations.

an annual duty-free TQ of 35,000 tons for imports of untreated olive oil originating in Tunisia.<sup>53</sup> Bilateral and autonomous quotas for imports of olive oil from Tunisia are managed by Directorate-General for Agriculture and Rural Development (DG AGRI) using the simultaneous examination method.<sup>54</sup>

### 3.1.4.5 Preferential tariffs

3.49. The EU maintains preferential tariffs for imports from certain countries pursuant to its reciprocal or preferential agreements. The agreements generally provide for duty-free access for 57% to 99.9% of tariff lines. There has generally been an increase in the duty-free coverage since the last Review, reflecting the ongoing reduction of commitments gradually being staged in. A number of trading partners/agreements, i.e. Andorra, CARIFORUM, ESA, Economic Partnerships, Fiji, Morocco, Palestine, San Marino, and LDC (EBA), have achieved tariff elimination on nearly all products, i.e. 99% or above (Table A3.1).

3.50. For non-reciprocal preferential agreements, the EU provides preferential or duty-free rates to certain countries under GSP, GSP+, and "Everything But Arms" (EBA). The simple average overall tariff rates for 2016 under the three programmes remains unchanged since the last Review at 4.1%, 1.8%, and 0%, respectively (Table A3.1). India, Indonesia, Nigeria, and Ukraine face slightly higher averages under GSP due to graduation. GSP and GSP+ preferences apply on over 6,000 tariff lines with nearly identical coverage except for about 60 lines. The main difference is that GSP+ provides a zero rate of duty on nearly all GSP+ eligible products, whereas GSP provides a zero rate of duty on about half the tariff lines, thus preferential rates apply on the remaining 2,922 lines. The EU performed the triennial review of the list of graduated products in 2016 and, as a result, has implemented changes to the eligible products for certain countries as of 1 January 2017.<sup>55</sup> These changes pertain to India (7 product sections), Indonesia (2), Kenya (1), and Ukraine (2) whereby GSP preferences will not be eligible for these countries' products which have been "graduated" due to their competitive position for the period 2017-2019. Country eligibility for the different preference programmes and the criterion has changed slightly over the review period (see Section 2.3).

### 3.1.5 Other charges affecting imports

3.51. The main other duties or charges for imports into the EU are VAT and excise duties. Duties are chargeable and collected upon the importation into the territory of the Community by the national authorities in the case of VAT, or upon release for consumption in the case of excise duty; i.e. upon release for free circulation for non-EU goods unless arrangements are made to suspend payment. For VAT, the Commission has set out a list of common rules in the VAT Directive that are applicable in each member State and harmonize certain elements such as rates and exemptions.<sup>56</sup> It sets out minimum rates of 15% for the standard rate, and 5% for the reduced rate (applicable only to 23 categories of certain goods and services specified in the VAT Directive); thus member States apply rates equal to or above these minima, varying by product and member State. The Directive also allows for numerous derogations to these general rules on rates, applied by member States under certain conditions.

3.52. For excise duties, the Commission has set out common provisions that include the categories of products that member States must apply excise duties to, principles on where excise

<sup>53</sup> The quota is for 2016 and 2017 and concerns HS codes 1509 10 10 and 1509 10 90. Regulation (EU) 2016/580 of the European Parliament and of the Council of 13 April 2016 on the introduction of emergency autonomous trade measures for the Republic of Tunisia. OJ L 102/1, 18 April 2016. European Commission online information. Viewed at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1475139131335&uri=CELEX:32016R0580>.

<sup>54</sup> Information provided by the authorities.

<sup>55</sup> Commission Implementing Regulation (EU) 2016/330 of 8 March 2016 suspending the tariff preferences for certain GSP beneficiary countries in respect of certain GSP sections in accordance with Regulation (EU) No. 978/2012 applying a scheme of generalized tariff preferences for the period of 2017-19. OJ L 62/9 of 9 March 2016. European Commission online information. Viewed at: [http://trade.ec.europa.eu/doclib/docs/2016/march/tradoc\\_154349.pdf](http://trade.ec.europa.eu/doclib/docs/2016/march/tradoc_154349.pdf).

<sup>56</sup> Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax. OJ L 347/1 of 11 December 2006. European Commission online information. Viewed at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32006L0112&from=EN>.

duty revenue accrues, and rules on the production, storage and movement of excise products.<sup>57</sup> In 2016, excise duties were applied to energy products and electricity, alcohol and alcoholic beverages, and manufactured tobacco at the EU level, known as the products subject to EU harmonization.<sup>58</sup> The Commission also establishes the minimum excise duty rates, although the member States generally apply higher rates based on their individual circumstances. Rates can vary considerably between member States depending upon the product concerned.

3.53. For common EU excisable goods, there exists an excise duty suspension system for the transit of goods across borders, and thus the excise duty is payable when it is sold to the final consumer. The system, known as EMCS, is an electronic system that documents and monitors the movement of excisable goods. Direct use of EMCS by economic operators requires an appropriate authorization. Authorizations, which allow for the suspension of the obligation to pay excise duty, are governed by national rules, subject to the general provisions of Chapters III and IV of Directive 2008/118/EC. There are no restrictions on transport providers.

3.54. Member States may also charge excise duties on other products so long as they are non-discriminatory and do not cause distortions of the single market. According to information from the Commission, Finland charges excise duties on beverage packages, and Germany charges an additional excise duty on alcoholic beverage blends.<sup>59</sup> However, nearly all EU member States have many other excise duties on a wide variety of products and services, e.g. coffee, automobiles, and beverages (Table 3.7). There are currently no rules or plans to harmonize these other excise duties among member States. The EMCS system allowing for the duty to be suspended during transit between member States cannot be used for these excisable goods.

**Table 3.7 Excise duties other than on EU harmonized products (alcohol, tobacco, and energy products), by member State, 2016/2017**

	Product	Rate	Source
Austria	None		
Belgium	Beverages Coffee Environmental Packaging	€2.70-4.50 per kg €9.86 or €1.41 per hl	<a href="http://finances.belgium.be/fr/entreprises/accises">http://finances.belgium.be/fr/entreprises/accises</a>
Bulgaria	None		
Croatia	Coffee Non-alcoholic beverages Motor vehicles	HRK 6-20/kg HRK 40-240/hl 1-14%	<a href="http://www.ijf.hr/upload/files/file/ENG/taxtable.pdf">http://www.ijf.hr/upload/files/file/ENG/taxtable.pdf</a>
Cyprus	Cars Double cabin vehicles Other vehicles Motorcycles Smoked salmon and sturgeon Caviar Crystals Chinaware	From €0 to €2,250 €0.26 per c.c. 15% €1.71 or €2.56 per c.c. €5.13 per kg 30% 20% 20%	<a href="http://www.mof.gov.cy/mof/customs/customs.nsf/All/A2C3593B5465A799422577D6002FEAC4?OpenDocument">http://www.mof.gov.cy/mof/customs/customs.nsf/All/A2C3593B5465A799422577D6002FEAC4?OpenDocument</a>
Czech Rep.	none		
Denmark	Ice cream and chocolate Coffee and tea Incandescent lamps and electrical fuses Cigarette paper Coal  Landfill Hazardous waste Packaging Piped water	Kr 5.58 to 6.98 per litre Kr 0.75 to 18.29 per kg  Kr 0.59 to 8.79 per piece Kr 5 per piece Kr 1,051 to 2,078 per tonne Kr 475 per ton Kr 160 per ton Varies by type Kr 6.25 per m <sup>3</sup>	<a href="http://www.skat.dk/SKAT.aspx?oId=1921338">http://www.skat.dk/SKAT.aspx?oId=1921338</a>

<sup>57</sup> Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02008L0118-20140101&from=EN>.

<sup>58</sup> EU online information. Viewed at: [https://ec.europa.eu/taxation\\_customs/business/excise-duties-alcohol-tobacco-energy/excise-duties-alcohol/excise-duty-rates\\_en](https://ec.europa.eu/taxation_customs/business/excise-duties-alcohol-tobacco-energy/excise-duties-alcohol/excise-duty-rates_en).

<sup>59</sup> EU online information. Viewed at: [https://circabc.europa.eu/sd/a/a16788cf-068a-47db-85b8-20cc22f14966/EDT-Ref%201045%20\(I-Alcohol\)%20-%20January%202016.pdf](https://circabc.europa.eu/sd/a/a16788cf-068a-47db-85b8-20cc22f14966/EDT-Ref%201045%20(I-Alcohol)%20-%20January%202016.pdf).



	Product	Rate	Source
	Sulphur Nitrous oxides Tyres Pesticides  Chlorinated solvents Batteries  Motor vehicles Gaming Insurance	Kr 23.3 per kg Kr 11.7 per kg Kr 5 to 225 per piece Kr 107 per kg or litre per agent Kr 2 per kg Kr 6 to 120 per kg or package Varies by type Varies by game 1.1%	
Estonia	Packaging (glass, plastic, metal, paper, cardboard, wood)	From €0.6 to €2.5 per kg depending on type	<a href="https://www.emta.ee/eng/business-client/excise-duties-assets-gambling/about-excise-duties/rates-excise-duty">https://www.emta.ee/eng/business-client/excise-duties-assets-gambling/about-excise-duties/rates-excise-duty</a>
Finland	Sweets, ice cream and soft drinks Beverage containers Oil waste Oil protection Landfill	Range from €0.11 per litre to €1.4 per kg €0.51 per litre €0.0575 per kg €0.50 per tonne €70 per tonne	<a href="http://www.tulli.fi/en/finnish_customs/publications/excise_tax/excise_taxation/016.pdf">http://www.tulli.fi/en/finnish_customs/publications/excise_tax/excise_taxation/016.pdf</a> <a href="http://www.tulli.fi/fi/yrityksille/verotus/valmisteverotettavat/index.jsp">http://www.tulli.fi/fi/yrityksille/verotus/valmisteverotettavat/index.jsp</a>
France	Non-alcoholic beverages	From €0.54 to €102.61 per hl	<a href="http://www.douane.gouv.fr/articles/a12186-tarifs-2016-droits-des-alcools-boissons-alcooliques-et-non-alcooliques">http://www.douane.gouv.fr/articles/a12186-tarifs-2016-droits-des-alcools-boissons-alcooliques-et-non-alcooliques</a>
Germany	Coffee Coffee products Nuclear fuel Biofuels	€2.19 to €4.78 per kg €0.12 to €3.83 per kg 145 euros per gram Quota system	<a href="http://www.zoll.de/DE/Fachthemen/Steuern/Verbrauchssteuern/verbrauchsteuern_node.html">http://www.zoll.de/DE/Fachthemen/Steuern/Verbrauchssteuern/verbrauchsteuern_node.html</a>
Greece	Electronic cigarette refills Coffee Instant coffee and coffee containing products	€0.10 per ml €2 to €3 per kg €4 per kg	<a href="https://www2.deloitte.com/content/dam/Deloitte/gr/Documents/tax/gr_in_direct_tax_customs_leg_43892016_en_noexp.pdf">https://www2.deloitte.com/content/dam/Deloitte/gr/Documents/tax/gr_in_direct_tax_customs_leg_43892016_en_noexp.pdf</a>
Hungary	none		
Ireland	Gaming Betting Entertainment Vessels and aircraft	€505 to €630 1%-15% €500 €500	<a href="http://www.revenue.ie/en/tax/excise/duties/excise-duty-rates.html">http://www.revenue.ie/en/tax/excise/duties/excise-duty-rates.html</a>
Italy	Nitrogen oxide emissions Sulfur emissions Lubricating oils Bitumen oil	€209.00 per tonne/year €106.00 per tonne/year €787.81 per 1,000 kg €30.99 per 1,000 kg	<a href="https://www.agenziadoganemonopoli.gov.it/portale/documents/20182/889198/Aliquote+nazionali+aggiornamento+al+1+gennaio+2015.pdf/9109f7b8-985a-4837-b0e0-ac09fdbbc77e">https://www.agenziadoganemonopoli.gov.it/portale/documents/20182/889198/Aliquote+nazionali+aggiornamento+al+1+gennaio+2015.pdf/9109f7b8-985a-4837-b0e0-ac09fdbbc77e</a>
Latvia	Non-alcoholic beverages Coffee	€7.4 per 100 litres €142.29 per 100 kg	<a href="http://www.fm.gov.lv/en/s/taxes/excise_duty/">http://www.fm.gov.lv/en/s/taxes/excise_duty/</a>
Lithuania	Coal Coke and lignite	€3.77 to €7.53 per tonne €4.63 to €8.98 per tonne	<a href="https://finmin.lrv.lt/en/competence-areas/taxation/main-taxes/excise-duties">https://finmin.lrv.lt/en/competence-areas/taxation/main-taxes/excise-duties</a>
Luxembourg	none		
Malta	Non-alcoholic beverages Plastic bags, CN 3923 Toilet waters, CN 3303 Make-up, CN 3304 Hair products, CN 3305 Shampoo, CN 330510 Personal hygiene products, 3307 Aftershave, deodorisers, 3307 Shower gel, 3401 Prefabricated concrete structures, CN 681091 Ceramic tiles, CN 6907, 6908 Glass sheets, CN 7005 Iron bars, CN 7213 Iron rods, CN 721310	€400 per 1,000 litres €425 per 100 kg €220 per 100 litres €50 per 100 litres/kg €50 per 100 litres/kg €3 per 100 litres  €3 per 100 litres/kg  €50 per 100 litres/kg €3 per 100 litres/kg  €25.60 per 1,000 kg  €7.50 per 1,000 kg €16 per 1,000 kg €30 per 1,000 kg €5 per 1,000 kg	<a href="https://customs.gov.mt/docs/default-source/rates-of-exchange/Rates-of-Exchange-2016/learn-more.pdf?sfvrsn=0">https://customs.gov.mt/docs/default-source/rates-of-exchange/Rates-of-Exchange-2016/learn-more.pdf?sfvrsn=0</a>

	Product	Rate	Source
	Iron bars, CN 72139110, 72139149, 72142000 Iron beams, CN 7216 Wire mesh, CN 73142010, 73142090 and 73143900	€15 per 1,000 kg €50 per 1,000 kg  €30 per 1,000 kg	
Netherlands	Non-alcoholic drinks	€8.83 per hl	<a href="https://www.government.nl/topics/excise-duty/contents/excisable-products">https://www.government.nl/topics/excise-duty/contents/excisable-products</a> <a href="http://download.belastingdienst.nl/duane/docs/tarievenlijst_accijns_acc0552z72fol.pdf">http://download.belastingdienst.nl/duane/docs/tarievenlijst_accijns_acc0552z72fol.pdf</a>
Poland	Cars	3.1% or 18.6%	<a href="http://www.finance.mf.gov.pl/in/excise-duty/basic-information">http://www.finance.mf.gov.pl/in/excise-duty/basic-information</a>
Portugal	Motor vehicles Plastic bags	..	..
Romania	Green coffee Roasted coffee Soluble coffee Natural fur products Articles from crystal Jewelleries from gold and/or platinum Cars Perfume products Microwave ovens Air conditioning units Hunting and other guns Yachts and boats	€680 per tonne €1,000 per tonne €4 per kg 45% 55%  25% €1 per cm <sup>3</sup> 10-35% 20% 20% 100% 30 to 50%	<a href="http://www.aneir-cpce.ro/chapter5/excise1.htm">http://www.aneir-cpce.ro/chapter5/excise1.htm</a>
Slovakia	Coal Natural gas  Compressed natural gas	€10.62 per tonne €1.32 to €9.36 per MWh €0.141 to € 0.01989 per kg	<a href="https://www.financnasprava.sk/en/individuals/taxes-individuals/excise-duties">https://www.financnasprava.sk/en/individuals/taxes-individuals/excise-duties</a>
Slovenia	none		
Spain	Perfume Coal	..	..
Sweden	Advertising Waste (landfills) Pesticides  Gravel Lottery Gaming  Profits (monetary gains) Automobile insurance	8%, 3% for periodicals SEK 500 per tonne SEK 34 per kilo active ingredient SEK 15 per tonne 35% Varies by number of tables (SEK 2,000-25,000) 30% 32%	<a href="http://www.skatteverket.se/foretagochorganisationer/skatter/punktskatter.4.71004e4c133e23bf6db800057013.html">http://www.skatteverket.se/foretagochorganisationer/skatter/punktskatter.4.71004e4c133e23bf6db800057013.html</a>
U.K.	Betting Vehicles Biofuels Climate change	10-50% varies by game £0-2,000 varies £0.5795 per litre £0.00195 to £0.00559 per kWh or £0.01251 to £0.01526 per kg depending on commodity	<a href="https://www.gov.uk/government/publications/uk-trade-tariff-excise-duties-reliefs-drawbacks-and-allowances/uk-trade-tariff-excise-duties-reliefs-drawbacks-and-allowances#introduction">https://www.gov.uk/government/publications/uk-trade-tariff-excise-duties-reliefs-drawbacks-and-allowances/uk-trade-tariff-excise-duties-reliefs-drawbacks-and-allowances#introduction</a> <a href="https://www.gov.uk/government/publications/rates-and-allowance-excise-duty-gambling-duty/excise-duty-gambling-duty-rates#gambling-duties">https://www.gov.uk/government/publications/rates-and-allowance-excise-duty-gambling-duty/excise-duty-gambling-duty-rates#gambling-duties</a> <a href="https://www.gov.uk/government/publications/vehicle-excise-duty/vehicle-excise-duty">https://www.gov.uk/government/publications/vehicle-excise-duty/vehicle-excise-duty</a>

.. Not available.

Source: As noted in the table.



### 3.1.6 Import prohibitions, restrictions, and licensing

3.55. The EU maintains import restrictions and prohibitions, and also maintains a licensing system for certain imports. The products subject to these provisions have not substantially changed since the last Review although there have been a number of amendments. There are a number of prohibited or restricted products, with many of them attributable to international agreements, i.e. to protect the environment or similar (Table 3.8). In addition, the EU has import prohibitions on cat and dog fur, and products thereof; and seal products.<sup>60</sup> According to the Commission, they consider these as internal measures and not border measures. Pursuant to an EU regulation<sup>61</sup>, the Commission has rules to restrict invasive alien species. The implementing regulation which came into force in August 2016 provides a list of species and implementation.<sup>62</sup> According to the Commission, no QRs were in place as of March 2017, and the regulation only sets the framework. Products prohibited due to sanctions, export control measures applied to dual-use goods, TBT, and SPS measures are not covered in this section (see Sections 3.2 and 3.3, respectively, for the restrictions on these products).

**Table 3.8 EU prohibitions or restrictions on imports, 2017**

Product	Measure	Rationale	Legislation
Controlled substances that deplete the ozone layer	Prohibition	Montreal Protocol	Regulation (EC) No. 1005/2009
Certain animal and plant species	Restriction	CITES	Regulation (EU) No. 750/2013
Certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment	Restriction	Protection of human life or health, protection of public morals	Council Regulation (EC) No. 1236/2005
Waste	Restriction	Basel Convention	Regulation (EC) No. 1013/2006
Fish of vessels from Cambodia and Guinea	Prohibition	Protection of the environment	Regulation (EC) No. 1005/2008 and Council Implementing Decision of 24 March 2014

Source: WTO document G/MA/QR/N/EU/3.

3.56. For import licensing, there are nine categories of products subject to licensing (Table 3.9). New licensing procedures were introduced on certain iron and steel products in April 2016 as safeguard surveillance measures (see Section 3.1.7.2); and in 2015 for sugar from EBA beneficiaries. Although not new, the EU decided to include drug precursors in its latest notification to the WTO.<sup>63</sup> Most of the licensing requirements, notably those linked to TQs, concern agricultural products; and others pertain mainly to international agreements to protect the environment or similar (e.g. CITES, Montreal Protocol, Basel Convention, Kimberley Process). According to the authorities, the EU import licensing system is based on the premise that no import licences are required except for specific products from certain origins. The EU maintains a central system (SIGL<sup>64</sup>) for the integrated management of licences for certain products subject to licence, i.e. textiles.<sup>65</sup>

<sup>60</sup> Regulation (EC) No. 1523/2007 and Commission Implementing Regulation (EU) 2015/1850. European Commission online information. Viewed at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32007R1523&from=EN> and <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015R1850&from=EN>.

<sup>61</sup> Regulation (EU) No. 1143/2014. European Commission online information. Viewed at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R1143&from=EN>.

<sup>62</sup> Commission Implementing Regulation (EU) 2016/1141. European Commission online information. Viewed at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R1141&from=EN> and [http://ec.europa.eu/environment/pdf/13\\_07\\_2016\\_news\\_en.pdf](http://ec.europa.eu/environment/pdf/13_07_2016_news_en.pdf).

<sup>63</sup> WTO document G/LIC/N/3/EU/5.

<sup>64</sup> Système Intégré de Gestion de Licenses.

<sup>65</sup> European Commission online information. Viewed at: <http://trade.ec.europa.eu/sigl/>.

**Table 3.9 Products subject to import licensing, 2017**

Product	Regime	Automatic/ non-automatic	Legislation
Textiles	Quantitative restrictions from Belarus and the Democratic People's Republic of Korea; outward processing traffic arrangements; surveillance regime	Non-automatic	Regulation (EU) 936/2015 and Regulation (EU) No. 2016/2148
Agriculture (cereals and rice, sugar, olive oil and table olives, milk and milk products, beef and veal, pigmeat, poultry meat, eggs and egg products including egg albumin, garlic, preserved mushrooms, ethanol from agricultural products, hemp)	Mainly to administer TQs	Non-automatic	Regulation (EU) No. 2016/1237 and Regulation (EU) 2016/1239
Iron and steel products	Surveillance of iron and steel products	Automatic	Commission Implementing Regulation (EU) No. 2016/670
Ozone-depleting substances	To control prohibited or restricted ODS goods	Non-automatic	Regulation (EC) No. 1005/2009
Rough diamonds	To implement the Kimberley Process Certification Scheme	Non-automatic	Regulation (EC) No. 2368/2002
Shipment of waste	To control the import of waste and hazardous waste pursuant to the Basel Convention	Automatic	Regulation (EC) No. 1013/2006
Harvested timber	To implement the voluntary EU FLEGT scheme for legally harvested timber	Automatic	Council Regulation No. 2173/2005
Endangered species (CITES)	To control imports of endangered species listed in Appendices I, II, and III of CITES	Non-automatic	Council Regulation (EC) No. 338/97 and Commission Regulation (EC) No. 1320/2014
Drug precursors	To monitor trade and authorization of imports of drug precursors	Automatic	Council Regulation (EC) No. 111/2005, Regulation (EU) 2015/1011, and implementing Regulation (EU) No. 2015/1013

Source: WTO document G/LIC/N/3/EU/5 and European Commission information. Viewed online at: [http://trade.ec.europa.eu/doclib/docs/2013/may/tradoc\\_151262.pdf](http://trade.ec.europa.eu/doclib/docs/2013/may/tradoc_151262.pdf).

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

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

3.57. In the EU's trade defence sector, new regulations have been put in place for the main anti-dumping, countervailing (also termed anti-subsidy by the EU), and safeguard rules during the review period. The two main regulations for anti-dumping and anti-subsidies are:

- 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 EU – Codified Version<sup>66</sup>; and
- Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidized imports from countries not members of the EU – Codified Version.<sup>67</sup>

<sup>66</sup> OJ L 176, 30 June 2016, p. 21. European Commission online information. Viewed at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R1036&from=EN>.

<sup>67</sup> OJ L 176, 30 June 2016, p. 33. European Commission online information. Viewed at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R1037&from=EN>.

3.58. The main structure and basic elements follow the previous Regulations.<sup>68</sup> The Regulations were re-published in 2016 in order to codify a number of previous amendments made to the Regulations in 2014, and did not contain any new substantive elements. The new codified version of the Regulations were notified to the WTO in October 2016.<sup>69</sup> The amendments to the Regulations made in 2014 and which had been notified to the respective WTO Committees in 2014 were primarily related to the decision-making procedures for the imposition of anti-dumping and anti-subsidy measures. The most significant change from 2014 is that now the Commission has responsibility for imposing anti-dumping and anti-subsidy measures, with no formal involvement of the Council. Member States are, however, consulted through a number of different types of procedures which apply under the EU's comitology rules, including an appeals procedure. Some specific rules were also introduced regarding the exchange of information with the European Parliament and Council.

3.59. More recently, in November 2016, the European Commission adopted a proposal to the European Parliament and the Council to amend both the Anti-dumping and Anti-Subsidy Regulations.<sup>70</sup> As of March 2017, the proposal was following the ordinary legislative procedure and would need a decision by both the European Parliament and the Council before entering into force.

3.60. The other main elements of the EU anti-dumping and anti-subsidy rules remain the same. The Commission investigates allegations of dumping or subsidies based on a complaint from producers, but it may also self-initiate investigations. An investigation determines whether there has been dumping or subsidization, whether material injury has occurred, whether there is a link between the dumping/subsidy and the injury, and whether the imposition of measures is in the EU's interest. If measures are imposed, the exporters may offer "undertakings", meaning that an arrangement is made on the price, and additional duties will not be collected. After the initial investigative process, the EU legislation provides for a number of possible reviews depending on circumstances, i.e. expiry reviews, interim reviews, newcomer investigations, absorption investigations, and circumvention investigations. The reviews continue to be a major part of the process and have outnumbered new investigations in recent years (Chart 3.2).

3.61. In addition, the EU has other regulations that pertain to the injurious pricing of vessels, i.e. Regulation 2016/1035<sup>71</sup>, and to unfair pricing and subsidies for airline services, Regulation 868/2004.<sup>72</sup> The regulation pertaining to airline services was being reviewed during 2013-2015, as it did not adequately address the specific characteristics of the aviation service sector, and thus, it was never applied.<sup>73</sup> According to the authorities, a legislative proposal is expected to be presented in the first half of 2017, in which the new regulation will replace Regulation 868/2004 once the EU decision-making process is completed. The regulation pertaining to vessels emanates from the OECD Shipbuilding Agreement and, while based on the WTO Anti-dumping Agreement, goes further to address the specific nature of ship-purchase transactions. This 2016 Regulation replaces the previous Regulation, Council Regulation (EC) No. 385/96. The Regulation has never been used, as it will not enter into force until the Shipbuilding Agreement enters into force.

<sup>68</sup> Regulation (EC) No. 1225/2009 and Regulation (EC) No. 597/2009. Commission online information. Viewed at: [http://trade.ec.europa.eu/doclib/docs/2010/april/tradoc\\_146035.pdf](http://trade.ec.europa.eu/doclib/docs/2010/april/tradoc_146035.pdf); and <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:188:0093:0126:EN:PDF>.

<sup>69</sup> WTO documents G/ADP/N/1/EU/3 and G/SCM/N/1/EU/2.

<sup>70</sup> European Commission online information. Viewed at: [http://europa.eu/rapid/press-release\\_IP-16-3604\\_en.htm](http://europa.eu/rapid/press-release_IP-16-3604_en.htm).

<sup>71</sup> Regulation (EU) 2016/1035 of the European Parliament and of the Council of 8 June 2016 on protection against injurious pricing of vessels. OJ L 176/1 of 30 June 16. European Commission online information. Viewed at: [http://trade.ec.europa.eu/doclib/docs/2016/june/tradoc\\_154704.en.L176-2016.pdf](http://trade.ec.europa.eu/doclib/docs/2016/june/tradoc_154704.en.L176-2016.pdf).

<sup>72</sup> Regulation (EC) No. 868/2004 of the European Parliament and of the Council of 21 April 2004 concerning protection against subsidization and unfair pricing practices causing injury to Community air carriers in the supply of air services from countries not members of the European Community. OJ L 162/1 of 30 April 2004. European Commission online information. Viewed at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32004R0868&from=EN>.

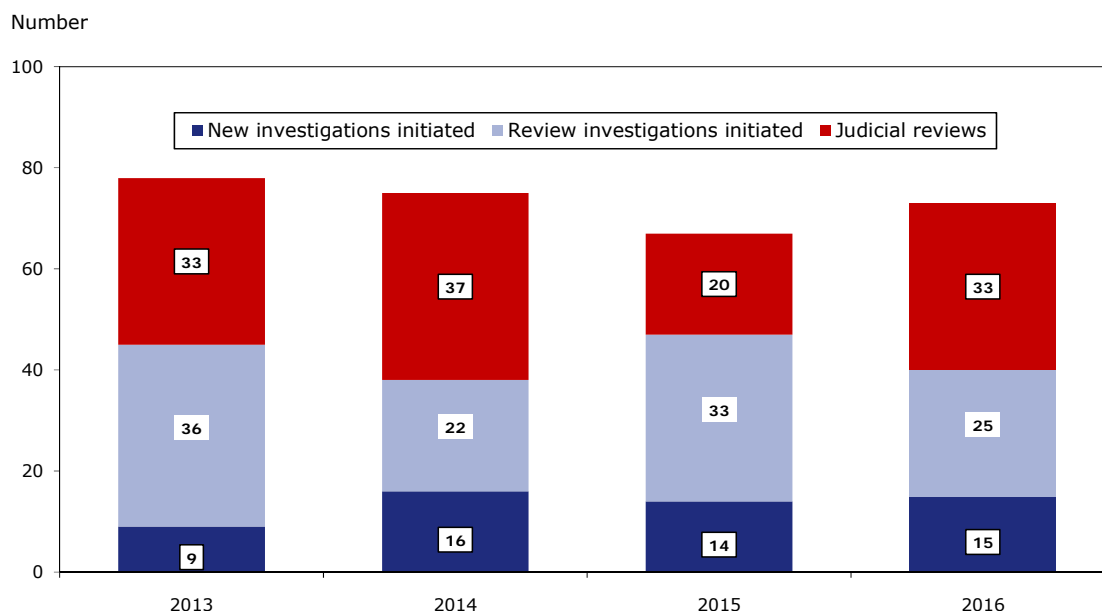
<sup>73</sup> Commission Staff Working Document accompanying the 34<sup>th</sup> Annual Report from the Commission to the European Parliament and the Council on the EU's Anti-Dumping, Anti-Subsidy and Safeguard activities (2015). European Commission online information. Viewed at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016SC0330&from=en>; and European Commission online information viewed at: [http://ec.europa.eu/smart-regulation/impact/planned\\_id/docs/2014\\_move\\_009\\_unfair\\_pricing\\_practices\\_en.pdf](http://ec.europa.eu/smart-regulation/impact/planned_id/docs/2014_move_009_unfair_pricing_practices_en.pdf).

3.62. In 2013, the EU initiated procedures to modernize its trade defence instruments to make them more accessible and better targeted to certain unfair trading practices. However, the process stalled in 2014 but was later revived in 2015, and discussions were still continuing in the Council in late 2016.<sup>74</sup>

3.63. A number of WTO disputes concerning contingency measures have been initiated during the review period concerning the EU (see Section 2).

3.64. Since the inception of the WTO, the EU has been one of the WTO's most significant users of trade remedies, as it ranks third overall in terms of anti-dumping initiations and second in terms of countervailing duty initiations.<sup>75</sup> More recently, since 2009, there has been a general decline from the historically high levels of measures in force, and they reached a historical low in 2012 before rising again in 2013. For 2014, 2015, and 2016, there has been a slight increase in new investigations compared with 2013. The number of review investigations has fluctuated (Chart 3.2). According to EU calculations, the amount of imports subject to trade remedies was 0.25% of total imports in 2015.<sup>76</sup>

**Chart 3.2 Overview of anti-dumping and anti-subsidy activity, 2013-16**



Source: Annual Reports from the Commission to the European Parliament and the Council on the EU's Anti-Dumping, Anti-Subsidy and Safeguard activities (2013-2015); and European Commission Anti-Dumping, Anti-Subsidy, Safeguard – Statistics covering the 12 months of 2016. Viewed at: [http://trade.ec.europa.eu/doclib/docs/2017/january/tradoc\\_155243.pdf](http://trade.ec.europa.eu/doclib/docs/2017/january/tradoc_155243.pdf) [February 2017].

3.65. The number of anti-dumping and anti-subsidy measures in force has remained relatively stable over the review period, and its composition by region has not changed significantly. The vast majority of measures in place are from Asia, accounting for 83% of the measures in 2016, with the next largest incidence from non-EU Europe (11%). Among Asian countries, China accounts for the largest share of measures (Chart 3.3).

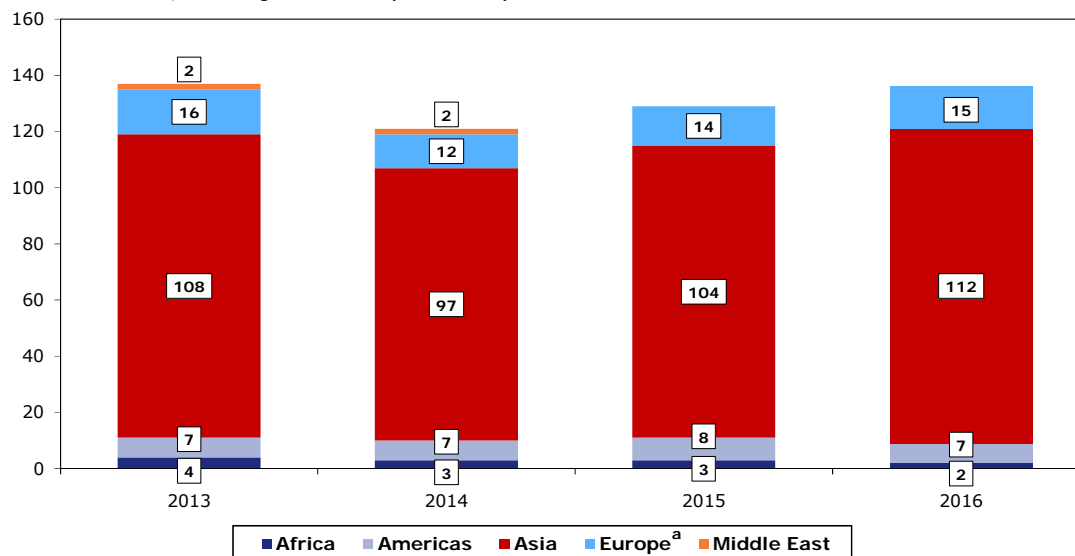
<sup>74</sup> Report from the Commission to the European Parliament and the Council, 34<sup>th</sup> Annual Report from the Commission to the European Parliament and the Council on the EU's Anti-Dumping, Anti-Subsidy and Safeguard activities (2015).

<sup>75</sup> WTO online information. Viewed at: [https://www.wto.org/english/tratop\\_e/adp\\_e/AD\\_InitiationsByRepMem.pdf](https://www.wto.org/english/tratop_e/adp_e/AD_InitiationsByRepMem.pdf) and [https://www.wto.org/english/tratop\\_e/scm\\_e/CV\\_InitiationsByRepMem.pdf](https://www.wto.org/english/tratop_e/scm_e/CV_InitiationsByRepMem.pdf).

<sup>76</sup> Report from the Commission to the European Parliament and the Council, 34<sup>th</sup> Annual Report from the Commission to the European Parliament and the Council on the EU's Anti-Dumping, Anti-Subsidy and Safeguard activities (2015).

**Chart 3.3 Anti-dumping and anti-subsidy measures in force, by region, 2013-16**

Number of measures, including extensions (Cumulated)



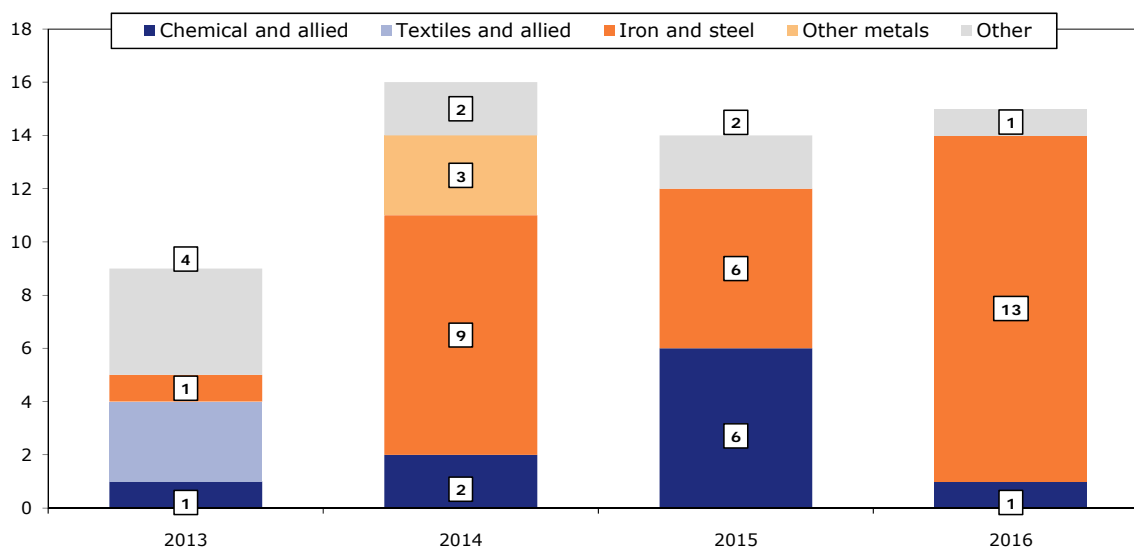
a Non-EU European countries include Belarus; Bosnia and Herzegovina; the Russian Federation; Republic of Moldova; Turkey; and Ukraine.

Source: Annual Reports from the Commission to the European Parliament and the Council on the EU's Anti-Dumping, Anti-Subsidy and Safeguard activities (2013-2015); and European Commission Anti-Dumping, Anti-Subsidy, Safeguard - Statistics covering the 12 months of 2016. Viewed at: [http://trade.ec.europa.eu/doclib/docs/2017/january/tradoc\\_155243.pdf](http://trade.ec.europa.eu/doclib/docs/2017/january/tradoc_155243.pdf) [February 2017].

3.66. The rise in new investigations in 2014 and 2015 was largely attributed to increases in investigations in two sectors — iron and steel, and chemical and allied products (Chart 3.4). In 2016, the largest sector concerned was iron and steel. Increased investigations in that sector were similar in other countries during the same period and reflect the world overcapacity of the sector. The process is complaint-driven and reflects the sectors from which the EU received properly substantiated complaints.

**Chart 3.4 Anti-dumping and anti-subsidy investigations initiated by product sector, 2013-16**

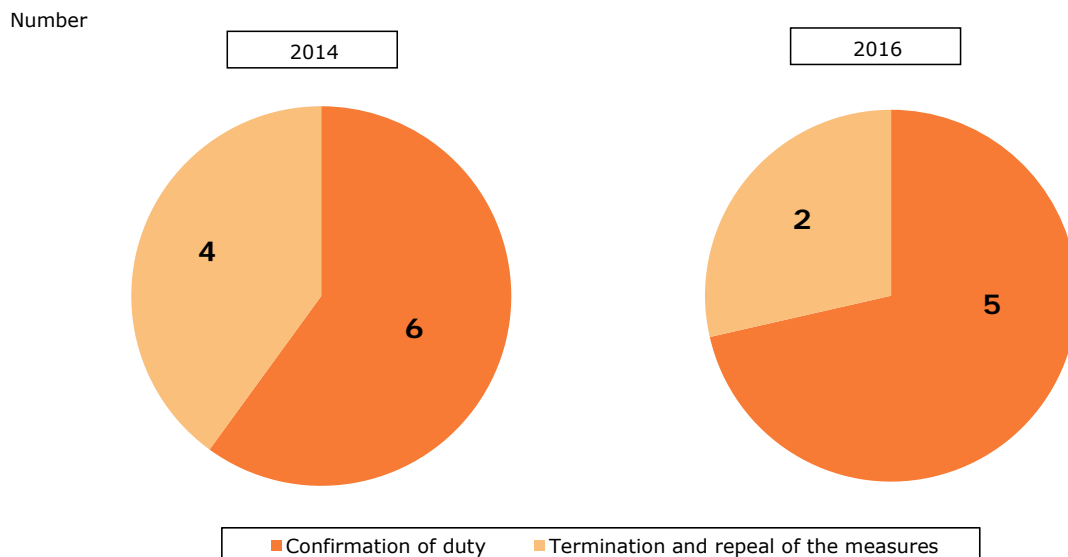
Number of investigations initiated



Source: Annual Reports from the Commission to the European Parliament and the Council on the EU's Anti-Dumping, Anti-Subsidy and Safeguard activities (2013-2015); and European Commission Anti-dumping, Anti-subsidy, Safeguard - Statistics covering the 12 months of 2016. Viewed at: [http://trade.ec.europa.eu/doclib/docs/2017/january/tradoc\\_155243.pdf](http://trade.ec.europa.eu/doclib/docs/2017/january/tradoc_155243.pdf) [February 2017].

3.67. As concerns review investigations, they account for about two thirds of the EU's workload on trade remedies. The largest sub-component is attributed to expiry reviews, and EU law provides that the measures may stay in place for up to five years, upon which they expire automatically unless an expiry review is requested. There was a slight increase in 2016 in the number of expiry reviews concluded by confirmation of duties (71%) compared to 2014 (60%) (Chart 3.5).

**Chart 3.5 Outcome of expiry reviews concluded, 2014 and 2016**



Source: Annual Reports from the Commission to the European Parliament and the Council on the EU's Anti-Dumping, Anti-Subsidy and Safeguard activities (2013-2015); and European Commission Anti-Dumping, Anti-Subsidy, Safeguard - Statistics covering the 12 months of 2016. Viewed at: [http://trade.ec.europa.eu/doclib/docs/2017/january/tradoc\\_155243.pdf](http://trade.ec.europa.eu/doclib/docs/2017/january/tradoc_155243.pdf) [February 2017].

### 3.1.7.2 Safeguards

3.68. The Commission is in charge of conducting safeguard investigations in cooperation with member States. Under the relevant safeguard legislation, the Commission may decide to impose surveillance if the "trend in imports of a product originating in a third country threatens to cause injury to EU producers".

3.69. The EU has issued new regulations in respect to safeguards during the review period; these regulations were an update and replaced the regulations from 2009. The EU's safeguard legislation is outlined in three separate regulations based on the country or products concerned; i.e. there are separate rules for textile products, and two others dependent on whether the country concerned is a WTO Member or not:

- Regulation (EU) 2015/478 of the European Parliament and of the Council of 11 March 2015 on common rules for imports (codification)<sup>77</sup>, i.e. imports from WTO Members;
- Regulation (EU) 2015/755 of the European Parliament and of the Council of 29 April 2015 on common rules for imports from certain third countries (recast)<sup>78</sup>, i.e. imports from non-WTO Members; and
- Regulation (EU) 2015/936 of the European Parliament and of the Council of 9 June 2015 on common rules for imports of textile products from certain third countries not covered by

<sup>77</sup> OJ L 83, 27 March 2015, p. 16. European Commission online information. Viewed at: [http://trade.ec.europa.eu/doclib/docs/2015/march/tradoc\\_153323.pdf](http://trade.ec.europa.eu/doclib/docs/2015/march/tradoc_153323.pdf).

<sup>78</sup> OJ L 123, 19 May 2015, p. 33. European Commission online information. Viewed at: <http://eur-lex.europa.eu/eli/reg/2015/755/oj>.

bilateral agreements, protocols or other arrangements, or by other specific Union import rules (recast)<sup>79</sup>, i.e. rules for textiles.

3.70. According to the Commission, the regulations published in 2015 are not new ones as such but, for each relevant regulation, they merely consolidate into one new regulation all the amendments that took place since 2009. It is recalled that the most important changes concerned the EU decision-making process and, in particular, the fact that, in the case of imposition of a definitive safeguard measure, the member States deliver their binding opinion by qualified majority.

3.71. Furthermore, there are special bilateral safeguard regulations, which were already covered in previous TPRs that the EU maintains regarding some countries. A new agreement was concluded with Moldova during the review period.<sup>80</sup> The regulations pertaining to the agreements with certain other countries have also been updated during the review period reflecting the consolidation process.<sup>81</sup>

3.72. While there have been no safeguard investigations during the review period<sup>82</sup>, the EU has invoked surveillance measures in 2016 pursuant to Article 10 of Regulation (EU) 2015/478 and Article 7 of Regulation (EU) 2015/755. The Commission Implementing Regulation (EU) 2016/670 put into force the surveillance measure one day after its publication, i.e. it runs from 30 April 2016 until 15 May 2020, on certain iron and steel products. Citing significant increases in imports of iron and steel between 2012 and 2015, from 41.8 to 55 million tonnes, global overcapacity, and the vulnerable situation of the industry, the Commission determined there was a threat of injury to Union producers.<sup>83</sup>

3.73. Thus, importers of certain iron and steel products are required to submit a surveillance document (obtained automatically upon a simple request) before the products can be released for free circulation, in order to provide advanced statistical information allowing for the rapid analysis of import trends. The regulations provide that the surveillance document is to be issued within five working days by authorized national authorities listed in the Annex, and it applies to imports from all non-EU member countries except products originating from Iceland, Liechtenstein, and Norway.

3.74. As of March 2017, the EU has not notified the Committee on Safeguards of any of its changes to its laws or regulations on safeguards.

<sup>79</sup> OJ L 160, 25 June 2015, pp. 1-54. European Commission online information. Viewed at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32015R0936>.

<sup>80</sup> Regulation (EU) 2016/400 of the European Parliament and of the Council of 9 March 2016 implementing the safeguard clause and the anti-circumvention mechanism provided for in the Association Agreement between the European Union and the European Atomic Energy Community and their member States, of the one part, and the Republic of Moldova, of the other part. OJ L 77, 23 March 2016, p. 53.

<sup>81</sup> Regulation (EU) 2015/938 of the European Parliament and of the Council of 9 June 2015 on the safeguard measures provided for in the Agreement between the European Economic Community and the Kingdom of Norway. OJ L 160/57, 25 June 2015. European Commission online information viewed at: <http://eur-lex.europa.eu/eli/reg/2015/938/oj/eng/pdf/a1a>. Regulation (EU) 2015/475 of the European Parliament and of the Council of 11 March 2015 on the safeguard measures provided for in the Agreement between the European Economic Community and the Republic of Iceland. OJ L 83/1, 27 March 2015. European Commission online information. Viewed at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015R0475&from=EN>.

<sup>82</sup> The last safeguard measures were applied in 2005.

<sup>83</sup> Commission Implementing Regulation (EU) 2016/670 of 28 April 2016 introducing prior Union surveillance of imports of certain iron and steel products originating in certain third countries. OJ L 115/37 of 29 April 2016. European Commission online information. Viewed at: [http://trade.ec.europa.eu/doclib/docs/2016/april/tradoc\\_154479.imports-surveillance.en.L115-2016.pdf](http://trade.ec.europa.eu/doclib/docs/2016/april/tradoc_154479.imports-surveillance.en.L115-2016.pdf). Corrigendum to Commission Implementing Regulation (EU) 2016/670 of 28 April 2016 introducing prior Union surveillance of imports of certain iron and steel products originating in certain third countries. OJ L 116/40 of 30 April 2016. European Commission online information. Viewed at: [http://trade.ec.europa.eu/doclib/docs/2016/may/tradoc\\_154516.corr-imports-surveillance.en.L116-2016.pdf](http://trade.ec.europa.eu/doclib/docs/2016/may/tradoc_154516.corr-imports-surveillance.en.L116-2016.pdf).



## 3.2 Measures Directly Affecting Exports

### 3.2.1 Export procedures and requirements

3.75. On 29 December 2015, the EU published Commission Delegated Regulation (EU) 2015/2446 and Commission Implementing Regulation (EU) 2015/2447, both providing detailed rules supplementing and implementing the UCC, which came into effect on 1 May 2016.

3.76. Under the UCC, for goods to be taken out of the customs territory of the EU a pre-departure declaration must be lodged electronically with the competent customs office within a specific time-limit before the goods are taken out of the customs territory of the EU, normally before departure or, in the case of a deep sea container port, before loading. There are some exceptions to the requirement for a pre-departure declaration, in principle for electrical energy and goods leaving by pipeline.<sup>84</sup>

3.77. Goods to be taken out of the customs territory of the Union are subject to customs supervision and may be subject to customs controls. A hard copy of the Export Accompanying Document is no longer to be presented at the office of exit; only the Master Reference Number needs to be notified. The Export Control System (ECS) is a trans-European system enabling EU member States to exchange the export declaration data and exit information between the customs office of export and the customs office of exit. The ECS covers indirect exports, where goods are exported from one member State and exit the customs territory of the Union from another member State, meaning that the Office of Export and the Office of Exit are located in two different member States. For indirect exports, the usage of the ECS has been mandatory since July 2009. Direct exports, where the Office of Export and Office of Exit are in the same member State, are handled by the National Export System of each member State. The ECS will be replaced by the Automated Export System (AES) and will be built on the functionalities of the current Export Control System Phase 2 (ECSP2) and will cover the changes introduced by the UCC. According to the Commission, new customs simplifications, such as centralized clearance, require the development of new system functionalities in the AES.

3.78. Certain provisions of the UCC will only be implemented when the AES is deployed in order to support the new functionalities. For that purpose, the European Commission adopted an additional Regulation<sup>85</sup> that lays down provisions for a transitional period between 1 May 2016 and 31 December 2020, during which these electronic customs enhancements are to be finalized.

3.79. Regarding the definition of an exporter under Article 1(19) of the UCC Delegated Act, the exporter must: (i) have the power to determine that the goods are to be brought outside the EU; and (ii) be established in the customs territory of the EU. In this respect, being "established" means that the exporter is a person having in the EU: a registered office; headquarters; or a permanent business establishment. Thus, non-EU companies are able to export goods out of the EU if they do so through an exporter as defined in Article 1(19) of the UCC Delegated Act, such as a customs representative that is identified as being responsible for complying with the export procedure.

### 3.2.2 Export taxes, charges and levies

3.80. The EU does not impose export-related duties or taxes. Following the introduction of the UCC, inward processing under the drawback system has been withdrawn.

### 3.2.3 Export prohibitions, restrictions, and licensing

3.81. The EU maintains restrictions and prohibitions on exports to some countries and/or regions on the basis of foreign and security policy, and on some goods on the grounds of safety, the environment, public morality, public policy or public security, or of the protection of the health and life of humans, animals and plants, of national treasures possessing artistic, historic or

---

<sup>84</sup> European Commission (2016), *Export and Exit out of the European Union – Title VII UCC, "Guidance for MSs and Trade"*, ref. Ares (2016) 2184402, 10 May 2016. <http://www.unwq.ch/>. Viewed at: <http://ec.europa.eu/taxation/customs/business/union-customs-code/ucc-guidance-documents-en> [November 2016].

<sup>85</sup> Commission Delegated Regulation (EU) 2016/341 of 17 December 2015.



archaeological value, or of industrial and commercial property, as well as compliance with international conventions. In addition, capital and payment transactions with some economic regions and specific persons, organizations or institutions may be restricted.

3.82. From 16 April 2015, Regulation (EU) 2015/479 on common rules for exports codified and replaced Regulation (EC) No. 1061/2009 which had been substantially amended on previous occasions. The Regulation sets out the basic principle that exports should be free of QRs but allows for some exceptions to prevent or remedy a critical situation arising from the shortage of essential products and to allow international undertakings entered into by the EU or its member States to be fulfilled.<sup>86</sup> The Regulation applies to all products, whether industrial or agricultural. In terms of procedure, if an EU country considers that protective measures might be necessary due to unusual developments in the market, it must notify the Commission, which then advises the other EU countries. The Committee on Safeguards comprising EU member State representatives (set up under Regulation (EU) 2015/478 on common rules for imports) assists the Commission in implementing the Regulation. The list of QRs that are currently in force are contained in the most recent EU notification to the WTO.<sup>87</sup> Salient export restrictions in the notification refer to: the banning of the exports of metallic mercury and certain mercury compounds; the prohibition or restriction of the export of certain hazardous chemicals; and restrictions on the export of waste.

3.83. Export prohibitions, export authorization requirements and other restrictions are imposed by means of specific legislation, such as Council Regulation (EC) 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items (see below).

### 3.2.3.1 Dual-use items export control regime

3.84. Dual-use export controls implement international commitments to prevent the proliferation of weapons of mass destruction (WMD), in particular under UN Security Council Resolution 1540 (2004). They include international agreements, such as the Chemical Weapons Convention (CWC), the Biological and Toxin Weapons Convention (BTWC) and the Nuclear Non-Proliferation Treaty (NPT), and multilateral export control regimes, such as the Wassenaar Arrangement (WA), the Nuclear Suppliers Group (NSG), the Australia Group and the Missile Technology Control Regime (MTCR). The EU is not a member of the MTCR or the WA but EU member States participate in those regimes. In the NSG, the EU, represented by the European Commission, has observer status, while it is a full member of the Australia Group. The decisions of the regimes regarding the lists of items to control are integrated into EU law.

3.85. According to Article 2(i) of Regulation 428/2009, dual-use objects are items "including software and technology, which can be used for both civil and military purposes. These items include all goods, which can be used for both non-explosive uses and assisting in any way the manufacture of nuclear weapons or other nuclear explosive devices". Dual-use objects thus include nuclear materials, telecommunications and information security, sensors and lasers, a variety of software, machine tools, chemical manufacturing equipment, avionics technology and civil unmanned aerial vehicles.

3.86. The Commission acknowledges the challenges in generating reliable statistics on dual-use exports as there is no correspondingly defined economic sector.<sup>88</sup> Nevertheless, it is estimated that controls applying to dual-use items, represent about 3.4%<sup>89</sup> of EU total exports in 2014. Dual-use items are listed in the EU Control List and are classified in 10 categories (Chart 3.6).

3.87. As described in detail in the previous Review, the EU export control regime is governed by Council Regulation (EC) No. 428/2009, which provides for common EU control rules, and a common EU list of dual-use items, as well as coordination and cooperation to support consistent implementation and enforcement throughout the EU.<sup>90</sup> The Regulation is binding and directly

<sup>86</sup> Regulation (EU) 2015/479 of the European Parliament and the Council of 11 March 2015 on common rules for exports.

<sup>87</sup> Notification document G/MA/QR/N/EU/3 of 31 January 2017.

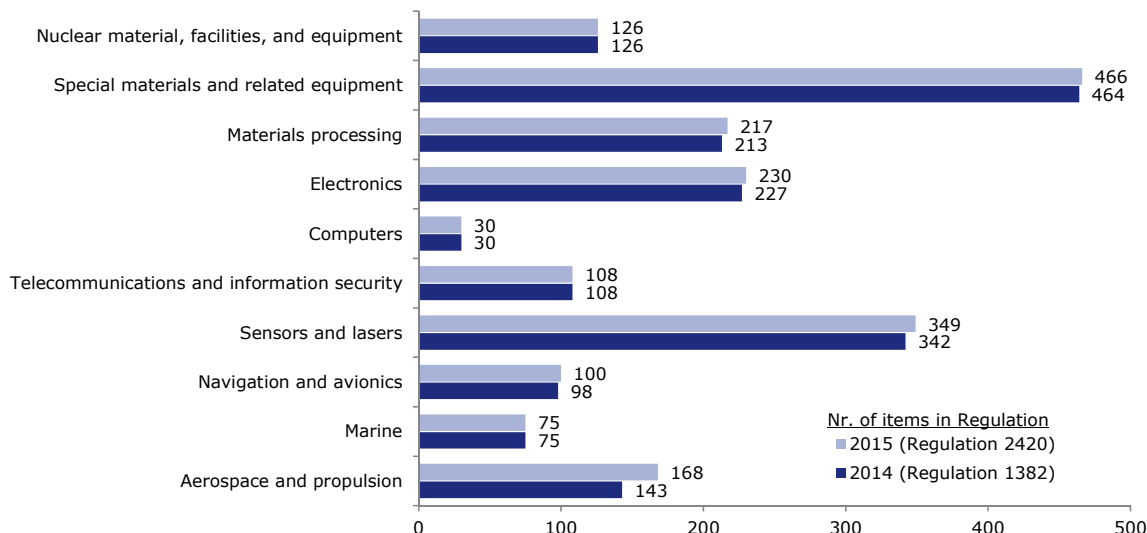
<sup>88</sup> Report from the Commission to the European Parliament and the Council on the implementation of Regulation (EC) No. 428/2009 in document COM(2016) 521 final, Brussels, 24 August 2016.

<sup>89</sup> Figure based on actual export control licences applied on items exported by the EU.

<sup>90</sup> Regulation (EC) No. 428/2009, which includes various amendments since 2009, notably the October 2014 addition of controls on so-called "intrusion software" in accordance with the WA. See Regulation (EU) No.

applicable throughout the EU. EU member States nevertheless need to take certain complementary measures for implementing some of its provisions, e.g. in relation to enforcement and applicable penalties. An overview of national measures is published at regular intervals.<sup>91</sup>

**Chart 3.6 Number of dual-use items listed in categories of Annex 1 further to the adoption of Regulation (EU) No. 2015/2420, compared to Regulation (EU) No. 1382/2014**



Source: See p. 7 of report cited in footnote 115.

3.88. The 2009 dual-use Regulation recognizes four types of export authorization: (i) individual export authorizations (licences) granted by national authorities; (ii) global export authorization issued by national authorities; (iii) EU general export authorization issued by the European Commission; and (iv) national general export authorization issued by national authorities. The Regulation also establishes a dual-use coordination group to examine questions regarding the application of the Regulation.

3.89. The Regulation has been amended on multiple occasions since its adoption; however, the September 2016 proposal by the Commission<sup>92</sup> recommends a modernization of EU export controls, which can be broadly grouped into two categories: changes that seek to clarify and simplify the EU dual-use export control regime, and the introduction of a new category of controls aimed at cyber-surveillance technology. The proposal has been submitted to the Council and the European Parliament for discussion in the ordinary legislative procedure.

### 3.2.4 Export credit, insurance and promotion

3.90. EU governments, as other governments in the world, provide officially supported export credits through Export Credit Agencies (ECAs) in support of national exporters competing for overseas sales. Such support can take the form of: loans offered to foreign buyers of ECA countries' goods and services; loan guarantees by an ECA covering the repayment risk on the foreign buyer's debt obligations incurred in the purchase of the ECA country's exports; export credit insurance provided to exporters in the ECA's home country; or, if the foreign borrower defaults, the ECA will pay the exporter the outstanding balance owed by the foreign

1382/2014. Furthermore, on 24 December 2015, the Commission published Commission Delegated Regulation 2015/2420, replacing the list of controlled items under the EU's Dual-Use Regulation No. 428/2009 (contained in its Annex I). This new dual-use export control list reflects changes made in 2014 to the international control lists on which the EU list is based. The changes relate mainly to the control of machine tools, avionics technology and aircraft wing-folding systems, spacecraft equipment and civil unmanned aerial vehicles (UAVs), and the removal from control of certain encrypted information security products. Annex IV (on intra-EU controls) has been amended to reflect these changes as well.

<sup>91</sup> European Commission online information. Viewed at: <http://ec.europa.eu/trade/import-and-export-rules/export-from-eu/dual-use-controls/> [November 2016].

<sup>92</sup> Proposal for a regulation of the European Parliament and of the Council setting up a Union regime for the control of exports, transfer, brokering, technical assistance and transit of dual-use items; see document COM(2016) 616 final of 28 September 2016.

borrower/purchaser. ECAs can be government institutions or private companies operating on behalf of governments (Table 3.12 and Appendix Table A3.2).

3.91. Data on the size of total official export credit worldwide are, according to the Economist Intelligence Unit (EIU), not available. However, EIU estimates put the ECAs of France, Germany and the U.K. in the top 10 ECAs of global trade finance, with total lending amounts for the 3 countries (sum of loans, guarantees and export credit insurance) of US\$14 billion, US\$37.1 billion and US\$9.8 billion, respectively, in 2013.<sup>93</sup>

**Table 3.10 Selected official export credit agencies and their activities**

Austria	Oesterreichische Kontrollbank AG (OeKB)	Export guarantees of the Austrian Government and OeKB funding via clients' banks
Belgium	Delcredere - Ducreire	Public credit insurer covering companies against political and commercial risks
Denmark	Eksport Kredit Fonden (EKF)	EKF guarantees safeguard against various risks: contract cancellation, bankruptcy, import bans, forex restrictions, etc.
Germany	AuslandsGeschäftsAbsicherung der BRD	Covers export credit guarantees, investment guarantees and untied loan guarantees
Spain	Compañía Española de Seguros de Crédito a la Exportación (CESCE)	Spanish export credit agency managing export credit insurance on behalf of the Spanish State
U.K.	U.K. Export Finance	Provides, <i>inter alia</i> , credit insurance against non-payment under an export contract and letter of credit guarantee scheme

Source: OECD list of export credit agencies. Viewed at: <http://www.oecd.org/trade/xcred/eca.htm> and individual websites.

3.92. When the Lisbon Treaty entered into force, the European Parliament and Council became co-legislators on trade issues, including export credits. The Parliament was involved in ensuring transparency, and accountability requirements were included in Regulation No. 1233/2011 on the "Application of certain guidelines in the field of officially supported export credits". The Regulation requires member States, as well as their respective ECAs, to comply with the Union's objectives and obligations.

3.93. Under Regulation 1233/2011<sup>94</sup>, EU member States must table an Annual Activity Report on their export credit activities to the European Commission, which transmits these reports, together with an annual review based on the information contained in these reports. The European Parliament adopted, on 2 July 2013, a resolution on the first reporting exercise under Regulation 1233/2011.

3.94. Concerning export credit insurance for transactions with medium- and long-term cover, Directive 98/29 aims to harmonize the various public systems for such insurance in order to prevent distortion of competition among EU firms. It lays down the common principles which must be observed by export credit insurers and which concern the constituents of cover (scope of cover, causes of loss and exclusions of liability, and indemnification of claims), premiums, country cover policy and notification procedures. In its 2012 Communication on short-term export credit insurance<sup>95</sup>, the Commission has set out rules to help ensure that state aid does not distort competition among export credit insurers, and helps create a level playing field among exporters. It seems that member State export credit schemes are examined on a case-by-case basis.<sup>96</sup>

<sup>93</sup> The Global Export Credit Dimension report. Viewed at: <http://www.nam.org/Issues/Global-Export-Credit-Dimension-Web>.

<sup>94</sup> Regulation (EU) No. 1233/2011 of the European Parliament and of the Council of 16 November 2011 on the "Application of certain guidelines in the field of officially supported export credits", and repealing Council Decisions 2001/76/EC and 2001/77/EC; OJ EU L 326/45 of 8 December 2011.

<sup>95</sup> Communication from the Commission to the member States on the application of Articles 107 and 108 of the TFEU to short-term export-credit insurance (2012/C 392/01). See the *Official Journal* of 19 December 2012.

<sup>96</sup> For example, in 2016 the Commission found that the Austrian short-term export-credit scheme continues to be in line with EU state aid rules. The Commission's assessment showed that private insurers are supplying exporters with various insurance products to cover the risk of non-payment by foreign buyers. However, there is a lack of insurance coverage for risks of non-payment by foreign buyers due to natural and

3.95. The EU contributes, from the budget, to closer cooperation at European level and to research for joint action with regard to EU member States and business organizations. This includes coordination with European programmes and with member States' export promotion programmes to participate in international exhibitions, trade forums, conferences, seminars and sector-specific business delegations. The cooperation with trade federations, national export promotion organizations and European chambers in non-EU countries pursues two aims: first of all, to ensure that any activities in a particular market strengthen the European dimension in trade and, secondly, to focus activities on a number of target countries to increase trade flows, including in particular South East Asian countries.

3.96. Trade promotion organizations (TPOs) exist in different forms in many countries, including EU member States, and act as an effective tool to support companies abroad. TPOs support the internationalization of SMEs in member State countries by providing consulting services, basic market information, advisory services and information about trade fairs or development aid projects.

3.97. Through its trade policy under Article 207 of the TFEU, the EU improves access for European businesses to other countries' markets, such as through the negotiation and enforcement of trade agreements. This also includes the identification and legal/economic analysis, monitoring and reporting concerning trade barriers in other countries, and the development of databases to provide information on international trade, international trade agreements and import requirements in the EU market.

### 3.2.5 Waste shipment trade regime

3.98. According to the Commission, around 25% of waste shipments sent from the EU to developing countries in Africa and Asia may be thought to contravene international regulations.<sup>97</sup> The amendment to the waste shipment regulation (WSR) introduced through Regulation (EU) No. 660/2014 required member States to establish inspection plans for waste shipments by 1 January 2017. These inspections plans shall include a minimum set of elements and shall be based on a risk assessment.

3.99. According to data from 2012, around 400,000 tonnes of Waste Electrical and Electronic Equipment (WEEE) could be illegally exported out of the EU annually.<sup>98</sup> When waste arrives illegally at a destination country, that waste is often dumped or mismanaged in a way that causes serious negative impacts on human health and the environment.

3.100. The significantly lower costs for waste treatment and disposal in developing countries is an important economic driver for illegal waste shipments. These lower costs are mainly a result of less stringent environmental and health regulation than in the EU, and indeed complete side-stepping of controls in some cases. If recycling standards and capacity are not adequate in the country of destination, potential environmental and health hazards are simply being exported to other parts of the world.

3.101. As noted in the previous Review, the EU WSR<sup>99</sup> bans all exports of hazardous waste to non-OECD countries and all exports of waste for disposal outside the EU/EFTA. Illegal waste shipments must be taken back when detected. The WSR allows non-hazardous waste to be exported for recovery operations outside the OECD but requires national authorities to verify that it will be managed in an environmentally sound manner in facilities that are operated in accordance with standards that are broadly equivalent to standards established in the EU. The WSR requires member States to lay down rules on the penalties applicable for the infringement of its provisions. The penalties provided for must be effective, proportionate and dissuasive. The WSR

---

man-made catastrophes. The Austrian scheme allows the State to provide reinsurance to insurance companies active in Austria that covers these risks incurred by exporters. As such, coverage is currently not sufficiently provided by the market; there is no risk that the State intervention will crowd out existing suppliers. The Commission therefore concluded that the scheme was in line with its 2012 Communication. The scheme is authorized until 31 December 2020. See: [http://europa.eu/rapid/press-release\\_MEX-16-306\\_de.htm](http://europa.eu/rapid/press-release_MEX-16-306_de.htm).

<sup>97</sup> Commission's own estimate. Viewed at: <http://ec.europa.eu/environment/waste/shipments/>.

<sup>98</sup> "Countering WEEE Illegal Trade", project CWIT - summary report, 30 August 2015.

<sup>99</sup> Regulation (EC) No. 1013/2006 of 14 June 2006. OJ L 190, 12 July 2006, pp. 1–98.

also requires member States to cooperate, bilaterally and multilaterally, with one another in order to facilitate the prevention and detection of illegal shipments.

3.102. Whether a shipment is authorized under the WSR, and under what conditions, depends on the cross-border movement, the processing method, the type of waste and the country of destination. EU legislation imposes stricter requirements on some types of waste than others, depending on the environmental and health risk. In the case of e-waste for example, the EU introduced the so-called WEEE Directive in order to prevent and reduce the adverse impacts from the generation and management of WEEE. This Directive came into force in 2003 and was recast in 2012.

3.103. The EU has introduced extensive amendments to both the WSR<sup>100</sup> (in 2014) and the WEEE Directive<sup>101</sup> (in 2012) concerning inspections and enforcement. Amendments to the WSR introduced in June 2014 will not fully come into force until 2017.<sup>102</sup> These amendments have the potential to improve inspection and enforcement on the ground, to the extent that the individual member States are willing and able to provide the necessary budgetary and staff resources to implement the new provisions effectively. As the Commission has pointed out, while some member States have thorough, well-functioning inspection systems targeting either illegal waste shipments in ports or on the sites of waste producers and collectors, others lag behind. This leads to "port hopping" – exporters of illegal waste choosing to export their waste from member States with the most lenient controls.

3.104. In July 2016, the Commission adopted an implementing regulation<sup>103</sup> setting out a preliminary correlation table between customs and waste codes. The table, which has been integrated in the customs' TARIC database, is expected to serve as a tool to assist in curbing illegal exports of waste out of the EU. This regulation is in line with the further measures foreseen by the Commission in its Circular Economy Action Plan adopted on 2 December 2015 to help ensure that the WSR is effectively implemented and that illegal shipments causing raw material leakage are addressed more effectively.

### 3.2.6 Other measures

3.105. Restrictions on economic and financial relations with one or more third countries (sanctions) are, according to the EU, one of its tools to promote the objectives of the Common Foreign and Security Policy (CFSP), namely peace, democracy and respect for the rule of law, human rights and international law. Sanctions are designed to bring about a change in policy or activity by the target country, entities or individuals; at the same time, the EU makes every effort to minimize adverse consequences for the civilian population or for legitimate activities.

3.106. The EU implements all sanctions imposed by the UN Security Council. In addition, the EU may reinforce UN sanctions by applying additional autonomous measures. Alternatively, where the EU deems it necessary, it may decide to impose autonomous sanctions in the absence of UN measures. EU restrictive measures are given full legal effect through the combination of a CFSP Council decision adopted unanimously, and a Council Regulation adopted under Article 215 of the TFEU.

<sup>100</sup> In 2013, the Commission proposed a revision to the WSR to provide for stronger national inspections of waste shipments, which was officially adopted in 2014 as Regulation (EU) No. 660/2014 of 17 July 2014. OJ L 189 of 27 June 2014, pp. 135–142.

<sup>101</sup> In December 2008, the European Commission proposed to improve the WEEE Directive. This resulted in the adoption of a recast directive which came into force in August 2012 (Directive 2012/19/EU). One of the key changes was the introduction of mandatory collection targets. OJ L 197/38 of 24 July 2012.

<sup>102</sup> By 1 January 2017, member States were to have established inspection plans, including the objectives and priorities of the inspections, the geographical area covered by the inspection plans and the tasks assigned to each authority involved. The inspection plans must be based on a risk assessment carried out for specific waste streams and sources of illegal shipments. They are to be regularly reviewed and updated at least every three years.

<sup>103</sup> Commission Implementing Regulation (EU) No. 2016/1245 of 28 July 2016 setting out a preliminary correlation table between codes of the CN provided for in Council Regulation (EEC) No. 2658/87 and entries of waste listed in Annexes III, IV and V to Regulation (EC) No. 1013/2006 of the European Parliament and of the Council on shipments of waste. OJ L 204/11 of 29 July 2016.

3.107. In order to guarantee that the restrictive measures are directly binding on EU citizens and businesses, these measures require that a regulation under Article 215 of the TFEU is adopted. The regulation, adopted by the Council on the basis of a joint proposal from the EU High Representative for Foreign Affairs and Security Policy and the European Commission, contains details on the precise scope of the measures decided upon by the Council, and their implementation. The regulation usually enters into force on the day following its publication in the EU Official Journal. All EU restrictive measures can be found on the EEAS webpage.<sup>104</sup> In certain instances, a limited number of restrictive measures, which have included arms embargoes<sup>105</sup> and travel bans, have been adopted only by a CFSP Decision by the Council. Such a decision is binding on EU member States.

### 3.3 Measures Affecting Production and Trade

#### 3.3.1 Standards and other technical requirements

3.108. There has been no major change to the basic legislative framework on the development of technical requirements, standards, conformity assessment or accreditation in the EU over the review period (Table 3.11).

**Table 3.11 Legal basis for technical requirements, standards, conformity assessment, and accreditation in the EU at end-2014**

Legislation		
Regulation (EC) No. 765/2008	of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products, and repealing Regulation (EEC) No. 339/93	Lays down rules on the organization and operation of accreditation for conformity assessment bodies. The Regulation provides a framework for market surveillance, a framework for controls on products from third countries, and lays down the general principles for CE marking.
Decision No. 768/2008/EC	of the European Parliament and of the Council of 9 July 2008 on a common framework for the marketing of products, and repealing Council Decision 93/465/EEC	Sets out a common framework for the marketing of products. The Decision is a political commitment rather than applicable legislation, but it does require the European Parliament, Council, and Commission to adhere to its principals when preparing legislation.
Regulation (EC) No. 764/2008	of the European Parliament and of the Council of 9 July 2008 laying down procedures relating to the application of certain national technical rules to products lawfully marketed in another member State, and repealing Decision No. 3052/95/EC	Lays down the rules and procedures to be followed by the competent authorities of a member State for decisions which may hinder the free movement of a product lawfully marketed in another member State. The Regulation also provides for the establishment of product contact points in the member States.
Regulation (EU) No. 1025/2012	of the European Parliament and of the Council of 25 October 2012 on European standardization, amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/105/EC of the European Parliament and of the Council and repealing Council Decision 87/95/EEC and Decision No. 1673/2006/EC of the European Parliament and of the Council	Establishes rules for cooperation between European standardization organizations, national standardization bodies, member States, and the Commission. It also sets out rules for the establishment of European standards and European standardization deliverables for products and services, the identification of ICT technical specifications eligible for referencing, the financing of European standardization, and stakeholder participation in European standardization.

<sup>104</sup> European External Action Service. Viewed at: [http://eeas.europa.eu/topics/sanctions-policy/423/sanctions-policy\\_en#Who+is+responsible+for+implementing+EU+sanctions%3F](http://eeas.europa.eu/topics/sanctions-policy/423/sanctions-policy_en#Who+is+responsible+for+implementing+EU+sanctions%3F).

<sup>105</sup> See Article 346(1)(b) of the TFEU.



Legislation		
Directive 2001/95/EC	of the European Parliament and of the Council of 3 December 2001 on general product safety	Applies principally to products which are not covered by harmonization legislation and sets up the rapid alert system (RAPEX) between the member States and the Commission and associated measures for products deemed to be dangerous.

Source: European Commission.

3.109. The EU framework of technical regulations, standards and conformity assessment is described in the updated Blue Guide on the implementation of EU product rules 2016.<sup>106</sup> The document provides guidance on the application of product-related directives and regulations, which serve as harmonization legislation for non-food and non-agricultural products destined for the EU market. Most of the EU product-related directives and regulations are drafted following the so-called "New Approach" - now labelled the New Legislative Framework and described in previous EU TPRs<sup>107</sup> - technique to technical regulations and standards which calls for common essential requirements for a particular product sector or addressing a particular risk to be made mandatory by legislation, while technical specifications aimed at achieving these essential requirements are contained in voluntary harmonized standards. As per EU Regulation 1025/2012 (Chapter 1, Article 2), a harmonized standard "means a European standard adopted on the basis of a request made by the Commission for the application of EU harmonization legislation".

3.110. Although the application of harmonized standards is voluntary, products which are made in compliance with those standards are presumed to be in conformity with the corresponding essential requirements of the applicable legislation (Box 3.1). Market operators are free to use alternative routes to demonstrate compliance with EU regulatory requirements. The Blue Guide<sup>108</sup> explains in more detail how the exact means of meeting the essential requirements is left to those making products available on the market.

3.111. The approach to product legislation in the EU (known as the "Old Approach") according to which the authorities drew up detailed regulations containing all the required technical and administrative requirements for each type of product<sup>109</sup> is still employed for certain products, such as motor vehicles. Other specific approaches to EU harmonization have been developed in sectors such as pharmaceuticals, chemicals, cosmetics, and construction products, tailored to their particular needs.

3.112. EU-produced and imported goods, lawfully placed on the market of an EU member State but not covered by EU harmonizing legislation, can be marketed freely throughout the single market even if they do not comply with the technical regulations of the member State of destination (this is the mutual recognition principle stemming from the TFEU as developed by Court of Justice of the EU). The only exceptions to this principle are restrictions introduced for reasons specified in Article 36 of the TFEU, or for other overriding reasons of public interest, that are proportionate to the aim pursued. Regulation (EC) No. 764/2008 aims to ensure the correct application of the mutual recognition principle in individual cases. Pursuant to this regulation, member States that use existing technical regulations to restrict market access for products lawfully marketed in another member State must justify their position with technical or scientific evidence, and must grant economic operators affected by the restriction an opportunity to provide comments.

<sup>106</sup> Published on 26 July 2016 by the European Commission in the *Official Journal* of the EU C 272.

<sup>107</sup> Formally launched in 1985 through the Council Resolution on a new approach to technical harmonization and standards (85/C 136/01) of 7 May 1985.

<sup>108</sup> Commission Notice: The "Blue Guide" on the implementation of EU products rules 2016 (2016/C 272/01), OJ C 272, 26 July 2016, pp. 1-149.

<sup>109</sup> Blue Guide 2016, p. 6.

**Box 3.1 Standards**

The WTO TBT Agreement clearly distinguishes standards from "technical regulations" (a type of legislation) in its Annex 1 definitions: standards are voluntary in application, whereas technical regulations are mandatory. This essential difference is also recognized by the EU. For example, the first recital of Regulation 1025/2012 states: 'The primary objective of standardization is the definition of voluntary technical or quality specifications'. The key characteristics of standards as distinct from legislation include:

<b>Legislation</b>	<b>Standards</b>
Mandatory	Voluntary
Created by legislator	Developed by interested parties through private standardization organizations' processes
Consultation depending on public authorities' policies <sup>110</sup>	Full open and transparent public consultation
Decided by legislator	Based on consensus of interested parties
Revised when legislator decides <sup>111</sup>	Considered for revision at least every 5 years
<b>For the New Approach/New Legislative Framework</b>	
Sets high-level essential requirements	Offer technical means of meeting essential requirements of legislation

Source: CEN-CENELEC Guide 30: European Guide on Standards and Regulation - Better regulation through the use of voluntary standards - Guidance for policy makers, Edition 1, 2015-06. Viewed at: [ftp://ftp.cencenelec.eu/EN/EuropeanStandardization/Guides/30\\_CENCLCGuide30.pdf](ftp://ftp.cencenelec.eu/EN/EuropeanStandardization/Guides/30_CENCLCGuide30.pdf).

3.113. The European standardization system was reviewed in 2011 and 2012 and was covered in previous TPR reports. The resulting standards regulation<sup>112</sup>, adopted in October 2012, clarifies the relationship between regulations and standards, and confirms the role of the three European standards bodies in developing harmonized standards. The emphasis is also on cooperation between European standardization organizations and international standardization bodies. According to the Commission, the adoption of the Regulation on European standardization has created a framework for a more transparent and efficient European standardization system for industry sectors. This Regulation also deals with the rapid evolution of technology and the way in which new products and services, such as 'smart' or connected devices (referred to as the 'Internet of Things') or the Cloud, transform markets. The process outlined in Articles 13 and 14 seeks to ensure that innovative state-of-the-art global information, communication and technology (ICT) specifications can be used in Europe as enablers for innovation and growth.<sup>113</sup>

<sup>110</sup> According to Article 11 of the Treaty on the European Union, 'the European Commission shall carry out broad consultations with parties concerned in order to ensure that the Union's actions are coherent and transparent'. Consultation is a continuous process and formal stakeholder consultations complement the Commission's broader interaction with stakeholders (e.g. meetings or exchanges or through existing permanent platforms for dialogue). In the process of the evaluation or the preparation of a legislative or policy initiative or the implementation of an existing intervention, "stakeholder consultation" should be carried out. Stakeholder consultation is governed by four principles: participation, openness, effectiveness and coherence. See: [http://ec.europa.eu/smart-regulation/guidelines/toc\\_guide\\_en.htm](http://ec.europa.eu/smart-regulation/guidelines/toc_guide_en.htm).

<sup>111</sup> The Commission is committed to evaluating, in a proportionate way, all EU spending and non-spending activities intended to have an impact on society or the economy. A commitment to evaluation is included in Article 318 of the TFEU. More specific requirements are often written into individual legal acts. Furthermore, the Commission examines all suggestions from stakeholders, and submits those relevant - on how to make EU laws more effective and efficient - to the REFIT Platform for advice. In general, EU product regulations are evaluated at least every five years. See: [http://ec.europa.eu/smart-regulation/guidelines/toc\\_guide\\_en.htm](http://ec.europa.eu/smart-regulation/guidelines/toc_guide_en.htm).

<sup>112</sup> Regulation (EU) No. 1025/2012 of the European Parliament and the Council of 25 October 2012 on European standardization, amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/105/EC of the European Parliament and of the Council, and repealing Council Decision 87/95/EEC and Decision No. 1673/2006/EC of the European Parliament and of the Council, OJ L 316/12 of 14 November 2012.

<sup>113</sup> European Commission (2016), *ICT Standardisation Priorities for the Digital Single Market*, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, COM(2016) 176 final, 19 April 2016.



3.114. In a 2016 Communication<sup>114</sup>, the Commission elaborated a comprehensive approach to standardization for priority ICT technologies that play an essential role in the completion of the Digital Single Market.

3.115. To reinforce the partnership between the European institutions and the European standardization community, the Commission announced in its Single Market Strategy its intention to launch a Joint Initiative on Standardization, bringing together public and private institutions and organizations in a collaborative dialogue process. The shared objective is to establish common standardization values, to promote European and international standardization, to develop standards in a timely, open, transparent and inclusive manner, to support and promote innovation for all and to increase competitiveness of European companies by increasing global value chains. This will be done by implementing 15 specific actions by 2019 in order to strengthen not only the European standardization system but also the public-private-partnership at the basis of it.

3.116. On 1 June 2016, the Commission adopted a Standardization Package on *European Standards for the 21<sup>st</sup> Century*, containing four elements: (i) a Communication on *European Standards for the 21<sup>st</sup> Century*<sup>115</sup>; (ii) a staff working document on *Tapping the potential of European service standards to help Europe's consumers and businesses*<sup>116</sup>; (iii) a report from the Commission to the European Parliament and Council on the implementation of the Standards Regulation (EU) 1025/2012<sup>117</sup>; and (iv) the annual Union work programme for European standardization for 2017.<sup>118</sup> This was followed on 13 June 2016 by the signature of the Joint Initiative on Standardisation.

### 3.3.1.1 Institutional framework

#### 3.3.1.1.1 ESOs

3.117. There are three European standardization organizations (ESOs): the European Committee for Standardization (CEN); the European Committee for Electrotechnical Standardization (CENELEC); and the European Telecommunications Standards Institute (ETSI). The members of CENELEC and CEN include the national standards bodies (NSBs) of 33 European countries, including all the member States of the EU, EFTA countries, and those countries candidates for EU membership that fulfil the membership criteria. It is a condition of membership of both CEN and CENELEC that at least 80% of European standards are adopted identically by each member.<sup>119</sup>

3.118. Specific CEN activities cover: accessibility, air and space, bio-based products, chemistry, construction, consumer products, energy and utilities, food, health and safety, healthcare, heating, ventilation and air conditioning, ICTs, innovation, machinery safety, materials, measurement, nanotechnologies, pressure equipment, security and defence, services, transport and packaging.

3.119. Specific CENELEC activities cover electro-technical standardization in sectors including: electric vehicles, smart grids and smart metering, household appliances, electrical engineering, fibre optic communications, fuel cells, medical equipment, railways, and solar electricity systems. An increasing number of sectors are being addressed together by CEN, CENELEC and ETSI regarding, for example, innovative technologies, smart grids and eco-design.

3.120. ETSI specializes in telecommunications, broadcasting and services standards, and uses a different participation model to CEN and CENELEC. ETSI's membership includes global industry players as well as NSBs and others. ETSI allows direct participation in its technical committees from businesses including non-EU companies that have interests in Europe, and its standards are freely available on its website. As with CEN and CENELEC, ETSI is subject to EU Regulation 1025/2012 in relation to its activities as an ESO.

<sup>114</sup> Communication from the Commission: *ICT Standardisation Priorities for the Digital Single Market*. Brussels, 19 April 2016 in COM(2016) 176 final.

<sup>115</sup> Document COM(2016)) 358 final.

<sup>116</sup> Available at: <http://ec.europa.eu/DocsRoom/documents/16823>.

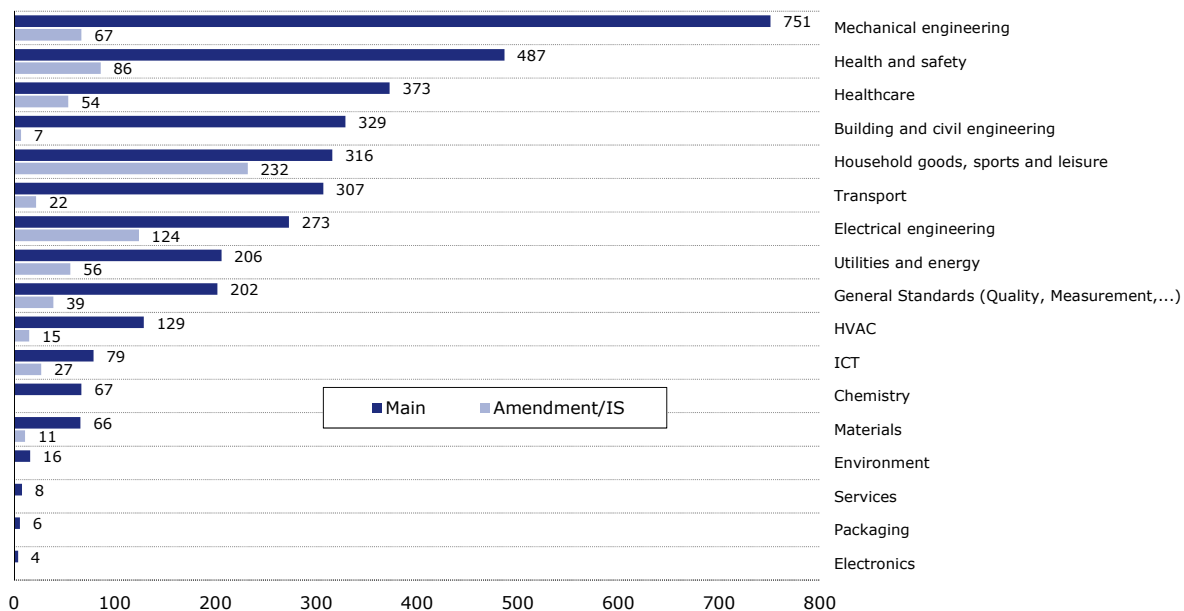
<sup>117</sup> Document COM/2016/0212 final.

<sup>118</sup> Document SWD (2016) 185 final.

<sup>119</sup> European Commission online information. Viewed at: [https://ec.europa.eu/growth/single-market/european-standards/key-players\\_en](https://ec.europa.eu/growth/single-market/european-standards/key-players_en) [November 2016].

3.121. ESOs are the only organizations authorized to create European standards (EN). As of September 2016, 19,854 European standards (ENs and HDs) have been created by CEN and CENELEC for products and services, of which around 20% are defined as harmonized standards.<sup>120</sup> In addition, there are around 40,000 standardization deliverables by ETSI.<sup>121</sup> In 2015, CEN and CENELEC approved and published some 473 harmonized standards which were intended for citation in the EU *Official Journal*, in support of specific directives and regulations.<sup>122</sup> CEN and CENELEC also accepted 14 new standardization requests from the European Commission, relating, *inter alia*, to eco-design and energy labelling of energy related products. An overview of harmonized standards by business domain in 2016 is given in Chart 3.7.

**Chart 3.7 CEN-CENELEC Portfolio of Harmonized Standards per business domain**



Source: CENELEC. CEN-CENELEC Quarterly Statistical Pack 2016 Q4. Viewed at: [ftp://ftp.cencenelec.eu/EN/AboutUs/InFigures/CEN-CENELEC\\_StatPack2016-Q4.pdf](ftp://ftp.cencenelec.eu/EN/AboutUs/InFigures/CEN-CENELEC_StatPack2016-Q4.pdf) [February 2017].

3.122. Standards are created or modified by experts in technical committees or working groups. The members of CEN and CENELEC are the national standards bodies of the member States, which monitor and delegate experts to participate in ongoing European standardization. European standards, always CEN/CENELEC/ETSI ones, are implemented as national standards by each of the 33 members of CEN/CENELEC/ETSI and "conflicting national standards shall be withdrawn"<sup>123</sup>, which results in a single standard for accessing the EU single market. CEN and CENELEC rules require that, when work is started on a European standard, a 'standstill' procedure applies, and members cannot start or continue national work on the same subject. National standards' development has to be reported at least annually by each NSB under EU Regulation (EU) No. 1025/2012 to provide transparency on national work programmes. In the case of harmonized standards, standstill and withdrawal are compulsory.

3.123. CEN and CENELEC standards are significantly aligned with ISO and IEC standards. According to the latest statistics available, 72% of all the standards in the CENELEC catalogue are identical to IEC standards, while 32% of standards in the CEN catalogue are identical to ISO publications.<sup>124</sup> Participation in international standards development is arranged by the NSB of each country via their membership of the International Organization for Standardization (ISO) and

<sup>120</sup> CEN-CENELEC Guide 30, p. 5. Viewed at: [ftp://ftp.cencenelec.eu/EC/EuropeanStandardization/Guides/30\\_CENCLCGuide30.pdf](ftp://ftp.cencenelec.eu/EC/EuropeanStandardization/Guides/30_CENCLCGuide30.pdf).

<sup>121</sup> On the ETSI website, the figure is 40,517 standards in the database including all versions of the standards.

<sup>122</sup> Annual Report 2015, p. 2.

<sup>123</sup> CEN-CENELEC Guide 30, p. 8.

<sup>124</sup> CEN-CENELEC Quarterly Statistical Pack, Q4 2016, p. 13. Viewed at: [ftp://ftp.cencenelec.eu/EN/AboutUs/InFigures/CEN-CENELEC\\_StatPack2016-Q4.pdf](ftp://ftp.cencenelec.eu/EN/AboutUs/InFigures/CEN-CENELEC_StatPack2016-Q4.pdf).

the International Electrotechnical Commission (IEC) or their European counterparts, CEN and CENELEC.

### 3.3.1.1.2 European Commission

3.124. In addition to the three ESOs, the European Commission plays a role in standardization by funding participation in the standardization process by small and medium-sized companies and non-governmental organizations, such as environmental and consumer groups and trade unions. The Commission issues standardization requests for harmonized standards in support of EU policy and legislation, and supports financially the work of the ESOs, but is not involved in the process of standard-setting, which is carried out by the ESOs. EU-funded research and innovation projects also make their results available to the standardization work of the standards-setting organizations (Table 3.12).

**Table 3.12 Roles of main actors in setting and executing EU standardization policy (Commission-requested standardization)**

Main actors	Tasks and/or roles
<b>The legislator</b> (the Council, including member States, and the European Parliament)	<ul style="list-style-type: none"> <li>- sets the legal framework and boundaries for standardization policy;</li> <li>- decides how to use standards or other technical specifications in Union legislation;</li> <li>- may challenge harmonized standards providing, or intended to provide, a legal effect (formal objection);</li> <li>- in some cases, a member State may regulate how standards requested by the Commission can be used to comply with national conditions.</li> </ul>
<b>Commission</b>	<ul style="list-style-type: none"> <li>- implements Union standardization policy and sets priorities;</li> <li>- proposes new legislation where application is supported by standards;</li> <li>- manages other specific standardization-related tasks assigned to it in Union legislation (e.g. adoption of standardization requests, assessment of compliance of documents drafted by ESOs with its initial requests, publication of the references of harmonized standards in the <i>Official Journal</i>, adoption of decisions to remove publication of the references of harmonized standards from the <i>Official Journal</i>, management of Union financing on European standardization);</li> <li>- manages relations between the Union and the ESOs.</li> </ul>
<b>ESOs (together with their members and stakeholders)</b>	<ul style="list-style-type: none"> <li>- execute the technical work requested in standardization requests;</li> <li>- coordinate the technical work to develop and adopt state-of-the-art technical specifications in cooperation with their members on the basis of consensus between those participating in the standardization work;</li> <li>- ensure that the transparency and inclusiveness requirements in the regulation are respected and appropriately reported;</li> <li>- offer the references of the requested technical specifications to the Commission, which then assesses the compliance of technical specifications with the requirements of the relevant Union legislation.</li> </ul>
<b>European stakeholder organizations meeting the criteria in Annex III and financed by the Union (Annex III organizations)</b>	<ul style="list-style-type: none"> <li>- have a specific status under the regulation to make the Commission-requested standardization process more inclusive;</li> <li>- ensure that SMEs', consumers', workers' and environmental interests are made known to the Commission before the Union work programme (UWP) or new standardization requests are adopted;</li> <li>- have direct access to policy development and technical work within the ESOs on the basis of the regulation.</li> </ul>

Source: European Commission Staff Working Document: Vademecum on European standardisation in support of Union legislation and policies. Part I: Role of the Commission's standardization requests to the European standardisation organisations, p. 11. Document SWD(2015) 205 final, Brussels, 27.10.2015. Viewed at: <http://ec.europa.eu/DocsRoom/documents/13507/attachments/1/translations>.

3.125. According to CEN-CENELEC, 19% of European standards in 2016 were developed following a request from the European Commission.<sup>125</sup> The majority of these standards specifically respond to harmonized regulatory requirements across the single market. Other European standards that are not developed to meet European Commission requests meet other market needs. These include test methods, specifications for products and services, business process standards and guidance on good practice.

### 3.3.1.2 New Legislative Framework

3.126. Existing legislation has been reviewed to bring it in line with NLF concepts, see Box 3.2. The date of applicability depends on the product category.<sup>126</sup> Where products are not regulated by specific EU technical legislation, they are always subject to the EU's General Product Safety Directive<sup>127</sup> as well as to possible additional national requirements.

3.127. An explanation of the different elements of the NLF and how it works is contained in the new version of the Blue Guide on the implementation of EU product rules 2016.<sup>128</sup>

#### Box 3.2 New Legislative Framework

The NLF aims to: (i) improve market surveillance rules to better protect both consumers and professionals from unsafe products, including those imported from outside the EU. In particular, this applies to procedures for products which can pose danger to health or the environment; (ii) set clear and transparent rules for the accreditation of conformity assessment bodies; (iii) improve confidence in the conformity assessment of products through stronger and clearer rules on the requirements for the notification of conformity assessment bodies; (iv) clarify the meaning of CE marking and enhance its credibility; and (v) establish a common legal framework for industrial products in the form of a toolbox of measures for use in future legislation. This includes definitions of terms commonly used in product legislation, and procedures to allow future sectorial legislation to become more consistent and easier to implement.

The NLF consists of three regulatory elements: (i) **Regulation (EC) 765/2008** setting out the requirements for accreditation and the market surveillance of products; (ii) **Decision 768/2008** on a common framework for the marketing of products, which includes reference provisions to be incorporated whenever product legislation is revised. In effect, it is a template for future product harmonization legislation; and (iii) **Regulation (EC) 764/2008** laying down procedures relating to the application of certain national technical rules to products lawfully marketed in another EU country.

Alignment of product legislation: A main objective of the Commission is to bring product harmonization legislation in line with the reference provisions of Decision 768/2008/EC. The following directives and regulations were aligned with these reference provisions:

1. Toy safety - Directive 2009/48/EU
2. Transportable pressure equipment - Directive 2010/35/EU
3. Restriction of hazardous substances in electrical and electronic equipment - Directive 2011/65/EU
4. Construction products - Regulation (EU) No. 305/2011
5. Pyrotechnic articles - Directive 2013/29/EU
6. Recreational craft and personal watercraft - Directive 2013/53/EU
7. Civil explosives - Directive 2014/28/EU
8. Simple pressure vessels - Directive 2014/29/EU
9. Electromagnetic compatibility - Directive 2014/30/EU
10. Non-automatic weighing instruments - Directive 2014/31/EU
11. Measuring instruments - Directive 2014/32/EU
12. Lifts - Directive 2014/33/EU
13. Equipment for explosive atmospheres (ATEX) - Directive 2014/34/EU
14. Radio equipment - Directive 2014/53/EU

<sup>125</sup> Calculation based on the CEN-CENELEC portfolio of harmonized standards cited or to be cited in the OJEU, p. 19 of the CEN-CENELEC Quarterly Statistical Pack, 2016, Q4. Viewed at: [ftp://ftp.cencenelec.eu/EN/AboutUs/InFigures/CEN-CENELEC\\_StatPack2016-Q4.pdf](ftp://ftp.cencenelec.eu/EN/AboutUs/InFigures/CEN-CENELEC_StatPack2016-Q4.pdf).

<sup>126</sup> For example, the new Electromagnetic Compatibility Directive (2014/30/EU) replaced the existing directive and became applicable on 20 April 2016.

<sup>127</sup> The General Product Safety Directive (GPSD 2001/95/EC) requires that all consumer products on the EU market are safe. The Directive recognizes that national legislation may set legal requirements as to the safety of consumer products that go beyond this general safety requirement. Hence, the harmonization is considered to set a minimum level of safety that must be met in all cases. Generally, the GPSD does not apply to products where there is harmonization legislation in place.

<sup>128</sup> Commission Notice of 5 April 2016; The Blue Guide on the implementation of EU product rules 2016. Brussels, 5 April 2016 C(2016) 1958 final. Viewed at: <http://ec.europa.eu/DocsRoom/documents/18027/>.

15. Low voltage - Directive 2014/35/EU
16. Pressure equipment - Directive 2014/68/EU
17. Marine equipment - Directive 2014/90/EU
18. Cableway installations - Regulation (EU) 2016/424
19. Personal protective equipment - Regulation (EU) 2016/425
20. Gas appliances - Regulation (EU) 2016/426

Further aligning proposals are pending on medical devices and in vitro diagnostic (IVD) medical devices.

Source: European Commission. Viewed at: [https://ec.europa.eu/growth/single-market/goods/new-legislative-framework\\_de](https://ec.europa.eu/growth/single-market/goods/new-legislative-framework_de).

3.128. An NLF directive requires member States to implement the legislation at national level within a set timeframe. This gives more flexibility to the member States, as they can reflect the principles of the legislation within their own legal and administrative frameworks.

### 3.3.1.3 Conformity assessment

3.129. The conformity assessment procedure is carried out before the product is placed on the EU market. It is a mandatory step for the manufacturer in the process of assessing and ensuring compliance with specific EU legislation. The purpose of conformity assessment is to ensure consistency of compliance during all stages, from design to production, and to allow acceptance of the final product. Conformity assessment procedures in the EU product legislation range from a self-certification examination and production quality control system, to a full quality assurance system, depending on the impact of the product on the protection of public interest (health, safety, environment, etc.). Several pieces of EU legislation require the involvement of a notified body in the conformity assessment process.

3.130. Conformity assessment bodies that have been notified by the national authorities in the member State of their establishment to provide conformity assessment prescribed by EU harmonized legislation are listed in the New Approach Notification and Designated Organizations (NANDO) information system.

#### 3.3.1.3.1 Product marking

3.131. To sell products in the EU market of 28 member States as well as in Norway, Liechtenstein and Iceland, foreign suppliers are required to apply CE marking whenever their product is covered by specific product legislation that provides for this. The CE marking is the manufacturer's declaration that a product meets the requirements of the applicable EC directives. It is the responsibility of manufacturers both within and outside the EU to ensure that their products, where applicable, comply with the relevant directives before affixing the CE marking and placing them on the market in Europe.

3.132. Only the products that fall within the scope of at least one of the 20 or more directives require the CE marking. These include, for example: the Low Voltage Directive (2014/35/EU); the Machinery Directive (2006/42/EC); the Medical Device Directive (93/42/EEC); the Radio Equipment Directive (2014/53/EU); the Restriction of Hazardous Substances Directive (2011/65/EU); and the Electromagnetic Compatibility (EMC) Directive (2014/30/EU).

3.133. The CE marking addresses itself primarily to the national control authorities of the member States, and its use simplifies the task of essential market surveillance of regulated products. As market surveillance was found lacking, the EU adopted the NLF, which entered into force in 2010 (Box 3.2). As mentioned before, this Framework is like a blueprint for all CE marking legislation, harmonizing definitions, responsibilities of economic operators, European accreditation and market surveillance. The CE marking is not intended to include detailed technical information on the product<sup>129</sup>, but there must be enough information to enable the inspector to trace the product back to the manufacturer or the local contact established in the EU.

<sup>129</sup> This detailed information should not appear next to the CE marking, but rather on the declaration of conformity (which the manufacturer or authorized representative must be able to provide at any time, together with the product's technical file), or the documents accompanying the product.

### 3.3.1.4 Accreditation

3.134. Accreditation is the last level of public control in the EU conformity assessment system and is designed to ensure that conformity assessment bodies have the technical competence to carry out their duties. The European Cooperation for Accreditation (<http://www.european-accreditation.org>) is the organization representing the national accreditation bodies. Membership is open to the national accreditation bodies in countries in the European geographical area that can demonstrate that they operate an accreditation system compatible with appropriate ISO/IEC standards and EU legal requirements.

### 3.3.1.5 Transparency

3.135. To help prevent the creation of technical barriers to trade, the Commission manages two notification procedures: one for the internal market of the EU and one at WTO level.

3.136. According to Directive (EU) 2015/1535, EU member States must communicate to the Commission any draft technical regulation before its adoption. Starting from the date of notification, a three-month standstill period comes into place, during which the EU member State must refrain from adopting the technical regulation in question. This procedure enables the Commission and other EU member States to examine the proposed text and react to it. The Commission and other EU member States may submit a detailed opinion or comments to the draft if they deem that the notified text may create barriers to the EU internal market. The notified drafts and their translations in all EU languages are available in the Technical Regulations Information Systems database (TRIS).

3.137. At the WTO level, under the TBT notification procedure, between 1 January 2015 and 31 December 2016, the EU submitted 176 notifications under Article 10.6 to the TBT Committee, and individual member States submitted another 52. In the same time-period, WTO Members used the TBT Committee to raise specific trade concerns relating to notifications made by the EU, and the EU raised its own concerns with measures proposed or implemented by other Members.

3.138. The *Official Journal*, as the official publication of the EU, publishes all EU harmonized technical rules, and lists the standards reference numbers linked to legislation ([http://ec.europa.eu/growth/single-market/european-standards/harmonised-standards/index\\_en.htm](http://ec.europa.eu/growth/single-market/european-standards/harmonised-standards/index_en.htm)).

## 3.3.2 Sanitary and phytosanitary measures

3.139. As noted in the last report, to a large extent SPS measures in the EU have been harmonized, and most measures are taken by the EU, although member States may, and sometimes do, take specific measures in specific circumstances.<sup>130</sup>

3.140. EU member States are members of the Codex Alimentarius Commission, the World Organization for Animal Health (OIE), and contracting parties to the International Plant Protection Convention (IPPC). The EU itself is a member of Codex and a contracting party to the IPPC.

3.141. Since the last Review in 2015, a new regulation on transmissible animal diseases (Animal Health Law)<sup>131</sup> and a new law on plant pests (Plant Health Law)<sup>132</sup> were adopted (Table 3.13). In addition, the European Commission noted that a new regulation on official controls is close to

<sup>130</sup> WTO document WT/TPR/S/317/Rev.1, 21 October 2015, para. 3.98.

<sup>131</sup> Regulation (EU) 2016/429 of the European Parliament and of the Council of 9 March 2016 on transmissible animal diseases and amending and repealing certain acts in the area of animal health ('Animal Health Law').

<sup>132</sup> Regulation (EU) 2016/2031 of the European Parliament and of the Council of 26 October 2016 on protective measures against pests of plants, amending Regulations (EU) No. 228/2013, (EU) No. 652/2014 and (EU) No. 1143/2014 of the European Parliament and of the Council and repealing Council Directives 69/464/EEC, 74/647/EEC, 93/85/EEC, 98/57/EC, 2000/29/EC, 2006/91/EC and 2007/33/EC.



adoption. The new regulation will replace Regulation (EC) No. 882/2004<sup>133</sup> and repeal Regulation (EC) No. 854/2004.<sup>134</sup>

3.142. The Animal Health Law is to become applicable on 21 April 2021 and the Plant Health Law on 14 December 2019, except for the provisions relating to a phytosanitary certificate for exports (from 1 January 2021), and a change to the obligation to inform the authorities of suspected pests (from 1 January 2017). In the meantime, several implementing measures are to be adopted by the Commission to complement the new rules.

3.143. The new legislation on animal health, plant pests, and official controls are part of the Animal and Plant Health Package which was adopted by the Commission in May 2013. The Package aims to simplify and modernize the existing legislation covering the food chain. It condenses nearly 70 different legislative acts to four, covering: official controls; animal health; plant health; and related financing measures.

**Table 3.13 Principal SPS legislation in the EU in 2017**

Legislation	Last amended	Note
Regulation (EC) No. 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety	2014	The General Food Law. Regulates the safety of food and feed produced or consumed in the internal market; established a framework for controlling and monitoring the risks and their prevention and management, and created the European Food Safety Authority (EFSA) for the control and evaluation of food and feed.
Regulation (EC) No. 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs	2009	On the hygiene of foodstuffs. General rules for food business operators on the hygiene of foodstuffs, putting primary responsibility on the operators, implementation of procedures based on the HACCP principles and good hygiene practice, and ensuring that imported foods are at least the same, or equivalent, hygiene standard as food produced in the EU
Regulation (EC) No. 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin	2016	Supplementing Regulation (EC) No. 852/2004. Setting out specific rules on hygiene for food of animal origin for food business operators and applying to unprocessed and processed products of animal origin.
Regulation (EC) No. 854/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific rules for the organization of official controls on products of animal origin intended for human consumption	2015	Setting out specific rules on the organization of official controls on products of animal origin intended for human consumption. The Regulation applies in addition to Regulation (EC) No. 882/2004.
Regulation (EC) No. 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules	2014 <sup>a</sup>	On official controls for verification of compliance with feed and food law, animal health, and animal welfare rules. The Regulation sets out general rules for the performance of official controls to verify compliance with rules aiming, in particular, at: (a) preventing, eliminating or reducing to acceptable levels risks to humans and animals, either directly or through the environment; and (b) guaranteeing fair practices in feed and food trade and protecting consumer interests, including feed and food labelling and other forms of consumer information.
Directive 2002/99/EC of 16 December 2002 laying down the animal health rules governing the production, processing, distribution and introduction of products of animal origin for human consumption <sup>b</sup>	2013	Setting out rules for the production, processing, distribution, and introduction of products of animal origin for human consumption. The Directive lays down the general animal health rules governing all stages of the production, processing and distribution within the EU and the introduction from third countries of products of animal origin and products obtained therefrom intended for human consumption.

<sup>133</sup> Regulation (EC) No. 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules.

<sup>134</sup> Regulation (EC) No. 854/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific rules for the organization of official controls on products of animal origin intended for human consumption.



Legislation	Last amended	Note
Regulation (EU) 2016/429 of the European Parliament and of the Council of 9 March 2016 on transmissible animal diseases and amending and repealing certain acts in the area of animal health ('Animal Health Law')		Animal Health Law Repeal of Council Directive 64/432/EEC, Council Directive 77/391/EEC, Council Directive 78/52/EEC, Council Directive 80/1095/EEC, Council Directive 82/894/EEC, Council Directive 88/407/EEC, Council Directive 89/556/EEC, Council Directive 90/429/EEC, Directive 91/68/EEC, Council Decision 91/666/EEC, Council Directive 92/35/EEC, Council Directive 92/65/EEC, Council Directive 92/66/EEC, Council Directive 92/118/EEC, Council Directive 92/119/EEC, Council Decision 95/410/EC, Council Directive 2000/75/EC, Council Decision 2000/258/EC, Council Directive 2001/89/EC, Council Directive 2002/60/EC, Council Directive 2002/99/EC, Council Directive 2003/85/EC, Council Regulation (EC) No. 21/2004, Council Directive 2004/68/EC, Council Directive 2005/94/EC Council Directive 2006/88/EC, Council Directive 2008/71/EC, Council Directive 2009/156/EC, Council Directive 2009/158/EC and Regulation (EU) No. 576/2013 of the European Parliament and of the Council. <i>Inter alia</i> , the Law consolidates animal health legislation and aims to simplify and clarify the rules relating to prevention and eradication of diseases.
Regulation (EU) 2016/2031 of the European Parliament and of the Council of 26 October 2016 on protective measures against pests of plants, amending Regulations (EU) No. 228/2013, (EU) No. 652/2014 and (EU) No. 1143/2014 of the European Parliament and of the Council and repealing Council Directives 69/464/EEC, 74/647/EEC, 93/85/EEC, 98/57/EC, 2000/29/EC, 2006/91/EC and 2007/33/EC		Repeal of Directive 2000/29/EC Protective measures against the introduction of organisms which are harmful to plants or plant products.

a Currently under review (see para 3.141. ).

b In addition to Directive 2002/99/EC, there are many other legislative acts in the EU relating to animal health (see the directives repealed by Regulation (EU) 2016/429).

Source: European Commission and Eurlex <http://eur-lex.europa.eu/homepage.html>.

3.144. The European Commission is responsible for developing draft proposals for legislation and, where the legislation delegates the authority, delegated acts.<sup>135</sup> The Standing Committee on Plants, Animals, Food and Feed (PAFF Committee) is the principal regulatory body responsible for delivering opinions on draft implementing measures. The PAFF Committee is made up of 14 different sections, each responsible for different aspects related to SPS measures.<sup>136</sup> In addition, there are five committees that are also responsible for specific SPS-related issues:

- Regulatory Committee under Directive 2001/18/EC on the deliberate release into the environment of genetically modified organisms;
- Regulatory Committee under Directive 2009/41/EC on the contained use of genetically modified microorganisms;
- Standing Committee on Plant Variety Rights;
- Standing Committee on Zootechnics; and
- Biocidal Products Committee.

3.145. The EFSA, established under the General Food Law of 2002, is an independent agency responsible for risk assessment for food and feed safety, nutrition, animal health and welfare, plant protection, and plant health, as well as, through environmental risk assessments, the

<sup>135</sup> A legislative act may delegate to the Commission the power to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of a legislative act (Article 290 of the Treaty on the Functioning of the European Union). Legal acts adopted by the Commission in this way are referred to as 'delegated acts'.

<sup>136</sup> General Food Law, Biological Safety of the Food Chain, Toxicological Safety of the Food Chain, Controls and Import Conditions, Animal Nutrition, Animal Health and Animal Welfare, Genetically Modified Food and Feed and Environmental Risk, Phytopharmaceuticals, Plant Health, Propagating Material of Ornamental Plants, Propagating Material and Plants of Fruit Genera and Species, Seeds and Propagating Material for Agriculture and Horticulture, Forest Reproductive Material, and Vine.

possible impact of the food chain on biodiversity.<sup>137</sup> The Health and Food Audits and Analysis Directorate (formerly known as the Food and Veterinary Office (FVO)) of the Commission is responsible for audits, inspections, and related activities to assess compliance with EU food safety and quality, animal health and welfare, and plant health legislation within the EU, and compliance with EU import requirements in third countries exporting to the EU.

3.146. The Commission's TRAdE Control and Expert System (TRACES) is an online system which manages official controls and route planning for imports of animals, semen and embryos, food, feed and plants which must be accompanied by health certificates and/or trade documents. All harmonized certificates for exporting to the EU are available on TRACES which is used to notify the relevant authorities in the importing member State of the arrival of a consignment.<sup>138</sup>

3.147. According to the Commission, SPS measures taken in the EU are normally based on international standards or, in other cases - including the absence of an international measure - based on the scientific opinion of the EFSA.<sup>139</sup>

### 3.3.2.1 Plants and plant products

3.148. The new Regulation (EU) 2016/2031 on protective measures against plant pests extends the definition of pests to include non-parasitic plants that could have a severe economic, social, or environmental impact within the EU. It also lists pests as being in the category of quarantine pests or quality pests. Quarantine pests are those that pose the greatest danger for the EU and are to be eradicated and/or protected zones created to prevent their spreading outside areas where they are endemic.

3.149. The new Regulation also includes measures to tackle pests from outside the EU under which the Commission will be able to implement precautionary measures for emerging risks from plants coming from certain non-EU countries. A category of "high risk" plants, plant products or other objects has been created for plants, plant products or other objects which present, on the basis of a preliminary assessment, a pest risk of an unacceptable level for the EU. Therefore their introduction into the EU from a third country will be prohibited, pending the completion of a full risk assessment.

3.150. The new rules also propose to extend, simplify and harmonize the existing plant passport scheme. This means that an extended range of plants, plant products or other objects will need:

- a phytosanitary certificate before being imported into the EU (attesting conformity with Union legislation); and
- a plant passport for movement within the EU.

3.151. Plant passports will also be needed for all movements between professional operators, but not for sales to final non-professional users. The new rules would also require relevant professional operators to be registered in a single register.<sup>140</sup>

3.152. Under the currently applicable legislation on trade in plants and plant products (Directive 2000/29/EC)<sup>141</sup>, a phytosanitary certificate from the competent authorities in the exporting country is required for plants for planting, some fruits, vegetables, seeds and cut flowers. Once in the EU, a plant passport may replace the phytosanitary certificate. Imports into the EU of most plants and plant products from most countries do not require prior approval or notification, although they are subject to rules on food safety and customs procedures and inspection. The competent authorities in the member States must be notified of imports of some food and feed products of non-animal origin from specified third countries which must enter the EU through

<sup>137</sup> EFSA online information. Viewed at: <http://www.efsa.europa.eu/> [December 2016].

<sup>138</sup> Directorate-General for Health and Food Safety (DG SANTE) online information. Viewed at: [http://ec.europa.eu/food/animals/traces\\_en](http://ec.europa.eu/food/animals/traces_en) [December 2016].

<sup>139</sup> WTO document WT/TPR/S/317/Rev.1, 21 October 2015, para. 3.104.

<sup>140</sup> European Council online information. Viewed at: <http://www.consilium.europa.eu/en/policies/animal-plant-health-package/plant-health/> [December 2016].

<sup>141</sup> Council Directive 2000/29/EC of 8 May 2000 on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community.

designated points of entry where they are subject to additional controls.<sup>142</sup> The list of products and exporting countries is reviewed quarterly.

3.153. The procedure for approving genetically modified organisms (GMOs) has not changed. An application for approval for use of a GMO for food, feed, cultivation, or release on the market for other purposes (e.g. cut flowers) must be made to the competent authority in a member State. The EFSA, in collaboration with the member States' scientific bodies, conducts a risk assessment and delivers an opinion. On the basis of the opinion, the Commission prepares draft legislation to grant or refuse authorization. Directive (EU) 2015/412<sup>143</sup> gives the member States more flexibility to restrict or prohibit cultivation of a GMO in their territory either during the authorization procedure, by demanding to exclude their territory from the geographical scope of the application, or, after authorization has been granted, by adopting measures that prohibit or restrict cultivation of specific GMOs. The Commission has also proposed a review of the decision-making process on GMOs.<sup>144</sup>

3.154. As at end-2016, one GMO is approved for cultivation (with ongoing procedures for renewal of authorization) and 72 for food and feed uses. In addition, 3 applications for cultivation and 47 for food and feed uses were pending. There are also 5 GMO flowers approved for sale in the EU.

### 3.3.2.2 Live animals and animal products

3.155. The new Animal Health Law does not make significant changes to the existing system for the entry into the EU of animals and animal products.

3.156. Under the currently applicable legislation, to export live animals and animal products, products of animal origin for human consumption, animal by-products and derived products to the EU, the competent authority of the exporting country must be recognized as being able to "ensure credible inspection and controls throughout the production chain, which cover all relevant aspects of hygiene, animal health and public health"<sup>145</sup> and provide adequate guarantees.<sup>146</sup> In addition, the country of origin must: be authorized for the specific species of animals or animal products; and, where appropriate, have an approved residue plan for the relevant animal species, a salmonella control programme for poultry and poultry products, and meet other requirements depending on the animal and/or product.

3.157. At the request of the supplying country, the EU normally audits the country to ensure that all the criteria provided for in the EU legislation are met. Based on the results of the audit, the country may then be added to the list of countries authorized to export to the EU. In some cases, and depending on the animal health situation within a country, part of a country may be authorized to export to the EU, or different parts of a country may face different requirements. Additions to the list of approved third countries, territories, zones, or compartments are made through amendments to the relevant legislation following approval of a Commission proposal by the PAFF Committee.<sup>147</sup>

3.158. In addition, an establishment in a third country that would like to export to the EU needs to be added to the list of eligible exporters. It must inform its national authorities, which may then make a request to the Health and Food Audits and Analysis Directorate in the EU, after they have

<sup>142</sup> Commission Regulation (EC) No. 669/2009 of 24 July 2009 implementing Regulation (EC) No. 882/2004 of the European Parliament and of the Council as regards the increased level of official controls on imports of certain feed and food of non-animal origin and amending Decision 2006/504/EC.

<sup>143</sup> Directive (EU) 2015/412 of the European Parliament and of the Council of 11 March 2015 amending Directive 2001/18/EC as regards the possibility for the member States to restrict or prohibit the cultivation of GMOs in their territory.

<sup>144</sup> Commission Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No. 1829/2003 as regards the possibility for the member States to restrict or prohibit the use of genetically modified food and feed on their territory, COM(2015) 177 Final, 22 April 2015.

<sup>145</sup> Commission (2007), *EU import conditions for fresh meat and meat products*, Directorate-General for Health and Consumers.

<sup>146</sup> Commission (2010), *General guidance on EU import and transit rules for live animals and animal products from third countries*, SANCO/7166/2010.

<sup>147</sup> For example, Commission Regulation (EU) No. 206/2010 of 12 March 2010 laying down lists of third countries, territories or parts thereof authorized for the introduction into the EU of certain animals and fresh meat, and the veterinary certification requirements.

verified that production in the establishment is compliant with, or equivalent to, the requirements laid down in the EU legislation.<sup>148</sup>

3.159. Imports of live animals and animal products must be accompanied by a health certificate issued by the competent authorities of the exporting country, stating that the animals or products meet EU import requirements. Before their arrival on EU territory, the approved Border Inspection Post (BIP)<sup>149</sup> of arrival must be notified through TRACES (at least 24 hours before arrival for live animals) using the Common Veterinary Entry Document (CVED). At the BIP, the consignment must undergo official controls, including documentary, identity, and physical checks, which may include laboratory tests. Depending on the risks associated with the animal product concerned, physical checks may be reduced.<sup>150</sup>

3.160. Where a recurrent problem has been identified with a specific animal product from a third country, special import conditions may be applied, such as reinforced testing or pre-export testing in the country of origin.<sup>151</sup>

### 3.3.2.3 Rapid Alert System for Food and Feed

3.161. The Rapid Alert System for Food and Feed (RASFF) allows food and feed authorities of the member States and the Commission to exchange information about measures taken in response to direct and indirect risks to human health from food, and human and animal health and the environment from feed.<sup>152</sup> Member States notify risks detected in products already on the market (market notifications) and when products are refused entry into the EU (border rejections).

**Table 3.14 RASFF notifications, 2012-15**

Year	Alert <sup>a</sup>	Border rejection <sup>b</sup>	Information for attention <sup>c</sup>	Information for follow-up <sup>d</sup>
<b>Original notification</b>				
2012	523	1,712	679	507
2013	584	1,438	679	429
2014	725	1,357	605	402
2015	750	1,380	476	378
<b>Follow-up notification</b>				
2012	2,312	906	664	1,325
2013	2,376	525	763	1,493
2014	3,280	571	670	1,377
2015	4,030	417	538	1,219

- a Alert notifications are sent when a food or feed presenting a serious health risk is on the market and when rapid action is required.
- b Border rejections concern food and feed consignments that have been tested and rejected at the external borders of the EU (and the EEA) when a health risk has been found.
- c Information notifications for attention are related to a product that is present only in the notifying member country, or has not been placed on the market, or is no longer on the market.
- d Information notifications for follow-up are related to a product that is, or may be, placed on the market on another member country.

Source: Commission (2016), *RASFF - The Rapid Alert System for Food and Feed - 2015 Annual Report*, Publications Office of the EU, p. 30.

<sup>148</sup> The lists of establishments are available from DG SANTE on: [https://ec.europa.eu/food/safety/international\\_affairs/trade/third\\_en](https://ec.europa.eu/food/safety/international_affairs/trade/third_en) [December 2016].

<sup>149</sup> Commission Decision of 28 September 2009 drawing up a list of approved border inspection posts, laying down certain rules on the inspections carried out by Commission veterinary experts and laying down the veterinary units in TRACES (notified under document C(2009) 7030).

<sup>150</sup> Commission Decision 94/360/EC of 20 May 1994 on the reduced frequency of physical checks of consignments of certain products to be implemented from third countries, under Council Directive 90/675/EEC.

<sup>151</sup> DG SANTE online information. Viewed at: [http://ec.europa.eu/food/animals/vet-border-control/special-import-conditions\\_en](http://ec.europa.eu/food/animals/vet-border-control/special-import-conditions_en) [December 2016].

<sup>152</sup> Regulation (EC) No. 178/2002 (General Food Law), Article 50.

### 3.3.2.4 SPS Committee in the WTO

3.162. The EU and each member State have notified enquiry points under the SPS Agreement.<sup>153</sup> The Directorate-General for Health and Food Safety (DG SANTE) of the European Commission is the EU notification authority.<sup>154</sup>

3.163. In 2015 and 2016, the EU made a total of 107 notifications to the Committee on Sanitary and Phytosanitary Measures in the WTO, of which: 47 were addenda; 8 were emergency notifications; 1 was a supplementary notification; and the remainder were regular notifications. In addition: Germany made 1 emergency notification and 1 regular notification; France made 2 regular notifications, 2 emergency notifications, and 1 addendum; and Slovenia made 1 emergency notification.

3.164. During this period, WTO Members used the SPS Committee to raise two new specific trade concerns about measures taken in the EU or a member State<sup>155</sup> and referred to eight concerns that had been raised earlier.<sup>156</sup> The EU has also used the Committee to raise its concerns in nine cases.

### 3.3.3 Subsidies and other government assistance

3.165. Subsidies in the EU are granted both out of the EU budget and by member States in the form of state aid. The most recent information and statistical data concerning subsidies granted during the years 2013 and 2014 is contained in the EU's subsidies notification to the WTO and member States' addenda submitted in August 2015.<sup>157</sup>

#### 3.3.3.1 EU level subsidies

3.166. The two largest areas of expenditure out of the EU budget in 2013 and 2014 were agriculture and structural operations, comprising the European Agriculture Guarantee Fund, the European Agricultural Fund for Rural Development, and the Cohesion Fund. Another notable area of expenditure is research. The structural funds comprise the European Regional Development Fund (ERDF) and the European Social Fund (ESF). ERDF resources focus on the co-financing of productive investment leading to job creation and maintenance and investment in infrastructure. The ESF supports programmes in education and job market improvement, and the Cohesion Fund covers member States whose gross national income per inhabitant is less than 90% of the EU average, and, *inter alia*, funds projects in the field of transport and environmental infrastructure.

3.167. The overall goal of the Cohesion policy, the EU's key investment policy, is to support job creation, business competitiveness, economic growth and sustainable development in all regions. The policy is put in place for a seven-year period, currently 2014-2020. The EU's intervention regarding the Cohesion policy is being carried out via the ERDF, the ESF and the Cohesion Fund. The budget for the current 2014-2020 period<sup>158</sup> is estimated to amount to €346 billion, or one third of the EU budget, according to the latest notification. Additional funding from the member States will bring the total amount spent to €477 billion. Outlays under the ERDF, the Cohesion Fund and the ESF amounted to €56.8 billion in 2013 and €52.8 billion in 2014.

<sup>153</sup> WTO document G/SPS/ENQ/16, 21 December 2016.

<sup>154</sup> WTO document G/SPS/NNA/8, 21 December 2016.

<sup>155</sup> EU proposal to amend Regulation (EC) No. 1829/2003 to allow EU member States to restrict or prohibit the use of genetically modified food and feed (ID 396), EU restrictions on exports of pork from the State of Santa Catarina (ID 407).

<sup>156</sup> Agricultural biotechnology approval process (ID 110), France's ban on Bisphenol A (BPA) (ID 346), EU phytosanitary measures on citrus black spot (ID 356), EU ban on mangoes and certain vegetables from India (ID 374), EU withdrawal of equivalence for processed organic products (ID 378), EU revised proposal for categorization of compounds as endocrine disruptors (ID 382), EU proposal to amend regulation (EC) No. 1829/2003 to allow EU member States to restrict or prohibit the use of genetically modified food and feed (ID 396), and EU restrictions on exports of pork from the State of Santa Catarina (ID 407).

<sup>157</sup> WTO document G/SCM/N/284/EU of 7 August 2015; subsidies granted by individual member States are contained in addenda to this notification.

<sup>158</sup> For the programming period 2014–20, the legal basis, according to the EU notification, comprises: Commission Delegated Regulation (EU) No.480/2014 of 3 March 2014 supplementing Regulation EU No. 1303/2013.

### 3.3.3.2 State aid in the member States

3.168. The provision of state aid by member States is regulated under Articles 107 to 109 of the TFEU. As the previous Secretariat report points out, member States are, in principle, required to notify state aid measures to the Commission, which has to approve the aid measures before they can be implemented. The Secretariat report laid out in some detail the content of the Commission's 2012 State Aid Modernisation (SAM) initiative.<sup>159</sup>

3.169. The overall aim of the initiative is to (i) focus enforcement on cases with the biggest impact on the internal market; (ii) reduce the administrative burden for member States; and (iii) increase legal certainty for public authorities and companies. This report will focus on salient aspects of the implementation of the reform over the past two years.

#### 3.3.3.2.1 State aid reform: implementation phase

3.170. On 1 July 2014, the Commission's new General Block Exemption Regulation<sup>160</sup> (GBER) entered into force. As a key part of SAM, it enlarges the categories of state aid that can be implemented without prior notification to the Commission. For categories of state aid already previously exempted from notification, the GBER increases the amounts that can be granted. The GBER applies to all sectors of the economy with some exceptions. Sectoral restrictions are set out in Article 1, paragraphs 3-5 of the Regulation, and include specific activities in the fishery and aquaculture sector, in the primary production of agricultural products, the coal sector, the steel sector, shipbuilding, and the synthetic fibres sector.

3.171. The current GBER will remain in force until 31 December 2020, and authorizes aid in favour of: regional investment; aid to SMEs and aid for access to finance for SMEs; environmental protection; consultancy in favour of SMEs; research, development and innovation; training; employment of disadvantaged and disabled workers; culture and heritage conservation; local infrastructures; broadband infrastructures; sport and multifunctional recreational infrastructures; and transport for residents of promoted regions. Each of the GBER articles which cover the activities listed above lists the eligible costs which may be assisted and the aid intensities (limits) which apply to these activities.

3.172. As a result of the reform and the entry into force of the new GBER, a substantial number of measures with a limited impact on competition are exempted from prior notification. According to the Commission, about 90% of new measures are, as of 1 July 2014, exempted from prior notification under the GBER. The Commission further states that the share of GBER expenditure in total aid measures was around 40% in 2015 and was expected to increase further.<sup>161</sup>

3.173. Although the 2014 GBER revision makes it easier for member States to implement straightforward measures involving state aid, more transparency is required from them in terms of identifying aid measures, beneficiaries and amounts granted. On 1 July 2016, the new transparency requirements for state aid entered into force and became mandatory based on Article 9 and Annex III of the GBER, and were reflected in notifications and decisions. According to the Commission, the main aim of the transparency requirements is to further the accountability of aid-granting authorities and to help lessen procedural asymmetries by aligning the transparency requirements across all the recently revised state aid rules. The transparency obligation is complemented by annual monitoring exercises in which the Commission reviews a sample of block-exempted aid measures to verify that they comply with the conditions of the GBER. Together, increased transparency and monitoring will help to ensure that the expanded GBER is used as intended.

<sup>159</sup> See WTO document WT/TPR/S/317, pp. 65-68. See also the Commission's SAM website at: [http://ec.europa.eu/competition/state\\_aid/modernisation/index\\_en.html](http://ec.europa.eu/competition/state_aid/modernisation/index_en.html).

<sup>160</sup> Commission Regulation (EU) No. 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in the application of Articles 107 and 108 of the Treaty, published in the Official Journal of the European Union L 187/1. The Regulation harmonizes the rules which previously existed across five separate regulations, and enlarges the categories of state aid covered by the exemption.

<sup>161</sup> Data published in Commission Staff Working Document (p. 5), accompanying the document Commission Report on Competition Policy 2015, Brussels, 15 June 2016, SWD(2016) 198 final. Viewed at: [http://ec.europa.eu/competition/publications/annual\\_report/2015/part2\\_en.pdf](http://ec.europa.eu/competition/publications/annual_report/2015/part2_en.pdf).



3.174. In December 2016, the Commission's public consultations on expanding the GBER to include aid to ports and to airports ended.<sup>162</sup> A decision is expected in the first quarter of 2017.

3.175. The other exemption applies to state aids of minor importance (*de minimis*) which have a negligible effect on trade among member States. The new *de minimis* regulation was adopted in December 2013 and is applicable since 1 January 2014.<sup>163</sup>

3.176. For aid that is not covered by the GBER, the Commission has revised and streamlined most state aid guidelines to align them along a set of common principles for assessing the compatibility of aid with the internal market. The aim of this alignment exercise was to foster greater coherence across policy fields and increase predictability for member States when devising measures that are not covered by the GBER. In principle, the various guidelines specify how the Commission is to exercise its discretion under Article 107(3) of the TFEU.

3.177. The guidelines cover a wide field of policy actions, for example:

- The Research, Development and Innovation Framework<sup>164</sup> facilitates the granting of aid measures with the aim of more R&D investment, better access to finance and improved framework conditions.
- The Risk Finance State Aid Guidelines<sup>165</sup> are designed to facilitate a more rapid distribution of risk finance aid to innovative and growth-oriented small and medium-sized businesses.
- The Broadband Guidelines<sup>166</sup> support member States in meeting the challenge of funding shortfalls concerning the provision of adequate broadband coverage, notably in rural areas.
- Other areas concern, for example, rescue and restructuring aid (guidelines adopted 9 July 2014<sup>167</sup>), regional aid (guidelines adopted 19 June 2013<sup>168</sup>) and aviation (guidelines adopted 20 February 2014<sup>169</sup>).

3.178. On 19 May 2016, the Commission published a new guidance document on the notion of state aid, the so-called "Notice on the notion of state aid".<sup>170</sup> This Notice is the last part of the Commission's SAM initiative and is designed to help member States and public authorities to draw up funding in ways which do not distort competition. The clarifications contained in the Notice reflect the case law of the Court of Justice as well as the approach followed in Commission decisions. The Notice facilitates the identification of public investments that qualify as state aid. It clarifies the various constituent elements of the notion of state aid, i.e. the existence of an undertaking, the imputability of the measure to the State, its financing through state resources, the granting of an advantage, the selectivity of the measure and its effect on competition and trade between member States. The Notice also focuses on certain sectors to provide more detailed guidance.

3.179. For example, Section 7 of the Notice contains specific clarification on state measures concerning infrastructure. Section 2.6 discusses culture and heritage conservation, including

<sup>162</sup> DG Competition online information. Viewed at: [http://ec.europa.eu/competition/consultations/2016\\_second\\_gber\\_review/index\\_en.html](http://ec.europa.eu/competition/consultations/2016_second_gber_review/index_en.html) [November 2016].

<sup>163</sup> Council Regulation (EU) No. 734/2013 amending Regulation (EC) No. 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty, OJ L 204/15, 31 July 2013.

<sup>164</sup> Communication from the Commission, *Framework for state aid for research and development and innovation*, OJ C 198, 27 June 2014.

<sup>165</sup> Communication from the Commission, *Guidelines on state aid to promote risk finance investments*, OJ C 19, 22 January 2014. Viewed at: [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52014XC0122\(04\)](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52014XC0122(04)).

<sup>166</sup> Communication from the Commission, *EU Guidelines for the application of state aid rules in relation to the rapid deployment of broadband networks*, OJ 2013 C 25, 26 January 2013.

<sup>167</sup> See OJ C 249 of 31 July 2014.

<sup>168</sup> See OJ C 209 of 23 July 2013.

<sup>169</sup> See OJ C 99 of 4 April 2014.

<sup>170</sup> Full title: Commission Notice on the notion of state aid as referred to in Article 107(1) of the TFEU (2016/ C 262/01). OJ C 262/1 of 19 July 2016.



nature conservation. In the domain of tax measures, Section 5.4.4 elaborates, *inter alia*, on when a tax ruling<sup>171</sup> gives a company or a group of companies a selective advantage (Box 3.3).

### Box 3.3 State aid - tax rulings

Since June 2013, the Commission has been investigating the tax ruling practices of member States. The Commission extended this information inquiry to all member States in December 2014, including a list of tax rulings issued in recent years, on the basis of which individual tax rulings have been requested.

The list of final decisions adopted since 2014 concerning tax planning practices and the list of formal ongoing investigations is presented below.

#### Final decisions

Member State	Title	Date of decision	Press release	Case No./ link to case	Status
Ireland	State aid implemented by Ireland to Apple	30.08.2016	<a href="#">IP/16/2923</a>	<a href="#">SA.38373</a>	Appealed
The Netherlands	State aid implemented by the Netherlands to Starbucks	21.10.2015	<a href="#">IP/15/5880</a>	<a href="#">SA.38374</a>	Appealed
Luxembourg	State aid which Luxembourg granted to Fiat	21.10.2015	<a href="#">IP/15/5880</a>	<a href="#">SA.38375</a>	Appealed
Belgium	Excess Profit exemption in Belgium – Art. 185§2 b) CIR92	11.01.2016	<a href="#">IP/16/42</a>	<a href="#">SA.37667</a>	Appealed

#### Open formal investigations

Member State	Title	Date of decision	Press release	Case No./ link to case
Luxembourg	Alleged aid to Amazon	07.10.2014	<a href="#">IP/14/1105</a>	<a href="#">SA.38944</a>
Luxembourg	Alleged aid to McDonald's	03.12.2015	<a href="#">IP/15/6221</a>	<a href="#">SA.38945</a>
Luxembourg	Possible state aid in favour of GDF Suez	19.09.2016	<a href="#">IP/16/3085</a>	<a href="#">SA.44888</a>

Source: European Commission website: [http://ec.europa.eu/competition/state\\_aid/tax\\_rulings/index\\_en.html](http://ec.europa.eu/competition/state_aid/tax_rulings/index_en.html).

### 3.3.3.2.2 Non-crisis state aid

3.180. In 2014, €99 billion were provided for non-crisis state aid (excluding transport), a 45% increase over spending in 2013<sup>172</sup> (Table 3.15). The biggest categories were: environmental protection, including energy saving which registered an almost three-fold increase over 2013 and accounted for more than 40% of total spending<sup>173</sup>; regional development; research and development, including innovation; and the agricultural sector. Thus, around 85% of state aid to industry and services was earmarked for horizontal objectives of common interest, that is, aid that is not granted to specific sectors of the economy. Member States used mainly grants (€58 billion) as instruments for state aid, followed by tax exemptions (€28 billion).

3.181. In addition, €44 billion was provided for rail transport (€21 billion for public service obligations and pensions, and €23 billion for infrastructure and other aid). Over 50% of the subsidies provided in 2014 came from France (€15 billion) and Germany (€38 billion). The United Kingdom, Poland and Italy are the next biggest providers of state aid.

<sup>171</sup> See also Commission working paper on state aid and tax rulings, June 2016. Viewed at: [http://ec.europa.eu/competition/state\\_aid/legislation/working\\_paper\\_tax\\_rulings.pdf](http://ec.europa.eu/competition/state_aid/legislation/working_paper_tax_rulings.pdf).

<sup>172</sup> Updated information on state aid provided by EU member States is regularly published by the Commission on the state aid scoreboard.

<sup>173</sup> The increase of renewable energy support schemes (RES) in the reporting stems, among others, from the increased awareness by member States of the state aid nature of subsidies to RES following the adoption of the 2014 Energy and Environmental Aid Guidelines. Indeed, 2014 shows an increase of the reported state aid on environmental protection and energy savings of about €28.5 billion at EU level.

Table 3.15 Non-crisis related state aid

	2009	2010	2011	2012	2013	2014
<b>Total state aid (excluding transport)</b>	<b>72,826.8</b>	<b>73,086.1</b>	<b>66,794.7</b>	<b>68,454.7</b>	<b>68,022.8</b>	<b>98,686.9</b>
<b>Non-agricultural aid</b>	<b>65,914.5</b>	<b>63,813.9</b>	<b>57,914.4</b>	<b>59,535.0</b>	<b>59,720.4</b>	<b>90,978.4</b>
of which (by objective)						
Closure aid	19.3	15.4	1,461.2	1,478.3	1,534.4	1,446.3
Compensation of damages caused by natural disasters	3.6	41.3	78.4	34.5	282.0	695.3
Culture	1,537.0	1,859.2	1,944.8	2,375.2	2,693.6	3,553.8
Employment	2,631.3	2,803.4	2,747.6	2,803.3	2,900.1	2,725.8
Environmental protection incl. energy saving	14,245.8	14,064.9	13,003.2	14,473.9	15,503.5	42,085.5
Heritage conservation	40.1	318.3	404.8	578.8	575.2	532.2
Promotion of export and internationalization	286.4	277.6	314.7	284.2	251.0	172.7
Regional development	16,061.0	14,237.6	13,163.5	12,333.5	12,967.6	14,751.0
Rescue and restructure	1,070.3	1,341.0	721.4	731.6	585.9	651.3
Research and development incl. innovation	10,938.0	10,777.2	10,030.4	9,458.5	9,220.4	9,457.2
Sectoral development	10,848.5	9,881.1	5,391.1	6,057.1	4,999.3	4,666.6
SME incl. risk capital	5,723.4	4,593.3	4,011.5	4,103.0	3,543.2	3,752.5
Social support to individual consumers	1,110.8	2,130.6	3,411.1	3,231.8	3,335.8	5,356.0
Training	971.0	846.7	906.9	1,085.0	824.6	643.9
Other	428.0	626.2	323.7	506.1	504.0	488.1
of which (by aid instrument)						
Equity participation	1,073.0	706.6	295.2	494.0	545.9	623.5
Grant	34,196.8	32,969.5	31,104.6	32,131.9	32,080.3	57,564.8
Guarantee	2,532.7	2,904.8	3,070.3	2,893.3	3,353.9	2,677.7
Soft loan	2,272.2	1,716.1	1,712.0	1,604.7	1,265.5	1,791.3
Tax deferral	191.6	58.9	35.4	36.9	41.5	34.6
Tax exemption	25,633.6	24,676.1	21,689.3	21,615.5	22,183.0	28,108.9
Other	14.6	781.8	7.6	758.7	250.3	177.6
of which						
Co-financed <sup>a</sup>	8,435.6	6,708.7	6,303.7	5,936.5	5,805.2	8,414.5
Not co-financed	57,479.0	57,105.2	51,610.7	53,598.5	53,915.2	82,563.9
<b>Agricultural aid</b>	<b>6,912.3</b>	<b>9,272.2</b>	<b>8,880.4</b>	<b>8,919.7</b>	<b>8,302.4</b>	<b>7,708.5</b>
of which						
Agriculture and rural development	6,712.3	9,141.2	8,770.5	8,835.9	8,232.5	7,667.8
Aid granted to fisheries and aquaculture	199.9	131.0	109.8	83.8	69.9	40.7
<b>Transport aid (excluding railways)</b>	<b>2,954.2</b>	<b>2,123.5</b>	<b>2,230.4</b>	<b>1,925.5</b>	<b>1,566.0</b>	<b>1,918.5</b>
of which						
Road	199.9	141.9	227.0	248.5	109.8	83.3
Maritime transport	1,536.1	1,473.4	1,476.6	1,268.4	1,187.8	1,164.3
Inland water transport	10.0	18.1	21.8	17.2	27.0	53.2
Air transport	918.5	270.9	296.7	315.8	196.5	545.6
Other transport	289.7	219.3	208.2	75.5	44.8	72.2
<b>Railways support<sup>b</sup></b>	<b>..</b>	<b>..</b>	<b>..</b>	<b>41,118.7</b>	<b>42,315.3</b>	<b>43,681.8</b>
Public service obligations (PSO) and pensions	..	..	..	18,927.8	19,008.3	21,532.9
Infrastructure and other aid	..	..	..	22,190.9	23,353.7	22,747.7

.. Not available.

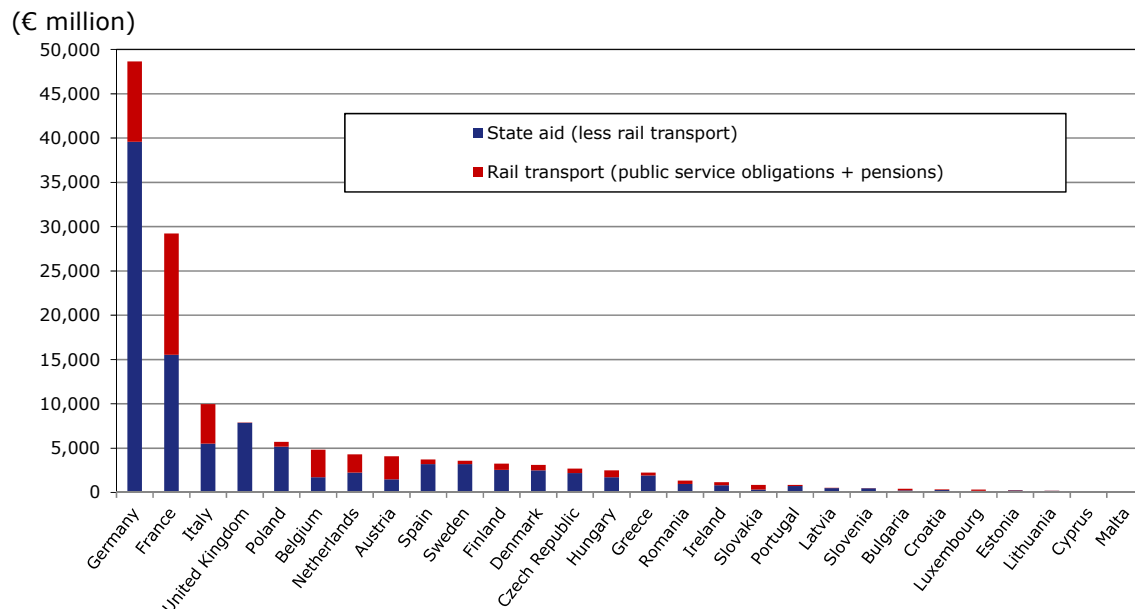
a From 2014, member States are required to indicate for co-financed schemes: (i) the percentage of aid that is co-financed; and (2) the total amount of aid that is co-financed including both national and EU structural funds expenditure. Before 2014, only national expenditure was reported for aid measures that were co-financed by Community funding.

b The Commission notes that railways support includes a significant amount that is not classified as state aid.

Source: Commission online information, State Aid Scoreboard 2015. Viewed at: [http://ec.europa.eu/competition/state\\_aid/scoreboard/index\\_en.html#tables](http://ec.europa.eu/competition/state_aid/scoreboard/index_en.html#tables) [November 2016].

3.182. In absolute terms in 2014, Germany and France provided over 50% of the total of non-crisis related state aid in the EU, including support for public service obligations and pensions for rail transport (Chart 3.8). In Germany's case, 80% of total state aid (less railways) was devoted to environmental protection, including energy saving. In France, a significant proportion of aid was for PSO, pensions and infrastructure for railways.

**Chart 3.8 State aid in EU member States**



Source: Commission online information. Viewed at: [http://ec.europa.eu/competition/state\\_aid/scoreboard/index\\_en.html#tables](http://ec.europa.eu/competition/state_aid/scoreboard/index_en.html#tables) (March 2017).

### 3.3.3.2.3 Crisis-related aid

3.183. As covered in previous Secretariat reports, in relation to financial institutions, the Commission updated and prolonged a series of communications adopted during the crisis. The 2013 Banking Communication and the 2009 Recapitalization and Impaired Assets Communications address state guarantees on liabilities, recapitalizations and asset relief measures. The Bank Recovery and Resolution Directive<sup>174</sup> (BRRD), which entered into force on 1 January 2015, lays out resolution rules for banks in all member States with the aim of better protecting taxpayers from having to bail out banks in distress. The BRRD has been transposed in all EU member States. According to the Commission, the rules "allow state aid control to continue to ensure a consistent policy response to the financial crisis throughout the EU."<sup>175</sup>

3.184. The Commission further notes<sup>176</sup> that, by end-2016, it had analysed more than 100 banks (or about one third of Europe's banking sector by assets) under the special crisis rules. Of those banks, around 60 were restructured and around 40 were orderly liquidated. The amount of aid approved has decreased over the period 2008-2014 (Table 3.16). The Commission points out that only a part of state aid to the financial sector has, in practice, been used, with only around a third of guarantees approved by the Commission being provided to banks by the member States. The volume of aid in the form of capital (recapitalizations and impaired asset measures) has declined considerably over the period. Similarly, outstanding guarantees and other liquidity support, having peaked in 2009, have declined considerably since then. Requests for, and use of, crisis-related state aid has varied from one member State to another.

<sup>174</sup> European Parliament and Council Directive 2014/59/EU of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms, OJ L 173, 12 June 2014.

<sup>175</sup> See p.51 of Commission staff working document on competition policy cited in FN 161 above.

<sup>176</sup> See p.52 of Commission staff working document on competition policy cited in FN 161 above.

Table 3.16 Use of crisis-related aid

	Belgium	Denmark	Germany	Ireland	Greece	Spain	France	Italy	Luxembourg	Netherlands	Austria	Portugal	Slovenia	U.K.	Total EU-28
<b>Recapitalizations</b>															
2008	14.4	0.5	20.0	-	-	-	13.2	-	2.5	14.0	0.9	-	-	49.4	115.2
2009	3.5	8.0	32.9	11.0	3.8	1.3	9.3	4.1	0.1	-	5.9	-	-	9.7	90.7
2010	-	1.9	6.7	35.3	-	-	9.5	-	-	4.8	0.6	-	-	34.6	93.5
2011	-	0.3	3.6	16.5	2.6	8.5	-	-	-	-	-	-	0.3	3.2	35.0
2012	2.9	-	0.9	-	30.9	40.4	2.6	2.0	-	-	2.0	6.8	0.5	-	90.8
2013	-	-	-	-	3.5	2.1	-	1.9	-	4.2	1.8	1.1	2.4	3.3	20.5
2014	-	-	-	-	-	-	-	-	-	-	0.8	4.9	0.4	-	7.6
<b>Impaired asset measures</b>															
2008	-	-	9.8	-	-	-	-	-	-	-	-	-	-	-	9.8
2009	7.7	-	24.8	-	-	-	1.2	-	-	5.0	0.4	-	-	40.4	79.5
2010	-	-	45.0	2.6	-	2.9	-	-	-	-	-	3.1	-	-	54.0
2011	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
2012	9.4	-	0.4	-	-	25.5	-	-	-	-	0.1	-	-	-	35.4
2013	4.7	0.3	-	-	-	4.5	-	-	-	-	-	-	-	-	9.5
2014	-	-	-	-	-	-	-	-	-	-	-	-	0.3	-	0.3
<b>Guarantees on liabilities</b>															
2008	9.0	145.0	18.7	180.3	-	-	8.7	-	0.4	0.9	2.4	1.2	-	33.5	400.4
2009	46.8	6.4	135.0	284.3	1.5	36.1	92.7	-	1.6	36.0	15.5	5.2	1.0	158.2	835.8
2010	32.8	22.3	132.0	196.3	26.7	55.8	91.5	-	1.4	40.9	19.3	5.0	2.2	150.7	799.8
2011	26.4	23.0	34.7	110.5	56.3	61.7	71.8	10.9	1.2	33.2	17.1	8.5	1.6	115.2	589.0
2012	45.6	1.2	10.0	83.5	62.3	72.0	53.4	85.7	1.9	19.4	11.8	16.6	0.2	21.9	492.1
2013	36.9	0.7	3.0	37.2	47.8	53.6	46.9	81.7	3.8	12.4	2.4	14.4	0.1	9.1	352.3
2014	37.6	-	2.0	10.6	60.0	11.1	36.1	22.0	0.6	-	4.0	3.5	1.8	14.1	204.5
<b>Liquidity measures, other than guarantees on liabilities</b>															
2008	-	0.6	3.6	-	0.5	2.3	-	-	-	13.2	-	1.1	-	-	22.2
2009	-	2.0	-	-	4.3	19.3	-	-	0.1	30.4	-	3.7	-	6.9	70.1
2010	-	0.7	4.7	-	6.9	19.0	-	-	0.1	7.9	-	3.8	-	18.5	62.6
2011	-	-	-	0.1	6.6	13.5	-	-	0.1	3.8	-	2.5	-	33.3	60.6
2012	-	-	-	0.7	2.8	3.5	-	-	0.1	3.8	-	0.2	-	32.7	44.3
2013	-	0.0	-	0.9	2.3	0.2	-	-	0.1	3.8	-	-	-	26.8	34.6
2014	0.0	0.2	-	-	2.2	-	-	-	0.1	4.7	-	-	-	24.0	31.6

Note: - refers to zero, 0.0 is greater than zero, but rounded to 0.0.  
Other member States either did not use crisis-related aid (Bulgaria, Croatia, the Czech Republic, Estonia, Malta, Romania and Slovakia) or relatively small amounts (Lithuania, Hungary, Poland and Finland).

Source: Commission State Aid Scoreboard 2015 - Aid in the context of the financial and economic crisis.  
Viewed at: [http://ec.europa.eu/competition/state\\_aid/scoreboard/financial\\_economic\\_crisis\\_aid\\_en.html](http://ec.europa.eu/competition/state_aid/scoreboard/financial_economic_crisis_aid_en.html) [November 2016].

### 3.3.4 Competition policy

3.185. The EU and the member States share responsibility for the application of the law on competition in the EU through DG Competition and the competition authorities of the member States.<sup>177</sup> The European Competition Network (ECN) was established in 2004 based on a Commission Notice<sup>178</sup> and a Joint Statement of the Council and the Commission on the Functioning of the Network of Competition Authorities.<sup>179</sup> The ECN was created to provide for an efficient separation of work between the EU and the member States and consistent application of competition rules. The objective of the ECN is to help build the legal framework for enforcement of EU competition law with respect to cross-border business practices which restrict competition.

3.186. The basic legislative structure for competition policy in the EU has not changed during the period under review (Table 3.17).

<sup>177</sup> The Competition Authorities of the member States are available at: [http://ec.europa.eu/competition/ecn/competition\\_authorities.html](http://ec.europa.eu/competition/ecn/competition_authorities.html) [December 2016].

<sup>178</sup> Commission Notice on cooperation within the Network of Competition Authorities (2004/C 101/03).

<sup>179</sup> Joint Statement of the Council and the Commission on the Functioning of the Network of Competition Authorities, 15435/02 Add 1. Viewed at: [http://ec.europa.eu/competition/ecn/joint\\_statement\\_en.pdf](http://ec.europa.eu/competition/ecn/joint_statement_en.pdf) [December 2016].

**Table 3.17 Competition policy legislative framework – selected rules**

Rule	Note
<b>Treaty on the Functioning of the European Union</b>	
TFEU Article 101	Prohibits agreements between two or more independent market operators that restrict competition.
TFEU Article 102	Prohibits firms holding a dominant position in a relevant market from abusing that position.
TFEU Article 105	The Commission may undertake investigations and make decisions, upon request by a member State or on its own initiative, concerning possible violations of the TFEU rules on competition policy. Such decisions may be appealed to the Court of Justice of the EU.
TFEU Article 106	Limited exceptions to the Treaty competition rules for undertakings required to operate services of general economic interest.
<b>Regulations and Directives</b>	
Council Regulation (EC) No. 1/2003 of 16 December 2002	On the implementation of the rules on competition laid down in Articles 81 and 82 of the EC Treaty (now Articles 101 and 102 of the TFEU).
Council Regulation (EC) No. 139/2004 of 20 January 2004	On the control of concentrations between undertakings (the EC Merger Regulation).
Directive 2014/104/EU of the European Parliament and the Council of 26 November 2014	On certain rules governing actions for damages under national law for infringements of the competition law provisions of the member States and of the EU.
Commission Regulation 773/2004/EC of 7 April 2004	Relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty.
Commission Regulation (EU) No. 330/2010 of 20 April 2010	On the application of Article 101(3) of the TFEU to categories of vertical agreements and concerted practices.
Commission Regulation (EU) No. 316/2014 of 21 March 2014	On the application of Article 101(3) of the TFEU to categories of technology transfer agreements.
Commission Implementing Regulation (EU) No. 1269/2013 of 5 December 2013	Amending Regulation (EC) No. 802/2004 implementing Council Regulation (EC) No. 139/2004 on the control of concentrations between undertakings.
<b>Other</b>	
Communication from the Commission OJ 2011/C 11/01	Guidelines on the applicability of Article 101 of the TFEU to horizontal cooperation agreements.
Communication from the Commission OJ 2014/C 89/03	Guidelines on the application of Article 101 of the TFEU to technology transfer agreements.
Communication from the Commission OJ 2006/C 210/02	Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No. 1/2003.
Communication from the Commission OJ 2013/C 167/07	On quantifying harm in actions for damages based on breaches of Article 101 or 102 of the TFEU.
Practical Guide SWD(2013) 205 - C(2013) 3440	Quantifying harm in actions for damages based on breaches of Article 101 or 102 of the TFEU.
Communication from the Commission OJ 2009/C 45/02	Guidance on the Commission's enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings.
Commission Notice OJ 2013/C 366	On a simplified procedure for treatment of certain concentrations under Council Regulation (EC) No. 139/2004.

Source: DG Competition, WTO Secretariat, and EUR-Lex.

### 3.3.4.1 Anti-trust

3.187. Although Article 101 and 102 of the TFEU and Council Regulation (EC) No. 1/2003 are generally applicable, there are specific rules for some sectors. During the period under review there has been no change to the rules for these specific sectors, including agriculture, fisheries, insurance, postal services, professional services, transport, and telecommunications.<sup>180</sup>

#### 3.3.4.1.1 Anti-competitive agreements

3.188. The general prohibition on agreements that restrict competition in Article 101 of the TFEU, does not apply to agreements among companies with a combined market share of 10% for

<sup>180</sup> DG Competition online information. Viewed at: [http://ec.europa.eu/competition/index\\_en.html](http://ec.europa.eu/competition/index_en.html) [December 2016].

horizontal agreements or 15% for vertical agreements (*de minimis*). Furthermore, Article 101 may not apply to agreements:

- That lead to economic benefits (such as improvements in production or distribution, or to technical or economic progress);
- Where the restrictions are required to achieve these benefits;
- Where consumers benefit from a fair share of the efficiency gains; and
- Where the agreement must not eliminate competition for a substantial part of the products concerned.

3.189. The Commission Guidelines relating to horizontal cooperation agreements set out general principles for assessment of information exchange among competitors, including information shared through third parties, agencies, suppliers, or customers. Such information could cover concerted practices or be related to fixing of prices or quantities.

3.190. Commission Regulation (EU) 330/2010 on vertical agreements and concerted practices is a block exemption regulation (BER) which sets out the requirements for a vertical agreement to qualify as exempt from Article 101(1) of the TFEU. These requirements include five "hardcore" restrictions which would disqualify an agreement from the exemption:

- Suppliers may not fix minimum resale prices;
- Suppliers may not apply restrictions on the territory into which they sell or to customers that buy the products;
- Distributors may not be restricted from selling to end-users, although suppliers may be prohibited from selling to unauthorized distributors;
- Authorized distributors must be free to sell or buy the goods to or from other authorized distributors; and
- A manufacturer of spare parts may not restrict a buyer from selling them to end-users, independent repairers, or service providers.

3.191. In addition, to be covered by the BER, both supplier and buyer must not have a market share greater than 30%. Furthermore, specific conditions apply to vertical agreements that include non-competition obligations during or on termination of the contract, and obligations relating to the exclusion of specific brands in a selective distribution system.

3.192. Commission Regulation (EU) No. 316/2014, the Technology Transfer Block Exemption Regulation (TTBER), exempts licensing agreements between companies with limited market share (20% for agreements between competitors, and 30% for agreements with non-competitors) and meet conditions set out in the Regulation, which include similar "hardcore" restrictions to those that apply under Commission Regulation (EU) No. 330/2010.

### ***Investigation procedure***

3.193. The investigation and redress procedures have not changed over the review period. Following an investigation, a Statement of Objections (SO) may be issued informing the parties of the Commission's objections. The companies then have the right to defence in writing and, if they so wish, at an oral hearing under an independent Hearing Officer after which the Commission reviews its initial objections. If the Commission's objections are not fully met, a draft decision is submitted to the Advisory Committee, made up of the representatives of the competition authorities of the member States, and then to the College of Commissioners for adoption. Alternatively, the Commission may make a commitment decision under which the parties may make legally binding undertakings to address the Commission's objections. The parties to a Commission decision have the right of appeal to the General Court, and General Court decisions may be then appealed to the Court of Justice.

3.194. Under the 2006 Guidelines on the method of setting fines, fines are based on a percentage, up to 30%, of sales in the relevant sector for each company participating in an infringement. In addition, the Commission may add an additional "entry fee" of 15-25% of annual

relevant sales while the company was participating in the cartel and not necessarily only during the period of infringement. In cases of repeat offenders, the fines may be increased by up to 100% and take account of the decisions of the national competition authorities of the member States as well as Commission decisions.

### ***Leniency***

3.195. Immunity from fines or a reduction in fines may be possible in cases where an enterprise involved in a cartel cooperates with the Commission. To qualify for immunity, a company in a cartel must be the first to inform the Commission of the cartel, and provide enough information to start an investigation of the participating companies. Reductions in fines may be possible for companies that no longer participate in the cartel and provide evidence of significant added value to the Commission. In these cases, fines may be reduced by up to 50% for the first company to comply with these conditions, with lower rates for the following ones.

### ***Investigations and fines imposed***

3.196. In 2016, the level of fines imposed on cartels was €3,561 million (Table 3.18), of which €2,926 million was related to the trucks cartel, with Daimler being fined €1,009 million, DAF €753 million, Volvo/Renault €670 million, and Iveco €495 million. In this case, MAN was not fined, as it had revealed the existence of the cartel to the Commission.<sup>181</sup>

**Table 3.18 Anti-trust cases, investigations, decisions, and fines**

	Note	2012	2013	2014	2015	2016
Commission investigations		6	5	21	43	
NCA investigations		106	116	173	136	
Submitted by NCAs		91	60	101	100	
A. 101	Anti-competitive agreements	61%	66%	67%	69%	
A. 102	Abuse of dominant position	28%	21%	29%	24%	
A. 101/102	Combined	11%	13%	4%	7%	
<b>Cartels</b>						
<b>Commission</b>						
Cases decided	No	5	4	10	5	5
Fines imposed	€ million	1,816	1,666	1,689	366	3,561

Source: DG COMP, Cartel Statistics. Viewed at: <http://ec.europa.eu/competition/cartels/statistics/statistics.pdf> [December 2016].

3.197. In addition, in December 2016, the Commission stated that the cartel investigation into euro interest rate derivatives had been completed, with fines of €485 million imposed on Crédit Agricole, HSBC, and JP Morgan Chase after other banks had reached a settlement in December 2013 (Barclays, Deutsche Bank, RBS and Société Générale).<sup>182</sup>

3.198. In other cases, following a request for comments, the Commission has accepted and made legally binding, commitments by companies. For example, commitments undertaken by container liner shipping companies on price transparency: where 14 carriers agreed that instead of only announcing price increases, they would provide maximum prices and the main elements thereof.<sup>183</sup>

<sup>181</sup> European Commission (2016), *Antitrust: Commission fines truck producers €2.93 billion for participating in a cartel*, Press release, 19 July 2016. Viewed at: <http://ec.europa.eu/competition/antitrust/news.html> [December 2016].

<sup>182</sup> European Commission (2016), *Anti-trust: Commission fines Crédit Agricole, HSBC and JPMorgan Chase €485 million for euro interest rate derivatives cartel*, Press release, 7 December 2016. Viewed at: <http://ec.europa.eu/competition/antitrust/news.html> [December 2016].

<sup>183</sup> European Commission (2016), *Anti-trust: Commission accepts commitments by container liner shipping companies on price transparency*, Press release, 7 July 2016. Viewed at: <http://ec.europa.eu/competition/antitrust/news.html> [December 2016].



3.199. Among the other investigations of note were the inquiries launched in May 2015 into the e-commerce sector in the EU, with initial findings published in September 2016<sup>184</sup> following an earlier initial finding that geo-blocking is wide-spread in the EU.<sup>185</sup>

3.200. In addition, the 2014 directive on antitrust damages actions is intended to reduce the obstacles to compensation for consumers. The directive was to have been implemented by the member States through their legal systems by 27 December 2016. The directive on damages was complemented by the Commission recommendations on collective redress and the Communication and Practical Guide on quantifying anti-trust harm in damages actions.

### 3.3.4.1.2 Abuse of dominant position

3.201. In the review period, there has been no significant change to anti-trust procedures in abuse of dominance (Article 102 of TFEU), and the Commission's priorities in assessing abuse of a dominant position are set out in the 2009 Communication on enforcement priorities in applying Article 102 of the TFEU to abusive exclusionary conduct by dominant undertakings.

3.202. In the Communication, dominance is defined as: "a position of economic strength enjoyed by an undertaking, which enables it to prevent effective competition being maintained on a relevant market, by affording it the power to behave to an appreciable extent independently of its competitors, its customers and ultimately of consumers". The definition of relevant market is based on the product itself (including possible substitutes), and the geographic market. Market share is used as an indicator of the importance of a firm in a market, and the Commission considers it unlikely that a company with a market share of less than 40% would be dominant. However, other factors are also taken into account, including the ease with which other companies can enter the market; the existence of countervailing buyer power; the overall size and strength of the company and its resources; and the extent to which it is vertically integrated.

3.203. Dominance is not, *per se*, illegal, and a dominant company is entitled to compete with others. However, it has a special responsibility to ensure that its conduct does not distort competition. Examples of practices that could be abusive include: exclusive purchasing requirements; below-cost price-setting; refusing to supply inputs indispensable for competition in an ancillary market; tying; loyalty rebates; and charging excessive prices.

3.204. The investigation and redress procedures have not changed over the review period and, with the additional importance of defining the relevant market, the steps are the same as cartel investigations. Similarly, the fines that may be imposed for abuse of dominant position are the same, *mutatis mutandis*, as those for cartels, and there is also the possibility of claims for damages from consumers.

3.205. The cases concerning abuse of dominant position during the review period include ongoing procedures with Google, with statements of objections on comparison shopping, restricting third party websites from displaying search adds from competitors<sup>186</sup>, and the Android operating system and applications<sup>187</sup>. In addition, the Commission opened formal investigations to assess whether Anheuser-Busch InBev SA abused its dominant position on the Belgian beer market by hindering imports of its beer from neighbouring countries<sup>188</sup>, and whether Qualcomm abused its dominant

<sup>184</sup> European Commission (2016), *Anti-trust: Commission publishes initial findings of e-commerce sector inquiry*, Press release, 15 September 2016. Viewed at: <http://ec.europa.eu/competition/antitrust/news.html> [December 2016].

<sup>185</sup> European Commission (2016), *Anti-trust: e-commerce sector inquiry finds geo-blocking is wide-spread throughout EU*, Press release, 18 March 2016. Viewed at: <http://ec.europa.eu/competition/antitrust/news.html> [December 2016].

<sup>186</sup> European Commission (2016), *Anti-trust: Commission takes further steps in investigations alleging Google's comparison shopping and advertising-related practices breach EU rules*, Press release, 14 July 2016. Viewed at: <http://ec.europa.eu/competition/antitrust/news.html> [December 2016].

<sup>187</sup> European Commission (2016), *Anti-trust: Commission sends Statement of Objections to Google on Android operating system and applications*, Press release, 20 April 2016. Viewed at: <http://ec.europa.eu/competition/antitrust/news.html> [December 2016].

<sup>188</sup> European Commission (2016), *Anti-trust: Commission opens formal investigation into AB InBev's practices on Belgian beer market*, Press release, 30 June 2016. Viewed at: <http://ec.europa.eu/competition/antitrust/news.html> [December 2016].

position by offering incentives to buy chipsets from Qualcomm, and whether Qualcomm engaged in "predatory pricing".<sup>189</sup>

### 3.3.4.2 Mergers and acquisitions

3.206. Under the Merger Regulation, all mergers with an EU dimension are reviewed by the Commission, where an EU dimension is defined as either:

- a merger where the parties have;
  - a combined worldwide turnover greater than €5,000 million; and
  - each party has an EU-wide turnover greater than €250 million; or
- a merger where the parties have;
  - a combined worldwide turnover greater than €2,500 million;
  - a turnover greater than €100 million in each of at least three member States;
  - at least two of the firms with a turnover greater than €25 million in each of these three member States; and
  - at least two firms with an EU-wide turnover greater than €100 million each.

3.207. In other cases, the competition authorities of the member States may need to approve the merger, and there is a referral mechanism to allow transfers of cases from a member State to the Commission or vice versa.

3.208. All mergers with an EU dimension must be notified to the Commission before they are implemented. A simplified procedure for merger approval applies to mergers which are considered unlikely to raise problems for competition. Since 2014, more cases have fallen under the simplified procedure, such as those with a combined market share of 20% for horizontal mergers and 30% for vertical mergers, or where the increase in market share resulting from a merger is quite small. A white paper suggesting further legislative change was issued by the Commission in July 2014.<sup>190</sup> The proposed changes were summarized by the Commission<sup>191</sup> in a previous report.<sup>192</sup> In August 2016, the Commission launched a further evaluation of procedural and jurisdictional issues of EU merger control, in order to assess whether there is scope for legislative changes.<sup>193</sup>

3.209. After being notified, the Commission has 25 working days to complete a Phase I investigation, at the end of which the merger is cleared with or without remedies or, if there are outstanding concerns, a Phase II investigation is opened. A Phase II investigation is a much more detailed analysis of the effect of the merger on competition, including claims of efficiency gains that could result from the merger. The result of the Phase II investigation is to unconditionally clear the merger, approve it subject to remedies, or prohibit it.

3.210. If the conclusion is that the merger will probably impede competition, the Commission sends a statement of objections to the parties, who have the right to respond and to request a hearing by the Hearing Officer. As for decisions relating to cartels and abuse of dominant position, all Commission decisions and/or procedural conduct may be appealed to the General Court and then, on points of law, to the Court of Justice of the EU.

<sup>189</sup> European Commission (2015), *Anti-trust: Commission opens two formal investigations against chipset supplier Qualcomm*, Press release, 16 July 2015. Viewed at: <http://ec.europa.eu/competition/antitrust/news.html> [December 2016].

<sup>190</sup> European Commission (2014), *White Paper – Towards more effective EU merger control*, COM(2014)449 final, 9 July 2014.

<sup>191</sup> DG Competition online information. Viewed at: [http://ec.europa.eu/competition/mergers/legislation/regulations.html#merger\\_reg](http://ec.europa.eu/competition/mergers/legislation/regulations.html#merger_reg) [December 2016].

<sup>192</sup> WTO document WT/TPR/S/317/Rev.1, paras 3.183-3.184.

<sup>193</sup> DG Competition online information. Viewed at: [http://ec.europa.eu/competition/consultations/2016/merger\\_control/index\\_en.html](http://ec.europa.eu/competition/consultations/2016/merger_control/index_en.html) [April 2017].

**Table 3.19 Merger notifications and decisions 2013-16**

	2013	2014	2015	2016
Notified cases	277	303	337	337
Withdrawn	1	6	8	8
Phase I decisions				
Out of scope	0	0	1	7
Compatible	252	280	297	299
Compatible with remedies	11	12	13	17
Phase II decisions				
Compatible	2	2	1	1
Compatible with remedies	2	5	7	6
Prohibited	2	0	0	1

Source: DG Competition. Viewed at: [http://ec.europa.eu/competition/mergers/overview\\_en.html](http://ec.europa.eu/competition/mergers/overview_en.html) [December 2016].

### 3.3.4.3 International cooperation

3.211. The EU cooperates with other competition authorities, and has competition agreements and cooperation arrangements with a variety of countries as set out in previous reviews. During the review period, a new agreement was signed with South Africa in 2016. In addition, competition provisions have also been included in numerous general cooperation or association agreements, or trade agreements.

3.212. The EU has also been supportive of greater multilateral cooperation through the International Competition Network (ICN), the UNCTAD Intergovernmental Group of Experts on Competition Policy, and the OECD Competition Committee. The EU considers that these multilateral forums provide an important platform to promote open competition and fight protectionism; this enables competition authorities worldwide to respond to cases more efficiently through coordinated inspections across several jurisdictions.<sup>194</sup>

### 3.3.5 Taxation

3.213. As outlined in the previous Review, the main priorities of EU tax policy continue to focus on eliminating tax barriers to cross-border economic activity, and combatting harmful tax competition as well as tax evasion and tax fraud.

3.214. The Commission has also adopted a tax reform package with the aim of overhauling the way in which companies are taxed in the Single Market. To this end, on 25 October 2016, the Commission relaunched proposals for a Common Consolidated Corporate Tax Base<sup>195</sup> (CCCTB) after a lack of agreement on the original proposal from 2011. The proposed directives (the first for a common tax base and the second bringing in consolidation and formula apportionment) are currently under discussion with member States. In terms of the main changes to the original proposal, the CCCTB will be mandatory for companies with a turnover of more than €750 million, whereas previously it was a general opt-in system. Also, the Commission wants member States to first agree on the common tax base before tackling the EU-wide consolidation of tax returns.

3.215. For the EU-28 in 2015, total receipts from taxes and social contributions amounted to the equivalent of 40.0% of GDP or €5,878 billion (Table 3.20). In 2015, income taxes (i.e. taxes on individual and household income) were the most important (9.4% of GDP), followed by VAT (7.0%) and employers' social contributions (6.9%).

<sup>194</sup> DG Competition online information. Viewed at: <http://ec.europa.eu/competition/international/bilateral/> [December 2016].

<sup>195</sup> Proposal for a Council Directive on a CCCTB in document COM(2016) 683 final, 25 October 2016.

**Table 3.20 Taxes and social contributions in the EU-28, 2012-15**

(€ billion)

	2012	2013	2014	2015
Total receipts from taxes and social contributions (including imputed social contributions) after deduction of amounts assessed but unlikely to be collected	5,320	5,422	5,602	5,878
Total tax receipts	3,535	3,614	3,742	3,949
Taxes on production and imports	1,805	1,829	1,903	2,002
Taxes on products	1,483	1,501	1,560	1,648
Value added type taxes (VAT)	928	939	976	1,033
Taxes and duties on imports excluding VAT	57	57	60	65
Taxes on products, except VAT and import taxes	497	504	523	551
Other taxes on production	322	328	343	354
Current taxes on income, wealth, etc.	1,701	1,747	1,804	1,907
Taxes on income	1,582	1,621	1,673	1,769
of which:				
Taxes on individual or household income including holding gains	1,240	1,272	1,322	1,389
Taxes on the income or profits of corporations including holding gains	332	336	338	364
Other current taxes	118	126	131	139
Capital taxes	30	38	35	40
Net social contributions	1,799	1,824	1,873	1,941
of which:				
Employers' actual social contributions	943	951	980	1,014
Households' actual social contributions	725	741	759	790

Source: Eurostat online database [gov\_10a\_taxag]. Viewed at: [http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=gov\\_10a\\_taxag&lang=en](http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=gov_10a_taxag&lang=en) [December 2016]. Includes taxes collected by the institutions of the EU in the context of the customs union.

### 3.3.5.1 Income tax

3.216. Taxes and employee social contributions in the member States differ considerably in their economic significance, and the systems of income tax vary from one member State to another with different categories of income subject to income tax. For example, in Denmark, where social contributions remain by far the lowest, personal income taxes are by far the highest. In contrast, workers in Cyprus have the lowest income taxes in the EU. Tax systems also vary widely among progressive tax systems and between progressive and flat tax systems. Governments with flat tax policies impose a fixed rate on income tax, the lowest being 10% in Bulgaria.<sup>196</sup>

3.217. A further feature of variation is that the share of tax revenue accounted for by local taxes and social security funds is substantial in some member States (e.g. Denmark) and very small in others (e.g. Malta).

**Table 3.21 Personal income taxes and actual social contributions in the EU-28, 2015**

(% of GDP)

	Taxes on individual or household income including holding gains <sup>a</sup>	Households' actual social contributions <sup>a</sup>	Compulsory employees' actual social contributions <sup>a</sup>	Tax system <sup>b</sup>	Top rate of income tax (%) <sup>b</sup>	Income for maximum income tax (single person) <sup>b</sup>
Austria	10.9	8.0	7.9	Progressive 5 brackets	50	€90,000
Belgium	12.6	5.6	5.5	Progressive 5 brackets	50	€38,080
Bulgaria	3.1	3.1	3.1	Flat rate	10	
Croatia	3.6	5.6	5.6	Progressive 3 brackets	40	HRK 158,400

<sup>196</sup> See "The Tax Burden of Typical Workers in the EU-28 – 2016", Institut Economique Molinari. Viewed at: <http://www.institutmolinari.org/IMG/pdf/tax-burden-eu-2016.pdf>.

	Taxes on individual or household income including holding gains <sup>a</sup>	Households' actual social contributions <sup>a</sup>	Compulsory employees' actual social contributions <sup>a</sup>	Tax system <sup>b</sup>	Top rate of income tax (%) <sup>b</sup>	Income for maximum income tax (single person) <sup>b</sup>
Cyprus	2.7	2.7	2.7	Progressive 4 brackets	35	€60,000
Czech Republic	3.6	5.3	5.2	Flat rate	15	
Denmark	26.5	0.7	0.0	Hybrid system	55.8 <sup>c</sup>	
Estonia	5.8	0.6	0.6	Flat rate	20	
Finland	13.3	4.2	4.0	Progressive 4 brackets	31.75	€72,300
France	8.8	5.6	5.6	Progressive 5 brackets	45	€152,108
Germany	9.1	8.8	8.5	Progressive formula	45	€254,447
Greece	5.4	6.3	6.3	Progressive 3 brackets	42	€42,000
Hungary	5.0	5.5	5.5	Flat rate	15	
Ireland	7.7	1.5	1.5	Progressive 2 brackets	40	€33,800
Italy	12.2	4.4	4.3	Progressive 5 brackets	43	€75,000
Latvia	5.9	2.5	2.5	Flat rate	23	
Lithuania	3.9	3.8	3.8	Flat rate	15	
Luxembourg	9.2	6.3	6.2	Progressive 19 brackets	40	€100,000
Malta	6.4	2.9	2.9	Progressive 3 brackets	35	€60,000
Netherlands	7.7	9.1	9.1	Progressive 3 brackets	52	€66,421
Poland	4.7	7.4	7.4	Progressive 2 brackets	32	PLN85,528 (€20,441)
Portugal	7.3	3.9	3.9	Progressive 5 brackets	48	€80,000
Romania	3.7	3.1	3.1	Flat rate	16	
Slovakia	3.1	5.8	5.8	Progressive 2 brackets	25	€35,022.31
Slovenia	5.1	9.0	9.0	Progressive 4 brackets	50	€70,907.20
Spain	7.4	3.4	3.4	Progressive 5 brackets	45	€60,000
Sweden	15.1	0.1	0.1	Progressive 2 brackets	25	SEK625,800 (€66,905)
United Kingdom	9.2	3.0	2.6	Progressive 3 brackets	45	£150,000 (€206,657)

Source: a. Eurostat online database [gov\_10a\_taxag]. Viewed at: [http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=gov\\_10a\\_taxag&lang=en](http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=gov_10a_taxag&lang=en) [December 2016].

b. DG Taxation and Customs Union (2016), Taxation trends in the European Union - Data for the EU member States, Iceland and Norway, Edition 2016.

c. Includes local tax (average 24.91%).

### 3.3.5.2 Corporation tax

3.218. The EU average top rate of tax on corporate income has been gently declining in recent years, falling from 23.8% in 2009 to 22.5% in 2016. Corporate tax rates still differ significantly within the Union (Table 3.22).

3.219. The nominal tax rate on corporate income varies between a minimum of 10% in Bulgaria to top rates equal to, or above, 30% in Belgium, France, Italy and Malta. However, tax provisions may limit the rate effectively applied as outlined, *inter alia*, in the most recent World Bank/PwC

report on paying taxes.<sup>197</sup> In the case of most member States, the charges related to labour are more important than taxes on profits.

**Table 3.22 Taxes on the income or profits of corporations including holding gains and employer social contributions**

(% of GDP for 2015, tax rates 2015)

	Taxes on the income or profits of corporations including holding gains, (% of GDP) <sup>a, b</sup>	Employers' actual social contributions <sup>b</sup>	Nominal corporate income tax rate <sup>b</sup>	Profit taxes <sup>c, d</sup>	Labour taxes <sup>c, d</sup>	Other <sup>c, d</sup>
Austria	2.3	8.0	25.0	16.9	34.2	0.5
Belgium	3.4	5.6	33.0	9.1	48.9	0.7
Bulgaria	2.1	3.1	10.0	5	20.2	1.8
Croatia	1.9	5.6	20.0	19.4	1.5	0
Cyprus	5.9	2.7	12.5	9.5	13.4	1.8
Czech Republic	3.4	5.3	19.0	9.1	38.4	2.5
Denmark	2.6	0.7	22.0	19	3.2	2.8
Estonia	2.1	0.6	20.0	7.9	38.8	2
Finland	2.2	4.2	20.0	11.7	25.1	1.3
France	2.6	5.6	33.33/34.4	0.4	53.5	8.9
Germany	2.4	8.8	15.0	23.2	21.3	4.4
Greece	2.2	6.3	29.0	22.4	27.7	0.6
Hungary	1.7	5.5	10.0/19.0	9.9	34.3	2.3
Ireland	2.7	1.5	12.5/25.0	12.4	12.2	1.4
Italy	2.0	4.4	27.5/31.4	17	43.4	1.6
Latvia	1.6	2.5	15.0	6.3	26.6	3
Lithuania	1.5	3.8	15.0	5.9	35.2	1.6
Luxembourg	4.5	6.3	21.0	4.6	15.7	0.5
Malta	6.3	2.9	35.0	32.4	10.9	0.5
Netherlands	2.7	9.1	20.0/25.0	20.6	19.4	0.4
Poland	1.8	7.4	19.0	14.5	24.9	1
Portugal	3.1	3.9	21.0	12.5	26.8	0.5
Romania	2.3	3.1	16.0	11.6	25.8	1
Slovakia	3.7	5.8	22.0	10.5	39.7	1.4
Slovenia	1.5	9	17.0	12.7	18.2	0.1
Spain	2.4	3.4	25.0	12.4	35.9	0.7
Sweden	3.0	0.1	22.0	13.1	35.4	0.6
United Kingdom	2.5	3.0	20.0	18.3	10.9	1.7

Source: a. Eurostat online database [gov\_10a\_taxag]. Viewed at: [http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=gov\\_10a\\_taxag&lang=en](http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=gov_10a_taxag&lang=en) [December 2016];  
b. DG Taxation and Customs Union (2016), Taxation trends in the European Union - Data for the EU member States, Iceland and Norway, Edition 2016.  
c. World Bank/PwC (2017), Paying Taxes 2017, p. 115. Nominal rates do not include various surcharges (e.g. regional surcharges).  
d. The last three columns relate to the PwC/World Bank indicators for the Total Tax Rate. This measures the amount of taxes and mandatory contributions borne by businesses in the second year of operation, expressed as a share of commercial profit.

### 3.3.5.3 Value Added Tax

3.220. Since the last Review, the Commission has proposed an action plan on VAT<sup>198</sup>, outlining the principles according to which a future single European VAT system would be organized. A

<sup>197</sup> See <http://www.pwc.com/qx/en/services/tax/paying-taxes-2017.html>; and <http://www.pwc.com/qx/en/paying-taxes/pdf/pwc-paying-taxes-2017-appendix2.pdf>.

<sup>198</sup> Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on an action plan on VAT: Towards a single EU VAT area – Time to Decide in document COM(2016) 148 final of 7 April 2016.

central feature of the plan is the proposed change to the country of destination principle in connection with cross-border shipments of goods. The action plan also outlines possible ways of granting members States more flexibility to introduce reduced rates.<sup>199</sup>

3.221. As shown in Table 3.23, the importance of VAT to member State government revenues differs significantly from one member State to another, ranging from 13.0% of GDP in Croatia to 4.7% in Ireland. The standard rate – i.e. the rate that EU member States have to apply to all non-exempt goods and services – must be no less than 15%, but there is no maximum. Member States also have the option to apply one or two reduced rates (to goods and services listed in Annex III of the VAT Directive) which must be no less than 5%.

**Table 3.23 VAT in the EU-28**

(% of GDP for 2015, tax rates 2016)

	VAT (% of GDP)	Standard rate (%)	Reduced rate (%)	Parking rate (%)	Zero-rated
Austria	7.7	20.0	10/13	13.0	
Belgium	6.7	21.0	6/12	12.0	Yes
Bulgaria	9.0	20.0	9.0		
Croatia	13.0	25.0	5/13		
Cyprus	8.6	19.0	5/9		
Czech Republic	7.3	21.0	10/15		
Denmark	9.4	25.0			Yes
Estonia	9.2	20.0	9.0		
Finland	9.1	24.0	10/14		Yes
France	6.9	20.0	5.5/10		
Germany	7.0	19.0	7.0		
Greece	7.3	24.0	6/13		
Hungary	9.7	27.0	5/18		
Ireland	4.7	23.0	9/13.5	13.5	Yes
Italy	6.2	22.0	5/10		
Latvia	7.7	21.0	12.0		
Lithuania	7.7	21.0	5/9		
Luxembourg	6.8	17.0	8.0	14.0	
Malta	7.4	18.0	5/7		Yes
Netherlands	6.6	21.0	6.0		
Poland	7.0	23.0	5/8		
Portugal	8.6	23.0	6/13	13.0	
Romania	8.1	20.0	5/9		
Slovakia	6.9	20.0	10.0		
Slovenia	8.3	22.0	9.5		
Spain	6.5	21.0	10.0		
Sweden	9.1	25.0	6/12		Yes
United Kingdom	6.9	20.0	5.0		Yes

Source: Eurostat online database [gov\_10a\_taxag]. Viewed at: [http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=gov\\_10a\\_taxag&lang=en](http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=gov_10a_taxag&lang=en) [December 2016]. DG Taxation and Customs Union (2016), VAT Rates Applied in the member States of the European Union, Situation at 1 August 2016, taxud.c.1(2016).

### 3.3.6 State trading, state-owned enterprises, and privatization

#### 3.3.6.1 State trading

3.222. During the review period, the EU has notified one state-trading enterprise pursuant to Article XVII of GATT 1994 and its Understanding. Thus, the Swedish distributor of alcoholic beverages, Systembolaget AB, has been notified as a retail monopoly.<sup>200</sup> It has a contract with the

<sup>199</sup> Regarding the minimum rate, by means of Directive (EU) 2016/856, the Council extended the period of validity of the 15% minimum VAT standard rate until the end of 2017.

<sup>200</sup> WTO document G/STR/N/16/EU.



Government of Sweden for the exclusive retail resale of alcoholic beverages, and may import, but not export, these products. The monopoly has been put in place with the aim of reducing the total alcohol consumption by limiting availability.<sup>201</sup>

3.223. However, there are a few other enterprises in EU member States that have exclusive privileges with respect to the sale or distribution of certain products. The British Wool Marketing Board, pursuant to the British Wool Marketing Scheme of 1950, has exclusive rights with respect to grading and marketing wool from U.K.-registered producers.<sup>202</sup> Furthermore, the Finnish state monopoly alcohol distributor, Alko, and its related state-owned producer/importer, Altia, have a similar role to Sweden's Systembolaget in order to limit the type and distribution of alcoholic beverages in Finland.<sup>203</sup> The EU authorities were in agreement that these entities were state-trading enterprises pursuant to Article XVII, and would be notifying them to the WTO in the future.

3.224. Article 37 of the TFEU provides some provisions with respect to state monopolies, i.e. to ensure that they provide non-discriminatory treatment when operating commercially. This Article provides that there will be no discrimination for the goods when procured or marketed, i.e. imported or exported between member States, when the state either directly or indirectly supervises, determines, or appreciably influences such intra-EU imports or exports.<sup>204</sup> Thus, these provisions apply to the EU internal market but not to external trade. State monopolies are subject to general EU rules, including, for example, rules on competition, freedom of establishment and non-discrimination.

### 3.3.6.2 State-owned enterprises

3.225. The EU has no common definition of state-owned enterprises (SOEs), rather each member State has its own legal provisions, and there are various forms of state ownership. Thus, a direct comparison across member States is difficult to apply in many cases due to lack of uniformity. However, a 2016 institutional paper by the European Commission had, for its purposes, defined SOEs as companies where the state exercised control, regardless of the size of state ownership.<sup>205</sup> Furthermore, it is the member States that retain competence for SOEs, including their functioning, funding, and policy. Article 345 of the TFEU states that: "The Treaties shall in no way prejudice the rules in member States governing the system of property ownership". For example, the Treaties will not interfere with a member State's choice to organize (part of) its economy on the basis of SOEs as opposed to private companies. However, general EU rules are applicable also to SOEs including, for example, rules on competition, freedom of establishment and non-discrimination. It is noted that, as many member States are also members of the OECD, they, in principle, follow the non-binding Guidelines on Corporate Governance of SOEs, which aims to provide transparency and disclosure, a rules-based environment, equitable treatment of shareholders, responsibilities for board members, rationales for state ownership, etc.<sup>206</sup>

3.226. SOEs continue to play a significant role in the EU by providing a large share of the output and employment, while significant disparities remain among member States as to the level and scope of public ownership. According to the EC's Institutional Paper on SOEs, most member States have significant participation of SOEs in the energy and rail sectors. In the new member States, there tends to be SOEs in many sectors of the economy due to historical legacies, while in the EU-15, SOEs are more concentrated in the network sectors.<sup>207</sup> While there has been a gradual

<sup>201</sup> WTO document G/STR/N/16/EU.

<sup>202</sup> British Wool Marketing Board online information. Viewed at: <http://www.britishwool.org.uk/> and <http://www.britishwool.org.uk/assets/uploads/BWMB-Full-Accounts-2014.pdf>; and Department for Environment, Food and Rural Affairs archived information at: <http://webarchive.nationalarchives.gov.uk/20080910140806/http://www.defra.gov.uk/farm/livestock/pdf/britishwool-review0408.pdf>.

<sup>203</sup> Online information: <https://www.altiagroup.com>, <https://www.alko.fi/>, and <https://en.wikipedia.org/wiki/Alko>.

<sup>204</sup> Consolidated Version of the TFEU, European Commission online information. Viewed at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT&from=EN>.

<sup>205</sup> "State-Owned Enterprises in the EU: Lessons Learnt and Ways Forward in a Post-Crisis Context", European Commission online information. Viewed at: [http://ec.europa.eu/economy\\_finance/publications/eeip/ip031\\_en.htm](http://ec.europa.eu/economy_finance/publications/eeip/ip031_en.htm).

<sup>206</sup> European Commission online information. Viewed at: [http://ec.europa.eu/economy\\_finance/events/2015/20151124-workshop/documents/eu\\_guidelines\\_presentation\\_hans\\_en.pdf](http://ec.europa.eu/economy_finance/events/2015/20151124-workshop/documents/eu_guidelines_presentation_hans_en.pdf).

<sup>207</sup> "State-Owned Enterprises in the EU: Lessons Learnt and Ways Forward in a Post-Crisis Context", European Commission online information. Viewed at: [http://ec.europa.eu/economy\\_finance/publications/eeip/ip031\\_en.htm](http://ec.europa.eu/economy_finance/publications/eeip/ip031_en.htm).

overall reduction in SOEs in most member States over the last 15 years, there has been somewhat of a reversal during the financial crisis, when many member States intervened or took equity interests in financial sector companies in particular. This has prompted further scrutiny and examination of SOEs, particularly as to their financial performance and impact on fiscal balances. Concerns have been raised as to their market functioning, public finances, and financial stability.

3.227. There have also been reports of the reform of SOEs in the EU in the last 15 years, with reductions in direct government control, improved corporate governance, and modifications to the legal framework in which SOEs operate. Many of these improvements can be related to adhering to the OECD Guidelines. In particular, there have been improvements in transparency in Italy; separation of ownership and regulatory functions in Lithuania; progress in the selection of supervisory boards in Croatia; and improvement in reporting modalities in several member States.<sup>208</sup> There is also a Commission Directive on transparency of financial relations between member States and public undertakings to ensure the transparency of public funds made available to state-owned companies.<sup>209</sup> However, while information is to be reported to the Commission pursuant to this Directive, it was not available.

3.228. One of the areas where comparability can be undertaken among member States is with respect to a recent requirement for member States to report on the participation of the government in the capital of public and private corporations.<sup>210</sup> The liabilities of public corporations as they pertain to its overall fiscal position have been an important benchmark in the aftermath of the financial crisis. This data demonstrates that government participation in public or private corporations can be beneficial if they produce profits, or alternatively, create a liability on public finances in the case of unprofitability. The government's role in the backing of SOEs varies considerably by member State (Table 3.24). The member States with the largest exposure in terms of liabilities are Germany and the Netherlands, whereby SOE liabilities exceed GDP (110% and 108% respectively). Other significant liabilities exist for France, Greece, Ireland, Luxembourg, Slovenia, Portugal, Belgium, and the U.K., where it exceeds 50% of GDP. It is important to note that, for all member States reporting significant liabilities, nearly all relate to the financial sector. Most member States' liabilities are with respect to the central government, except for Germany and Finland where most is at the level of the local government.

3.229. An overview was undertaken of government ownership in enterprises as reported by the individual member States (Table A3.5), as there is no common reporting at the EU level. In view of the differences in SOE definitions (i.e. some reporting includes only majority ownership, whereas others include all shareholding or investments of the state), and varying levels of detailed information available, particularly at the sub-central level, the information set out in the Table is meant to provide only a rough overview of governments as stakeholders in enterprises. In most member States, governments have ownership interests in at least 50 enterprises; while the figure varies considerably, with Italy having over 10,000. When sub-central enterprises with state involvement are also accounted for, Germany, Romania, and Sweden have a considerable number of such enterprises, with Germany having the largest overall. These enterprises operate in all sectors of the economy, while the largest ones tend to be concentrated in the energy, financial, and transport sectors. While some member States have moved towards privatization of the network sectors in recent years, there remains a significant number of SOEs in the postal and telecommunications sectors.

3.230. Information on the size, prevalence, financial exposure, profitability, and employment of enterprises where governments own stakes was also compiled where available (Table A3.5). In general, the larger the number of such enterprises, the larger the assets owned by the state. Five member States (Austria, Germany, Hungary, Italy, and Slovenia) had government-owned or -invested assets (where available) which met or exceeded 50% of GDP. This type of assets exceeded 100% of the GDP for Slovenia. Where information on profitability was available, enterprises where governments were involved tended to earn a profit for the state and contributed

<sup>208</sup> Ibid.

<sup>209</sup> The Directive applies to enterprises with a turnover of more than €40 million (or a balance sheet total of €800 million for public credit institutions) and more detailed information on manufacturing public undertakings with a turnover of more than €250 million. Commission Directive 2006/111/EC of 16 November 2006. Online information. Viewed at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32006L0111&from=EN>.

<sup>210</sup> Council Directive 2011/85/EU. OJ L 306/41 of 23 November 2011. Online information. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:306:0041:0047:en:PDF>.

positively to the government's budget. The exceptions being Denmark and Portugal, where losses were reported.

**Table 3.24 Liabilities of public corporations in EU member States, 2015**

(% of GDP)

	Total liabilities	Of which:		Central govt.	Of which controlled by:		
		Financial	Non-financial		State govt.	Local govt.	Social security
Austria <sup>a</sup>	33.05	18.53	14.52	11.85	16.64	4.56	n.a.
Belgium	51.44	37.35	14.09	42.19	3.94	5.31	n.a.
Bulgaria	12.12	3.61	8.50	9.83	n.a.	2.29	n.a.
Croatia	10.70	4.87	5.83	8.63	n.a.	2.02	0.04
Cyprus	<sup>b</sup>	<sup>b</sup>	<sup>b</sup>	<sup>b</sup>	<sup>b</sup>	<sup>b</sup>	<sup>b</sup>
Czech Rep <sup>a</sup>	12.21	n.a.	12.21	11.09	n.a.	1.12	n.a.
Denmark	31.10	10.74	20.36	15.83	n.a.	15.28	n.a.
Estonia	8.71	n.a.	8.71	8.35	n.a.	0.36	n.a.
Finland	43.18	20.24	22.94	17.72	n.a.	25.46	n.a.
France <sup>a</sup>	62.66	44.14	18.52	56.87	n.a.	5.79	n.a.
Germany <sup>a</sup>	110.41	105.81	4.60	22.47	37.97	49.97	n.a.
Greece	91.37	83.51	7.86	91.37	n.a.	n.a.	n.a.
Hungary	20.50	15.37	5.14	19.65	n.a.	0.85	n.a.
Ireland	50.23	44.22	6.01	50.23	n.a.	n.a.	n.a.
Italy	47.41	26.80	20.62	43.25	n.a.	4.15	0.01
Latvia	20.79	n.a.	20.79	13.89	n.a.	6.91	n.a.
Lithuania	6.92	0.16	6.75	5.97	n.a.	0.94	n.a.
Luxembourg	80.75	75.33	5.41	80.62	n.a.	0.13	n.a.
Malta	22.33	3.67	18.66	22.33	n.a.	n.a.	n.a.
Netherlands	108.10	90.31	17.79	95.11	n.a.	12.99	n.a.
Poland	31.26	19.54	11.72	29.50	n.a.	1.75	n.a.
Portugal	72.83	68.83	4.00	72.03	n.a.	0.79	n.a.
Romania	8.26	3.97	4.30	6.92	n.a.	1.34	n.a.
Slovakia	1.63	0.33	1.31	1.41	n.a.	0.23	n.a.
Slovenia	67.72	47.72	20.00	60.47	n.a.	0.65	6.60
Spain	29.57	26.16	3.41	28.97	0.40	0.21	n.a.
Sweden	44.75	19.19	25.56	21.24	n.a.	20.30	3.22
U.K. <sup>a</sup>	55.80	54.50	1.30	54.90	n.a.	0.90	n.a.

n.a. Not applicable.

a 2014 data.

b Not reported.

Source: Eurostat online information viewed at: <http://ec.europa.eu/eurostat/web/government-finance-statistics/data/database> and [http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=gov\\_cl\\_liab&lang=en](http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=gov_cl_liab&lang=en).

### 3.3.6.3 Privatization

3.231. As with state enterprises, privatization is in the exclusive competence of the individual member States, as per Article 345 of the TFEU noted above. Privatization of state enterprises or assets is thus subject to each member States' privatization laws, if they exist. Often member States undergoing certain reforms have also published privatization plans outlining how the state intends to privatize assets and in what time-frame. There is neither a specific EU policy nor law with respect to privatization but general EU rules (e.g. on non-discrimination, freedom of establishment, and competition) are applicable also to privatizations by member States.

3.232. Rather, privatization in EU member States has been driven by other policy factors. In particular after the financial crisis, as part of various economic monitoring, surveillance, and reforms in certain member States, a number of privatization initiatives have been proposed and completed. Certain member States have agreed to privatize certain state assets as part of financial packages or ongoing reforms. For example, Spain has agreed to the privatization and restructuring

of certain state-owned banks as part of its state aid package.<sup>211</sup> Greece has recently agreed to more privatization of state assets in order to obtain additional funding.<sup>212</sup> Member States have also pursued privatization upon the recommendation of other bodies such as the EU Council, the IMF, and the OECD. Lithuania has pursued SOE reform prior to its adoption of the euro and, as it works toward becoming a member of the OECD, it has undergone further review and analysis of its SOEs and privatization programme.<sup>213</sup>

3.233. According to the 2014/2015 Privatization Barometer Report, the EU showed the largest number of privatization transactions in the early 1990s, with its most recent peak during the financial crisis.<sup>214</sup> Since then, there has been an increase in transactions since 2012, but the EU has accounted for a minority of the number and value of privatizations worldwide during 2014-2015. In 2014 and 2015, the number of EU privatizations was below its historical average, amounting to €56.3 billion in 2014. Among the EU member States, the U.K. was the leading country (in terms of number of transactions and value) in privatizations in recent years, followed by Spain and Greece.

### 3.3.7 Government procurement

#### 3.3.7.1 EU directives on public procurement

3.234. In 2015, total general government public procurement expenditure on works, goods and services in the EU (excluding utilities) was €2,015.3 billion, or over 13% of GDP, with €349.2 billion published on the Tenders Electronic Daily (TED) supplement to the Official Journal of the EU. Including defence and utilities, the total value of government procurement in the EU and published on TED was €450.2 billion.<sup>215</sup>

3.235. The EU rules on public procurement are set in three directives: the Classical Directive<sup>216</sup>; the Concessions Directive<sup>217</sup>, and the Utilities Directive (water, energy, transport, and postal services).<sup>218</sup> The last Review outlined the changes introduced in these three Directives<sup>219</sup>, which entered into force on 17 April 2014 with 24 months for transposition into domestic law by the member States, with 30 months for the provisions on e-procurement. As at 5 January 2017, 12 member States had transposed all three Directives into national law.<sup>220</sup>

3.236. All procurement carried out in the EU above the specified thresholds must comply with the requirements of the EU directives on procurement. The applicable thresholds were amended, with effect from 1 January 2016, for 2016 and 2017 (Table 3.25). Public procurement above the thresholds must be published on TED. A contracting authority may also publish a prior information notice (PIN) to announce a possible upcoming tender. Local and regional authorities may use the PIN as a call for tenders.

3.237. For public procurement below the thresholds, national rules apply, and these national rules must respect the general principles of EU law, including the TFEU principles of non-discrimination, equal treatment, transparency, mutual recognition, and proportionality.

<sup>211</sup> European Commission online information. Viewed at: [http://ec.europa.eu/economy\\_finance/articles/eu\\_economic\\_situation/2016-04-18-statement-spain\\_en.htm](http://ec.europa.eu/economy_finance/articles/eu_economic_situation/2016-04-18-statement-spain_en.htm).

<sup>212</sup> European Commission online information. Viewed at: [http://ec.europa.eu/economy\\_finance/assistance\\_eu\\_ms/greek\\_loan\\_facility/](http://ec.europa.eu/economy_finance/assistance_eu_ms/greek_loan_facility/); and Financial Times online information viewed at: <https://www.ft.com/content/81dc1d54-84f5-11e6-8897-2359a58ac7a5>.

<sup>213</sup> OECD online information. Viewed at: [https://www.oecd.org/daf/ca/Lithuania\\_SOE\\_Review.pdf](https://www.oecd.org/daf/ca/Lithuania_SOE_Review.pdf).

<sup>214</sup> Privatization Barometer online information. Viewed at: [http://www.privatizationbarometer.net/PUB/NL/5/5/PB\\_AR2014-2015.pdf](http://www.privatizationbarometer.net/PUB/NL/5/5/PB_AR2014-2015.pdf).

<sup>215</sup> DG Grow (2016), *Public Procurement Indicators 2015*, DG GROW G4 – Innovative and e-Procurement – 19 December 2016.

<sup>216</sup> Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC.

<sup>217</sup> Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts.

<sup>218</sup> Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC.

<sup>219</sup> WTO document WT/TPR/S/317/Rev.1, 21 October 2015, Section 3.3.2.

<sup>220</sup> Czech Republic, Denmark, Germany, Greece, France, Italy, Hungary, Malta, Netherlands, Poland, Romania and Slovakia.

**Table 3.25 Public procurement thresholds in the EU from 1 January 2016**

(€)

Directive	Type	Threshold
<b>Concessions Directive</b> Directive 2014/23/EU and Commission Delegated Regulation (EU) 2015/2172 of 24 November 2015 amending Directive 2014/23/EU of the European Parliament and of the Council in respect of the application thresholds for the procedures for the award of contracts		
	All works or services concessions	5,225,000
<b>Classical Directive (contracts for public works, public supply and public service)</b> Directive 2014/24/EU and Commission Delegated Regulation (EU) 2015/2170 of 24 November 2015 amending Directive 2014/24/EU of the European Parliament and of the Council in respect of the application thresholds for the procedures for the award of contracts		
Central government authorities	Works contracts, subsidized works contracts	5,225,000
	All contracts concerning social and other specific services listed in Annex XIV	750,000
	All subsidized services	209,000
	All other service contracts and all design contests	135,000
	All supplies contracts awarded by contracting authorities not operating in the field of defence	135,000
	Supplies contracts awarded by contracting authorities operating in the field of defence	Annex III products 135,000 Other products 209,000
Sub-central contracting authorities	Works contracts, subsidized works contracts	5,225,000
	All services concerning social and other specific services listed in Annex XIV	750,000
	All other service contracts, all design contests, subsidized service contracts, all supplies contracts	209,000
<b>Utilities (Sectors) Directive</b> Directive 2014/25/EU and Commission Delegated Regulation (EU) 2015/2172 of 24 November 2015 amending Directive 2014/23/EU of the European Parliament and of the Council in respect of the application thresholds for the procedures for the award of contracts		
	Works contracts	5,225,000
	All services concerning social and other specific services listed in Annex XVII	1,000,000
	All other services contracts, all design contests, all supplies contracts	418,000

Source: WTO document GPA/W/336/Add.9, 1 March 2016; and DG Growth online information. Viewed at: [https://ec.europa.eu/growth/single-market/public-procurement/rules-implementation/thresholds\\_en](https://ec.europa.eu/growth/single-market/public-procurement/rules-implementation/thresholds_en) [December 2016].

3.238. In 2015, the importance of total general government expenditure on works, goods, and services (excluding utilities) in the member States varied from as low as 5.5% of GDP in Cyprus and 7.2% in Ireland, to 20.0% in the Netherlands and 18.2% in Finland. In 2015, 17% of the total value of public procurement (excluding utilities) was advertised on the TED, although this also varied from one member State to another, from as low as 6% in Germany and 8% in Portugal to 65% in Latvia and 50% in Estonia (Table 3.26).

3.239. Several factors may explain the low proportion of procurement published in the TED, such as the small value of individual contracts, and the various degrees of centralization among member States: most of the smaller contracting authorities may never make a purchase large enough to fall into the scope of the directives, and member States with a generally higher degree of centralization are more likely to have tender invitations published in the Official Journal because procurement tends also to be centralized. The Commission also noted that member States are not required to publish below-threshold procurement in TED, and the practice varies among member States: in some member States, contracting entities thus publish below-threshold procurement, whereas some publish above-threshold procurement only.

**Table 3.26 Estimated value of public procurement by general government in the EU 2014-15**

(€ billion)

	2014				2015			
	GDP	Estimated total value excluding utilities <sup>a</sup>	Estimated value of tenders in TED		GDP	Estimated total value excluding utilities <sup>a</sup>	Estimated value of tenders in TED	
			excluding utilities and defence	including utilities and defence			excluding utilities and defence	including utilities and defence
Belgium	401	58.7	9.3	11.7	410	59.5	10.5	13.8
Bulgaria	43	5.5	2.1	2.7	45	6.2	2.2	2.9
Czech Republic	157	21.5	7.5	10.5	167	24.2	4.7	6.4
Denmark	265	38.3	11.7	14.2	272	38.7	12.5	17.8
Germany	2,924	442.0	23.7	310	3,033	461.7	27.6	35.1
Estonia	20	2.7	1.1	1.4	20	2.9	1.4	1.8
Ireland	193	18.0	3.7	4.3	256	18.3	4.4	5.2
Greece	178	18.9	2.1	3.9	176	19.0	1.8	3.2
Spain	1,037	104.9	13.9	18.2	1,076	111.4	13.7	17.6
France	2,140	317.0	53.0	64.9	2,181	317.2	50.9	65.5
Croatia	43	6.0	2.5	3.5	44	5.7	2.1	3.0
Italy	1,620	169.2	27.3	35.2	1,642	170.3	32.3	40.8
Cyprus	18	1.0	0.3	0.3	18	1.0	0.3	0.3
Latvia	24	2.7	1.7	2.3	24	2.9	1.9	2.4
Lithuania	37	3.7	1.6	2.2	37	3.9	1.2	1.7
Luxembourg	49	5.9	0.7	0.8	51	6.3	0.6	0.8
Hungary	105	16.2	3.8	6.1	110	17.3	2.9	4.8
Malta	8	0.9	0.3	0.4	9	1.0	0.4	0.4
Netherlands	663	134.9	11.8	13.4	677	135.6	14.1	16.1
Austria	330	43.4	5.6	7.6	340	45.2	5.3	7.4
Poland	411	51.5	18.3	28.8	430	52.1	19.1	27.6
Portugal	173	17.0	1.8	2.3	180	17.7	1.4	2.5
Romania	150	16.4	5.1	8.1	160	18.7	6.7	9.1
Slovenia	37	5.1	1.1	1.4	39	5.2	1.3	1.7
Slovak Republic	76	10.9	5.8	7.1	79	13.4	3.7	4.4
Finland	205	37.7	6.8	8.7	209	38.0	7.4	8.8
Sweden	433	70.8	14.7	18.2	447	72.1	17.5	21.7
United Kingdom	2,261	312.6	82.6	112.4	2,577	349.7	101.2	127.6
EU-28	14,001	1,933.2	319.7	421.3	14,708	2,015.3	349.2	450.2
% of GDP		13.8%	2.3%	3.0%		13.7%	2.4%	3.1%

a These estimates include expenditure on items which are exempt under the EU directives, such as contracts below the thresholds. They also include expenditure which may not be classified as public procurement, for example, the costs of health care and medical products reimbursed through statutory health insurance funds or by government.

Source: DG Grow (2016), *Public Procurement Indicators 2015*, DG GROW G4 – Innovative and e-Procurement, and Eurostat.

3.240. Under the Classical Directive, and the Utilities Directive<sup>221</sup>, the public authorities can choose among different procedures, including:

- Open procedure, when all eligible economic operators may submit a tender;
- Restricted procedure, when the contracting authority invites tenders from a selected group of those that respond to the TED advertisement;

<sup>221</sup> Directive 2014/24/EU, Articles 26-32; and Directive 2014/25/EU, Articles 43-50.

- Competitive procedure with negotiation is similar to a restricted procedure followed by negotiations with the selected economic operators;
- Competitive dialogue, when the contracting authority enters into a dialogue with a selection from among the suppliers that responded to the TED advertisement in order to find a suitable product or service to meet its needs. Tenders are then invited from a selection of bidders; and
- Innovation partnership, which was introduced in 2014, under which a selection is made from suppliers that responded to the TED advertisement followed by negotiations for "search and innovation projects aimed at meeting the needs identified by the contracting authority that cannot be met by existing solutions".<sup>222</sup>

3.241. Each procedure of public procurement is subject to minimum time-limits for the submission of tenders. For example, after the publication of a contract notice under the open procedure, the minimum time-limit is 35 days but this can be reduced to 15 days if a prior information notice has been published.

3.242. The methods for calculating the estimated value of a procurement are set out in the Directives<sup>223</sup> and include aggregation rules intended to prevent a single public procurement requirement being subdivided with the intention or effect of reducing the value below the threshold amounts. For example:

- For framework agreements, and dynamic purchasing systems, the value should be the maximum estimated value of all contracts for the total term;
- For innovation partnerships, the value should be the maximum estimate of research and development activities for all stages of the partnership as well as supplies, services or works to be developed and procured at the end of the partnership; and
- For concessions, the value is the total turnover of the concessionaire for the duration of the concession.

3.243. The procurement authority may divide a requirement into lots but, if the total value of these lots is greater than the threshold, then EU level rules will apply to the awarding of each lot, except for small lots, for which the amounts are below the following *de minimis* levels:

- €80,000 for supplies or services; or
- €1 million for works; and
- Provided the aggregate value of the lots to be excluded from aggregation is no more than 20% of the total value.

3.244. A simplified regime applies for contracts with an estimated value of less than €750,000 for services listed in Annex XIV of the Classical Directive<sup>224</sup> with no procedural rules apart from the requirements for advance publication, equal treatment of bidders, and the announcement of the results.

3.245. Under the directives, contract awards are based on the most economically advantageous tender (MEAT) which "shall be identified on the basis of the price or cost, using a cost-effectiveness approach, such as life-cycle costing ..., and may include the best price-quality ratio, which shall be assessed on the basis of criteria, including qualitative, environmental and/or social aspects, linked to the subject matter of the public contract in question".<sup>225</sup> The criteria used for assessment are set out in the request for tenders. In assessing the life-cycle cost, imputed values for environmental externalities may be included. In addition, the contracting authorities may take into account criteria linked to the production process of the works, services or supplies to be

<sup>222</sup> Directive 2014/23/EU, Article 31.

<sup>223</sup> Directive 2014/24/EU, Article 5; Directive 2014/23/EU, Article 8; and Directive 2014/25/EU, Article 16.

<sup>224</sup> Social, health, cultural, and assimilated services; legal services; hotels and restaurant services, and catering and canteen services.

<sup>225</sup> Directive 2014/24/EU, Article 67.



purchased, such as the inclusion of vulnerable and disadvantaged people, or the use of non-toxic substances. Furthermore, a contracting authority may require that works, supplies, or services bear specific labels certifying environmental, social or other characteristics, as long as the label requirements only concern criteria which are linked to the subject matter of the contract and are appropriate to define characteristics of the works, supplies or services and that equivalent labels are accepted.

3.246. E-procurement is becoming progressively mandatory, with electronic notification and access to tender documents by April 2016; electronic submission of offers for central purchasing bodies by April 2017; and electronic submission of offers for all contracting authorities by October 2018.

3.247. Under Directive 2014/55/EU of 16 April 2014, member States must keep up-to-date all the information about certificates required in national public procurement procedures and on the E-Certis database.<sup>226</sup> The Directive also contains provisions on dynamic purchasing systems (electronic systems allowing public purchasers to consult a large number of potential suppliers of standardized, "off-the-shelf" works, supplies or services), electronic auctions, and electronic catalogues. Member States had until April 2016 to transpose the Directive into national law.

3.248. In terms of contract award notices, in 2014, 48% were for services, 29% for works, and 23% for goods. In terms of procedures, in 2011, about 75% of contract award notices (51% by value) were under open procedure, 7.1% (12.1% by value) were under negotiated procures with competition, and 6.8% (20.8% by value) were restricted procedures.<sup>227</sup>

3.249. The Remedies Directives<sup>228</sup>, as modified in particular by Directive 2007/66/EC<sup>229</sup>, provide for legal remedies in cases of breaches of EU Public Procurement Directives. These remedies include a "standstill period", which requires contracting bodies to provide at least 10 days' suspension after tender awards and before the public contract can be signed, and more stringent rules against illegal direct awards of public contracts so that they may be rendered ineffective by national courts.

3.250. On 24 January 2017, the European Commission published a report, accompanied by a detailed evaluation, on the operation of the Remedies Directives. The Commission concluded that the Directives have contributed to making the procurement procedure in EU countries more fair, transparent, open and efficient, and confirmed this by the fact that economic operators are using them to challenge deviations from public procurement rules: over four years (2009-12), more than 50,000 first instance decisions were taken.<sup>230</sup>

3.251. Therefore, the Commission has proposed to maintain the Remedies Directives. Notwithstanding this, it proposes that the shortcomings identified in the evaluation be addressed through, *inter alia*, stronger cooperation and exchanges of best practices (in particular via a network of first instance remedies bodies); a Remedies Scoreboard based on objective indicators to promote the collection of data; guidance documents to ease the practical implementation of the Remedies Directives; and enforcement actions when problems could not be solved by cooperative means. The Commission also stated that, since the thresholds of EU rules are aligned with those of the Government Procurement Agreement (GPA), and their substantive provisions are broadly similar to those of the GPA, the follow-up to the evaluation can be expected to contribute to the proper implementation of the GPA as well.

<sup>226</sup> Viewed at: <http://ec.europa.eu/markt/ecertis/login.do?selectedLanguage=en> [December 2016].

<sup>227</sup> European Commission (2014), *Annual Public Procurement Implementation Review 2013*, Commission Staff Working Document, SWD(2014) 262 final, 1 August 2014.

<sup>228</sup> Council Directive 92/13/EEC of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors; and Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts.

<sup>229</sup> Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts, amended by Directives 2007/66/EC and 2014/23/EU.

<sup>230</sup> European Commission (2017), *Report from the Commission to the European Parliament and the Council on the Effectiveness of Directive 89/665/EEC and Directive 92/13/EEC, as modified by Directive 2007/66/EC, Concerning Review Procedures in the Area of Public Procurement*, COM(2017) 28 Final, 24 January 2017.

### 3.3.7.2 The Government Procurement Agreement

3.252. The EU and the member States are parties to the WTO plurilateral GPA, and adopted the revised GPA through Council Decision 2014/115/EU.<sup>231</sup> Under the revised GPA, the EU extended its commitments to provide for further market access opportunities for suppliers offering goods and services originating in GPA parties' economies. New sectors and contracting authorities/entities were included in the EU schedules, for example, the European External Action Service at EU level and a number of central government contracting authorities and sub-central entities of member States.<sup>232</sup> The GPA thresholds for 2016-2017 are set out in Table 3.27.

**Table 3.27 EU GPA thresholds 2016-17**  
(€)

	Central government entities		Sub-central government entities		Other entities	
	SDR	€	SDR	€	SDR	€
Goods	130,000	135,000	200,000	209,000	400,000	418,000
Services	130,000	135,000	200,000	209,000	400,000	418,000
Construction services	5,000,000	5,225,000	5,000,000	5,225,000	5,000,000	5,225,000

Source: WTO document GPA/W/336/add.9, 1 March 2016.

3.253. The total value of contracts covered by the GPA was €286.4 billion in 2012, of which €283.4 billion was attributed to the 27 member States (Croatia acceded to the EU in 2013) and €3 billion to the EU institutions (Table 3.28).

**Table 3.28 EU procurement and GPA key figures, 2009-12**

(€ billion)

EU procurement	2009	2010	2011	2012
Value of contracts covered by the GPA	250.8	227.9	237.3	286.4
Value of contracts above thresholds	353.4	318.8	335.4	365.6
Value of contracts awarded under Article XV GPA (i.e. limited tendering contracts)	14.5	9.9	7.3	12.3
Total expenditures on goods and services	2,346.0	2,416.65	2,405.9	2,422.5

Source: WTO documents: GPA/108/Add.7 and GPA/114/Add.5, both dated 22 October 2014; and GPA/119/Add.6, 6 June 2016.

### 3.3.8 Intellectual property rights

3.254. In a world of increasingly knowledge-based economies, in which companies heavily rely on innovation and creativity, as well as quality, the adequate protection and enforcement of intellectual property rights (IPRs) continue to play a key role for EU business to maintain its competitiveness. The economic importance of IPRs both in terms of employment and contribution to the EU's GDP was once again confirmed by a joint EPO/EUIPO report released in October 2016.<sup>233</sup> The report updated an earlier study that was published in September 2013.<sup>234</sup> An overview of its main findings is provided in Table 3.29. It shows that an important share of the EU's total GDP, amounting to 42.3% on average during the period 2011 to 2013, was generated by IPR-intensive industries. The trademark-intensive industry made again by far the biggest contribution both to employment and the EU's GDP, followed by the patent-intensive and design-intensive industries. As regards the EU's external trade, the design-intensive industry saw the biggest surplus with net exports worth more than €243 billion.

<sup>231</sup> 2014/115/EU: Council Decision of 2 December 2013 on the conclusion of the Protocol Amending the Agreement on Government Procurement.

<sup>232</sup> WTO document GPA/113, 2 April 2012.

<sup>233</sup> EPO/EUIPO, Intellectual Property Rights Intensive Industries and Economic Performance in the European Union, Industry-Level Analysis Report, 2<sup>nd</sup> edition, October 2016. Viewed at: [https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/IPContributionStudy/performance\\_in\\_the\\_European\\_Union/performance\\_in\\_the\\_European\\_Union\\_full.pdf](https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/IPContributionStudy/performance_in_the_European_Union/performance_in_the_European_Union_full.pdf).

<sup>234</sup> See previous TPR Report, WT/TPR/S/317/Rev.1, para. 3.254.

**Table 3.29 Contribution of IP industries to EU employment, GDP and trade and average wage premium of IP-intensive industries, 2011-13 average**

IP right	Share of total EU direct employment (%)	Share of total direct and indirect employment (%)	Share of total EU GDP (%)	Average wage premium compared to non-IPR-intensive industries (%)	Share of EU exports (€ million, 2013)	Share of EU imports (€ million, 2013)
All IPR industries	27.8	38.1	42.3	46	1,605,516	1,509,099
Copyright-intensive industries	5.4	7.1	6.8	64	119,554	102,389
Patent-intensive industries	10.3	16.7	15.2	69	1,231,966	1,157,909
Plant variety-intensive industries	0.5	0.6	0.4	n.a.	5,065	5,369
Trade mark-intensive industries	21.2	30.3	35.9	48	1,275,472	1,261,002
GI-intensive industries	n.a.	0.2	0.1	31	12,923	1,335
Design-intensive industries	11.9	17.9	13.4	38	945,084	701,752

n.a. Not applicable.

Source: Intellectual Property Rights Intensive Industries and Economic Performance in the European Union, Industry-Level Analysis Report, joint EPO/EUIPO study, 2<sup>nd</sup> edition, October 2016.

3.255. The recognition of the key role that IPRs play in the EU economy had also led the European Commission to adopt its comprehensive IP strategy in 2011.<sup>235</sup> During the reporting period, a number of legislative measures were put in place that implement the initiatives announced in the Commission's earlier strategy. These include the adoption of the trademark reform package and of the Trade Secrets Directive. In addition, important work was undertaken to further modernize the legislative framework for copyright protection and enforcement with a particular focus on copyright-protected goods in the online environment. For this purpose, a number of legislative proposals were submitted by the European Commission in September 2016. Significant steps were also taken towards the putting into place the unitary patent. Meanwhile, work progressed on the review of the IPR enforcement regime in the EU, again with a particular focus on the need to adapt the regime to respond to challenges in the online environment. These measures and initiatives are discussed in more detail in the relevant sections below.

3.256. The Commission Communication on a Digital Single Market Strategy for Europe, of 6 May 2015<sup>236</sup>, announced legislative initiatives to further harmonize national copyright laws and related exceptions, to pave the way towards wider online access to works by users across the EU, and to further modernize the IPR enforcement regime. It also called on the EU's trading partners to ensure that IPRs can be effectively enforced. A Commission Communication on Upgrading the Single Market (the Single Market Strategy), of 28 October 2015<sup>237</sup>, identified additional steps to further consolidate the EU's IPR framework. These include measures to support the use of IP by

<sup>235</sup> Communication on a Single Market for IPRs, COM(2011) 287 final, 24 May 2011. Viewed at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52011DC0287&from=EN>. See also the 2013 TPR Report, WT/TPR/S/284/Rev.2, para. 3.241.

<sup>236</sup> COM(2015) 192 final. Viewed at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015DC0192&from=EN>.

<sup>237</sup> COM(2015) 550 final. Viewed at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015DC0550&from=EN> and SWD(2015) 202 final <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015SC0202&from=EN>.

SMEs. In November 2016, for example, a Start-Up and Scale-Up initiative<sup>238</sup> was adopted, which puts forward policy actions to support access to and use of IP by SMEs in Europe. Other steps identified by the Strategy include the need to address uncertainties regarding the link between the unitary patent and national patents and national supplementary protection certificates (SPC) granted under the SPC regime, and, in due course, consideration of the possible creation of a unitary SPC title.

3.257. The IPR regime in the EU is governed by both EU legislation and legislation in member States. Based on Article 118 of the TFEU, the EU has put in place an extensive body of IP legislation. Table A3.3 in the Annex provides an overview of the principal legislative measures adopted by the EU, as well as their status of notifications to the WTO. Member States' legislation implements and complements, where appropriate, EU legislation and commitments under international agreements.

3.258. During the period under review, the EU has constructively contributed to discussions and work in the TRIPS Council, including as regards the agenda items on non-violation and situation complaints, IP and innovation, e-commerce and the review of implementing legislation. It has submitted comprehensive reports on its technical cooperation activities and on incentives provided to the private sector to transfer technology to least developed countries for consideration by other WTO Members.<sup>239</sup> The EU has also notified and introduced new legislation in the field of IPRs to the TRIPS Council, including the trademark reform package and the Trade Secrets Directive (see Table A3.3 for the summary of the main legislation, as well as the sections below on trademarks and undisclosed information).

3.259. The EU is an observer to WIPO, while its member States are WIPO member States. Table 3.30 provides an overview of the status of the EU's participation in individual WIPO treaties. Given that the 2015 Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications now also allows for the membership of international organizations, the EU will give due consideration to the possibility of becoming party to the Geneva Act. The EU and 24 of its member States<sup>240</sup> are also UPOV contracting parties.

**Table 3.30 Status of EU participation in WIPO conventions and treaties**

Convention/treaty	Signed	Accepted	In force
Beijing Treaty on Audiovisual Performances	19 June 2013		
Marrakesh VIP Treaty	30 April 2014		
Trademark Law Treaty	30 June 1995		
WIPO Copyright Treaty	20 December 1996	14 December 2009	14 March 2010
WIPO Performances and Phonograms Treaty	20 December 1996	14 December 2009	14 March 2010
Hague Agreement		24 September 2007	1 January 2008
Madrid Protocol		1 July 2004	1 October 2004

Source: WTO Secretariat.

3.260. The EU's competence to conclude international agreements in the field of IPRs continues to be subject to judicial review. Thus, the CJEU has been asked by the European Commission to provide an Opinion regarding the EU's competence to conclude the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled.<sup>241</sup> In its Opinion of 14 February 2017<sup>242</sup>, the Court held the view that the Marrakesh Treaty did not fall within the scope of the EU's exclusive competence to deal with its common

<sup>238</sup> COM (2016) 733 final <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016DC0733&from=EN> and SWD (2016) 373 final <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016SC0373&from=EN>.

<sup>239</sup> Documents IP/C/W/617/Add.7 and IP/C/W/616/Add.7.

<sup>240</sup> Except Cyprus, Greece, Luxembourg and Malta.

<sup>241</sup> The Commission has also sought the Court's Opinion regarding the competence to conclude the EU-Singapore FTA that was initialled in September 2013 and that includes a section dealing with the protection and enforcement of IPRs. The Advocate General's Opinion in Opinion Procedure 2/15 was released on 21 December 2016. Viewed at: <http://curia.europa.eu/juris/document/document.jsf?text=&docid=186494&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1&cid=606566>.

<sup>242</sup> Opinion 3/15, viewed at: <http://curia.europa.eu/juris/document/document.jsf?text=&docid=183130&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=784638>.

commercial policy pursuant to Article 207 of the TFEU. While reiterating its earlier ruling according to which the rules adopted by the EU in the field of IP which have a specific link to international trade are capable of falling within the scope of "commercial aspects of IP" as referred to in Article 207(1) TFEU<sup>243</sup>, the Court found that the Marrakesh Treaty was not intended to promote, facilitate or govern international trade in accessible format copies, nor could the cross-border exchange of such copies be equated with international trade that was driven by commercial purposes. The CJEU nevertheless confirmed the EU's exclusive competence to conclude the Marrakesh Treaty, as it fell within an area that was already largely harmonized by common rules at EU level that had been established by the Information Society Directive<sup>244</sup>, and that may be affected by certain mandatory provisions of the Marrakesh Treaty on exceptions and limitations.

### 3.3.8.1 Copyright and related rights

3.261. For the EU economy, but also for its international competitiveness and cultural diversity, copyright and neighbouring rights continue to play a key role. There are 33 sectors of the economy considered copyright-intensive, accounting directly for over 11.6 million jobs, or 5.4% of total direct employment in the EU on average from 2011 to 2013.<sup>245</sup> These figures are even higher when indirect employment generated by the copyright-intensive industry is taken into account (more than 15 million jobs, or 7.1% of total employment). The same industry is also reported to have contributed a share of 6.8%, equivalent to almost €915 billion, value added to the EU's total GDP during the same period. As regards the EU's external trade, the copyright-intensive industry generated a net surplus of €17.1 billion, with total exports worth almost €120 billion in 2013.

3.262. Digital technologies are having a strong impact on the development of the copyright-intensive industry. For example, 49% of EU internet users reportedly access music or audiovisual content online.<sup>246</sup> In 2015, digital revenues also became, for the first time, the primary revenue stream for recorded music, thus overtaking income from physical formats and generating 45% of global revenues (see Section 4.3.1).<sup>247</sup>

3.263. The EU's legal framework (*acquis*) for copyright and neighbouring rights is shaped by a set of 10 directives that had to be implemented by its member States (see Table A3.3.). The overarching objective of approximating the standards of protection is to create a sound basis for the free movement of protected creative works and services offering access to these works within the internal market.

3.264. Based on the comprehensive IP strategy adopted in 2011, the EU is continuing the review and modernization of its legislative framework under which copyright and related rights can be protected and enforced. As part of this process, and noting the important technological developments, the European Commission presented its Digital Single Market Strategy for Europe in May 2015.<sup>248</sup> Besides proposing to take action in a number of other sectors, the Strategy specifically addressed the need to modernize the copyright framework in order to enhance EU-wide access to protected digital content. To do so, the Commission announced a series of legislative proposals regarding both the online protection and enforcement of copyright-protected material. A further communication of 9 December 2015 set out the details of how to achieve "a modern, more European copyright framework".<sup>249</sup> The suggested measures aim at ensuring wider access to content in Europe, adapting exceptions to digital and cross-border environments, achieving a well-functioning marketplace for copyright, and providing an effective and balanced enforcement system.

<sup>243</sup> Case C-414/11 (Daichi Sankyo Co. Ltd and Sanofi-Aventis Deutschland GmbH v DEMO Anonimos Viomikhaniki kai Emporiki Etairia Farmakon). Viewed at: <http://curia.europa.eu/juris/document/document.jsf?text=&docid=139744&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=2446481>.

<sup>244</sup> Directive 2001/29/EC of 22 May 2001 on the harmonization of certain aspects of copyright and related rights in the information society, OJEU L167/10.

<sup>245</sup> EPO/EUIPO, Intellectual Property Rights Intensive Industries and Economic Performance in the European Union, Industry-Level Analysis Report, 2<sup>nd</sup> edition, October 2016. Viewed at: [https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/IPContributionStudy/performance\\_in\\_the\\_European\\_Union/performance\\_in\\_the\\_European\\_Union\\_full.pdf](https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/IPContributionStudy/performance_in_the_European_Union/performance_in_the_European_Union_full.pdf).

<sup>246</sup> See explanatory memorandum to the proposal for a regulation on ensuring the cross-border portability of online content services in the internal market, COM(2015) 627 final, 9 December 2015.

<sup>247</sup> See IFPI Global Music Report 2016. Viewed at: <http://www.ifpi.org/downloads/GMR2016.pdf>.

<sup>248</sup> Document COM (2015)192 final, 6 May 2015.

<sup>249</sup> Document COM (2015) 626 final, 9 December 2015.



3.265. Subsequently, the European Commission has submitted a series of legislative proposals to modernize the EU's copyright regime since December 2015. The measures proposed in September 2016 were also explained in a Commission Communication on Promoting a Fair, Efficient and Competitive European Copyright-Based Economy in the Digital Single Market.<sup>250</sup> The envisaged legislative measures that are yet to be discussed by the European Parliament and the Council of the European Union include:

- A proposal for a regulation ensuring the cross-border portability of online content services in the internal market:<sup>251</sup> the aim is to allow residents in the EU to use legitimate digital content purchased or subscribed to in their principal country of residence anywhere in the EU;
- A proposal for a Directive on Copyright in the Digital Single Market<sup>252</sup>: among others, the suggested introduction of a negotiating mechanism is conceived to facilitate the conclusion of licensing agreements to support the availability of audiovisual works on Video on Demand (VoD) platforms. The proposed Directive also provides for mandatory exceptions in the field of education, research and preservation of cultural heritage to adapt them to the digital and cross-border environment, as well as rules to achieve a well-functioning marketplace for copyright, including rules to ensure that right holders are receiving adequate remuneration. In particular, Article 11 suggests that neighbouring rights for press publishers be introduced into EU law for the digital use of their publications<sup>253</sup>;
- A proposal for a regulation laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organizations and retransmissions of television and radio programmes<sup>254</sup>: inspired by the existing legal framework for traditional transmissions via satellite and retransmissions via cable<sup>255</sup>, the draft regulation proposes that similar conditions be put in place for online distribution of television and radio programmes, providing for a simple and fast clearance process regarding rights needed for certain online services; and
- In order to implement the WIPO Marrakesh Treaty into EU law, the proposed legislative measures also include the introduction of mandatory exceptions for people with print disabilities. For that purpose, the Commission has suggested to adopt a regulation on the cross-border exchange between the Union and third countries of accessible format copies of certain works and other subject matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print disabled<sup>256</sup>, and a directive on certain permitted uses of works and other subject matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print disabled and amending Directive 2001/29/EC on the harmonization of certain aspects of copyright and related rights in the information society.<sup>257</sup>

3.266. In an important case decided on 8 September 2016, the CJEU interpreted the concept of "communication to the public" under the Information Society Directive (2001/29/EC), in particular, whether this included the posting on a website of hyperlinks to protected works freely available on another website without the authorization of the right holder. The Court found that the determination of this question would depend on whether such links were provided without the pursuit of financial gain by a person who did not know or could not reasonably have known the

<sup>250</sup> Document COM (2016) 592 final, 14 September 2016.

<sup>251</sup> Document COM (2015) 627 final, 9 December 2015.

<sup>252</sup> Document COM (2016) 593 final, 14 September 2016.

<sup>253</sup> For a critical view on the proposed introduction of neighbouring rights for press publishers, see the Opinion of the CEIPI, 28 November 2016. Viewed at: [http://www.ceipi.edu/en/news/piece-of-news/?tx\\_ttnews%5Btt\\_news%5D=9416&cHash=6d5162a2ffb84d27e79a48f01e12d9e7](http://www.ceipi.edu/en/news/piece-of-news/?tx_ttnews%5Btt_news%5D=9416&cHash=6d5162a2ffb84d27e79a48f01e12d9e7).

<sup>254</sup> Document COM (2016) 594 final, 14 September 2016.

<sup>255</sup> Satellite and Cable Directive 93/83/EEC, OJ EU L 248/15 of 6 October 1993.

<sup>256</sup> Document COM(2016) 595 final, 14 September 2016.

<sup>257</sup> Document COM(2016) 596 final, 14 September 2016.

infringing nature of the publication of the works concerned, or whether they were provided for precisely such purpose, in which case the knowledge would have to be presumed.<sup>258</sup>

3.267. Also in September 2016, the CJEU issued another important judgment regarding the interpretation of both substantive provisions and remedies available under the Enforcement Directive (2004/48/EC).<sup>259</sup> First, the Court held that the provision of free-of-charge internet access to the general public constituted an information society service within the meaning of Article 12(1) of the Directive where the service was offered for the purposes of advertising the provider's goods and services. The Court also found that, in order for such information society service to be considered to have been provided, the access to a communication network "must not go beyond the boundaries of a technical, automatic and passive transmission of the required information." Further conditions, such as a contractual relationship between the provider and the recipient or the provider using advertising to promote the service, were not required. As regards the liability of the service provider, the CJEU confirmed that it did not apply where the three conditions laid down in Article 12(1) of the Directive were met, i.e. the transmission of the information was not initiated by the provider, nor was the receiver of the transmission selected or the information contained in the transmission selected or modified by the provider. While the copyright holder was thus not entitled to claim compensation from the provider on the ground that the network was used by third parties to infringe its rights, it was not precluded from seeking injunctive relief to have the provider ordered to prevent or to stop any copyright-infringing act by its customers. Taking into account the interest of the owner to protect its copyright on the one hand, and of the provider to conduct a business on the other hand, the Court held that such an injunction could be limited to order the provider to password-protect access to the internet, provided that users were required to reveal their identity in order to obtain the password.

### 3.3.8.2 Industrial property

#### 3.3.8.2.1 Patents

3.268. Patent-intensive industries in the EU are reported to have contributed to more than 36 million direct and indirect employments, which represents a share of 16.7% of total employment in the EU on average from 2011 to 2013. During the same period, this industry has held a share of more than 15%, or the equivalent of €2 trillion, of the EU's total GDP. Also on a positive note, exports of the patent-intensive industries amounted to €1.2 trillion and registered a net surplus of €74 billion.<sup>260</sup>

3.269. With 160,000 new patent applications in 2015, the European Patent Office (EPO) was among the top five offices that accounted for a combined share of 82.5% of global patent applications. While China saw the fastest growth (+18.7%), the increase in filings at the EPO (+4.8%) exceeded those in other patent offices, such as the U.S. (+1.8%) and the Republic of Korea (+1.6%).<sup>261</sup> In 2015, the EPO granted 68,431 patents, and 684,004 applications were pending. Most patent applications were in the fields of medical technology, digital communication and computer technology.

##### 3.3.8.2.1.1 Unitary patent

3.270. As noted in a previous TPR report<sup>262</sup> and for the reasons explained therein, the European Parliament and the Council reached a political agreement on the unitary patent package in December 2012. Regulation (EU) No. 1257/2012 of 17 December 2012 on "Implementing Enhanced Cooperation in the Area of the Creation of Unitary Patent Protection"<sup>263</sup> will allow right

<sup>258</sup> Case C-160/15 (GS Media), 8 September 2016. Viewed at: <http://curia.europa.eu/juris/document/document.jsf?docid=183124&doclang=EN>.

<sup>259</sup> Case C-484/14 (Mc Fadden v Sony Music Entertainment Germany GmbH), 15 September 2016. Viewed at: <http://curia.europa.eu/juris/liste.jsf?num=C-484/14>.

<sup>260</sup> EPO/EUIPO, Intellectual Property Rights Intensive Industries and Economic Performance in the European Union, Industry-Level Analysis Report, 2<sup>nd</sup> edition, October 2016. Viewed at: [https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/IPContributionStudy/performance\\_in\\_the\\_European\\_Union/performance\\_in\\_the\\_European\\_Union\\_full.pdf](https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/IPContributionStudy/performance_in_the_European_Union/performance_in_the_European_Union_full.pdf).

<sup>261</sup> WIPO, World Intellectual Property Indicators 2016. Viewed at: [http://www.wipo.int/edocs/pubdocs/en/wipo\\_pub\\_941\\_2016.pdf](http://www.wipo.int/edocs/pubdocs/en/wipo_pub_941_2016.pdf).

<sup>262</sup> WT/TPR/S/284/Rev.2, paras. 3.257 to 3.267 (pp. 94-96).

<sup>263</sup> OJEU L 361/1, 31 December 2012.



holders to potentially get patent protection in 26 member States (except Croatia and Spain)<sup>264</sup> based on a single request. Council Regulation (EU) No. 1260/2012 of 17 December 2012 deals with applicable translation arrangements.<sup>265</sup> They will apply from the date of entry into force of the third component of the unitary patent package, i.e. the international Agreement on the Unified Patent Court (UPC Agreement), which was signed by 25 EU member States (except Croatia, Poland and Spain) in early 2013.<sup>266</sup> It establishes the framework for a specialized court with exclusive competence for litigation regarding European patents, European patents with unitary effect ('unitary patent'), supplementary protection certificates issued for a product covered by such a patent, and European patent applications. Acceptance by 13 member States, including the 3 member States with the highest number of European patents in force (Germany, France and the U.K.) is required for its entry into force. By December 2016, 11 member States had ratified the UPC Agreement, including France, but not Germany or the U.K.<sup>267</sup> On 28 November 2016, the U.K. Government confirmed that it was proceeding with preparations to ratify the UPC Agreement, and thus to participate in the system, also noting that the UPC was not an EU institution, but an international patent court.<sup>268</sup>

3.271. The unitary patent is expected to make it simpler and less expensive for inventors to obtain patent title, thus fostering foreign direct investment and innovative activities in the EU, including by SMEs. This will be supported by consistent and uniform jurisprudence on patent matters by the UPC, together with expeditious judicial proceedings and more predictability in patent litigations.<sup>269</sup>

3.272. On the administrative side, important agreements were reached among the 26 participating EU member States as regards the fee structure and the distribution of revenues of the unitary patent. In June 2015, it was agreed that the renewal fees would be equal to the sum of national renewal fees in Germany, France, the U.K. and the Netherlands. An inventor would thus pay less than €5,000 over 10 years for the participating countries, instead of about €30,000 under the current regime, which is expected to make the unitary patent attractive for small companies, and competitive in comparison with third countries, including the U.S. and Japan. In November 2015, the 26 participating EU member States also agreed to the distribution of fees during the initial period: 50% would be retained by the EPO; the other half would be distributed among them, based on, *inter alia*, their respective GDP and the number of patent applications filed.<sup>270</sup>

3.273. As referred to in the previous TPR report<sup>271</sup>, earlier action for the annulment of the unitary patent package filed by Spain and Italy was dismissed by the CJEU. In two follow-up cases, Spain again sought the annulment of the unitary patent package. In both cases, the CJEU dismissed the action taken by Spain. As regards Regulation (EU) No. 1257/2012, the Court held that the Regulation merely established the conditions under which a European patent previously granted by the EPO could benefit from unitary effect at the request of the right holder, and defined what was meant by unitary effect. According to the Court, the Regulation was neither intended to delimit the conditions for the grant of European patents nor to import the procedure for granting such patents laid down by the EPC into EU law. The CJEU also confirmed the legal basis for the Regulation: as unitary patent protection under the Regulation served to provide uniform protection in the participating member States, it fell within the scope of Article 118 of the TFEU, according to which the EU was competent to adopt measures for the creation of European IPRs. Furthermore, as regards Article 9 of the Regulation which assigns the power to participating member States acting in a select committee of the EPO's Administrative Council to determine the level and distribution of

<sup>264</sup> In September 2015, Italy joined the unitary patent and became the 26<sup>th</sup> member of the enhanced cooperation on unitary patent protection. See European Commission, Daily News, 30 September 2015. Viewed at: [http://europa.eu/rapid/press-release\\_MEX-15-5748\\_en.htm](http://europa.eu/rapid/press-release_MEX-15-5748_en.htm).

<sup>265</sup> OJEU L 361/89, 31 December 2012.

<sup>266</sup> The text of the Agreement on a Unified Patent Court can be accessed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2013:175:0001:0040:EN:PDF>.

<sup>267</sup> The status of signature and acceptance of the Agreement can be viewed at European Commission online information. Viewed at: <https://www.consilium.europa.eu/en/documents-publications/agreements-conventions/agreement/?aid=2013001>.

<sup>268</sup> See press release "U.K. signals green light to UPC Agreement", 28 November 2016. Viewed at: <https://www.gov.uk/government/news/uk-signals-green-light-to-unified-patent-court-agreement>.

<sup>269</sup> See European Commission statement at the Council for TRIPS meeting on 8-9 November 2016, IP/C/M/83/Add.1, paras. 377-379.

<sup>270</sup> Viewed at: [http://ec.europa.eu/growth/tools-databases/newsroom/cf/itemdetail.cfm?item\\_type=251&lang=en&item\\_id=8561](http://ec.europa.eu/growth/tools-databases/newsroom/cf/itemdetail.cfm?item_type=251&lang=en&item_id=8561).

<sup>271</sup> WT/TPR/S/317/Rev.1, para. 3.272.

renewal fees, the Court found that member States were required to adopt all necessary measures under national law to implement legally binding Union acts pursuant to Article 291(1) of the TFEU. Given that the EU was not a party to the European Patent Convention (EPC), it fell inevitably to participating member States to adopt the measures that cover the EPO's expenses for carrying out the additional tasks generated by unitary patent protection.<sup>272</sup>

3.274. With respect to the applicable translation arrangements, the CJEU recognized that Regulation (EU) No. 1260/2012 differentiated between the EU's official languages. But, according to the Court, the Regulation pursued a legitimate objective, as it was conceived to create a uniform and simple translation regime in order to facilitate patent protection for small and medium-sized enterprises by making access to it easier, less costly and legally more secure.<sup>273</sup> The Court also confirmed the respect of the principle of proportionality, as the Regulation maintained a balance between the interests of applicants for a unitary patent in facilitating access to such protection and those of other economic operators in accessing translations of texts that confer rights.

### 3.3.8.2.1.2 Biotechnological inventions

3.275. In the field of biotechnological inventions, the EPO's Enlarged Board of Appeal adopted two important decisions in "Tomatoes II" and "Broccoli II" on 25 March 2015.<sup>274</sup> Noting the exclusion of essentially biological processes from patentability, the Enlarged Board of Appeal held that this did, however, not preclude the grant of patents for plants and plant material obtained from such processes, provided the basic patentability criteria were met. The reasoning for these decisions was that exclusions from patentability of essentially biological processes under Article 53(b) of the EPC had to be narrowly interpreted. The decisions were subject to a controversial debate.<sup>275</sup>

3.276. These and other issues were addressed by the work of the Expert Group set up by the European Commission in November 2012<sup>276</sup> which presented its Final Report on the development and implications of patent law in the field of biotechnology and genetic engineering on 17 May 2016.<sup>277</sup> It reviewed primarily issues related to (i) the patentability of plant-related inventions, focusing on the scope of essentially biological processes for the production of plants and the patentability of plants obtained by such processes, the interface with plant variety protection, and the breeder's exemption; (ii) the patentability of human embryonic stem cells and the related use of human embryos for industrial and commercial purposes; and (iii) the scope of patents related to biological material. This Report provided a useful overview of definitional and legal issues, including relevant CJEU jurisprudence, as well as recent technological developments. According to most of the experts, the Biotech Directive<sup>278</sup> should not be reopened.

3.277. The interface between patents and plant variety rights was also debated at a symposium organized by the then Dutch Presidency in May 2016.<sup>279</sup> To deal with the issues raised, the Commission undertook to work on a clarifying notice that would look at relevant provisions of the Biotech Directive.<sup>280</sup> Subsequently, the patentability of products obtained from essentially biological processes became the object of a Commission Notice of 3 November 2016. While not legally binding, the purpose of the Notice was to clarify the intention of the EU legislators (the

<sup>272</sup> Case C-146/13 (Spain v Parliament and Council), 5 May 2015. Viewed at: <http://curia.europa.eu/juris/document/document.jsf?text=&docid=164092&doclang=EN>.

<sup>273</sup> Case C-147/13 (Spain v Council), 5 May 2015. Viewed at: <http://curia.europa.eu/juris/liste.jsf?num=C-147/13>.

<sup>274</sup> Case G 2/12 and G 2/13. They can be accessed at the EPO Board of Appeal decisions database at: <http://www.epo.org/law-practice/case-law-appeals/advanced-search.html>.

<sup>275</sup> As reported by IP Watch, EPO Backs Patents on Conventional Plants: Broccoli, Tomato Cases Decided, 1 April 2015. Viewed at: <http://www.ip-watch.org/2015/04/01/epo-backs-patents-on-conventional-plants-broccoli-tomato-cases-decided/>.

<sup>276</sup> See previous TPR Report, WT/TPR/S/317/Rev.1, para. 3.273.

<sup>277</sup> Available at: <http://ec.europa.eu/DocsRoom/documents/18604/attachments/1/translations/>.

<sup>278</sup> Directive 98/44/EC on the legal protection of biotechnological inventions, OJEU L 213/13, 30 July 1998.

<sup>279</sup> Symposium on "Finding the Balance – Exploring Solutions in the Debate Surrounding Patents and Plant Breeders' Rights", Brussels, 18 May 2016; unofficial report of the outcome available at: <http://european-seed.com/ip-symposium-explores-patents-pbr/>.

<sup>280</sup> See also the European Parliament's Resolution of 17 December 2015 on patents and plant breeders' rights, available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2015-0473+0+DOC+XML+V0//EN>.

Council and the European Parliament) when enacting certain provisions of the Biotech Directive.<sup>281</sup> In particular, recognizing that Article 4 of the Directive did not explicitly mention the patentability of products emanating from essentially biological processes, the Commission took the view that the negotiating history of the Directive, as well as various provisions of it, confirmed the legislator's intention to exclude plants, animals and parts thereof that are obtained through essentially biological processes from patentability. It recognized that this reading of the Directive was different from the EPO's Enlarged Board of Appeal's decisions, which had to be guided by its legal order, namely the EPC and its implementing regulations in the light of the preparatory work that had led to the signing of the EPC in 1973 and the intention of its drafters, and not by the negotiating history of the Biotech Directive. Subsequently, the EPO announced on 12 December 2016 that all examination and opposition proceedings relating to plants and animals obtained by an essentially biological process were stayed ex officio in order to allow EPO member States to consider the potential impact of the Commission Notice on the EPO's examination practice.<sup>282</sup>

3.278. Also as part of the outcome of the aforementioned symposium, it was agreed that cooperation between the Community Plant Variety Office (CPVO) and the EPO should be further increased. Already in February 2016, the two offices had signed an administrative arrangement. The purpose was to enhance cooperation and to increase transparency,<sup>283</sup> including through the exchange of information and practices between the CPVO and the EPO.<sup>283</sup>

### 3.3.8.2.1.3 Standard-essential patents

3.279. The interface between standards and patents was already discussed in the previous TPR report.<sup>284</sup> Since then, the CJEU followed the opinion of the Advocate General and, in a judgment of 16 July 2015, clarified the conditions under which a holder of a patent essential to a standard can apply for an injunction without infringing competition law.<sup>285</sup>

3.280. In particular, the Court found that the holder of a standard-essential patent who has committed to the standardization body to licence third parties on fair, reasonable and non-discriminatory terms, may seek an injunction to stop the infringement or to recall the products concerned without abusing its dominant position. Prior to seeking such an injunction, the right holder must, however, alert the alleged infringer of the infringement and, if the latter is prepared to sign a licensing agreement, submit an offer for a licence, including the applicable terms, such as the royalty to be paid and the way in which it is to be calculated.

3.281. In this judgment, the Court took into account the need to avoid injunctions becoming an instrument for the right holder to distort licensing negotiations, aimed at securing high royalties, on the one hand, and, by not limiting injunctions to narrowly circumscribed circumstances, the respect of their essential function to incentivize innovative activities, on the other. It thus recognized the need to preserve the balance between ensuring free competition and safeguarding the owner's patent rights, including the right to effective enforcement.

### 3.3.8.2.2 Supplementary protection certificates

3.282. Although closely related to, and conferring the same rights as, the basic patent, SPCs have been described by the Commission as a *sui generis* IP category that only applies after expiry of the basic patent. Making SPCs available aims to restore effective patent protection for certain regulated products; they are designed to compensate the right holder for the time it takes from the filing of a patent application to the marketing authorization, and the potentially negative impact resulting from the reduction of the effective period of market exclusivity to recover R&D

<sup>281</sup> OJEU C 411/3, 8 November 2016.

<sup>282</sup> EPO Notice of 24 November 2016 concerning the staying of proceedings due to the Commission Notice on certain articles of Directive 98/44/EC of the European Parliament and of the Council of 6 July 1998 on the legal protection of biotechnological inventions. Viewed at: <https://www.epo.org/law-practice/legal-texts/official-journal/information-epo/archive/20161212.html>. See also EPO press release of 12 December 2016, viewed at: <https://www.epo.org/news-issues/news/2016/20161212.html>.

<sup>283</sup> EPO press release of 11 February 2016. Viewed at: <http://www.epo.org/news-issues/news/2016/20160211a.html>.

<sup>284</sup> WT/TPR/S/317/Rev.1, para. 3.276.

<sup>285</sup> Case C-170/13 (Huawei Technologies Co. Ltd v ZTE Corp.). Viewed at: <http://curia.europa.eu/juris/document/document.jsf?text=&docid=165911&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=165126>.

investment. SPCs are available for medicinal products (Regulation (EC) No. 469/2009) and plant-protection products (Regulation (EC) No. 1610/96).<sup>286</sup>

3.283. The European Commission Communication on Upgrading the Single Market, of 28 October 2015, identified SPCs among the issues that required further consideration in order to consolidate the IP framework in the EU.<sup>287</sup> In particular, the relationship between the unitary patent and SPCs that are granted by national authorities and, in due course, consideration of the possible creation of a unitary SPC title were raised.

3.284. The above Communication also called for exploring the introduction of an SPC manufacturing waiver in order to allow EU-based generic and biosimilar manufacturers to produce for export during the lifetime of the SPC. Such a waiver has already been included as an option in the Comprehensive Economic and Trade Agreement (CETA) concluded with Canada. The section on *sui generis* protection for pharmaceuticals explicitly provides for an exception that allows "the making, using, offering for sale, selling or importing of products for the purpose of export during the period of protection".<sup>288</sup>

### 3.3.8.2.3 Plant variety rights

3.285. According to a joint EPO/EUIPO report of October 2016<sup>289</sup>, the plant variety rights intensive industries accounted for about 1 million direct employments on average between 2011 and 2013, which represented a share of 0.5% of total direct employment in the EU. In the same period, it contributed 0.4%, or €51 billion, to the EU's total GDP.

3.286. In the EU, plant varieties can be protected either under national plant variety right systems or as a Community Plant Variety Right (CPVR). As regards the latter, Council Regulation (EC) No. 2100/94 of 27 July 1994 on CPVRs<sup>290</sup> established a separate regime that provides for a unitary right to exploit a plant variety with effect across the EU via a single application to the CPVO.<sup>291</sup> The term of protection is 25 years, and 30 years in the case of potato, vine and tree varieties, extendable for a further 5 years in certain cases. National plant variety rights or patents cannot coexist with CPVRs: when a CPVR is granted, the corresponding national title becomes ineffective as long as the CPVR is in force.

3.287. CPVRs are granted and administered by the CPVO. On 31 December 2016, there were 24,956 titles in force, with 2,980 titles granted in 2016 alone, which represented a slight increase of about 4% compared to 2015.<sup>292</sup> About half of the titles in force were for ornamental crops, while the fruit sector ranked last with only 1,654 titles.

3.288. Commission Regulation (EC) No. 1238/95 of 31 May 1995 establishing implementing rules for the application of Regulation 2100/94/EC as regards the fees payable to the CPVO<sup>293</sup> has been amended several times. Commission Implementing Regulation (EU) No. 2015/2206 of 30 November 2015<sup>294</sup> has considerably reduced the fee for the processing of applications filed by electronic means via the online application system made available on the CPVO website. This fee amounts to €450, whereas the fee payable to the CPVO for the processing of applications filed by

<sup>286</sup> For further details, please see 2013 TPR report, WT/TPR/S/284/Rev.2, para. 3.268.

<sup>287</sup> COM(2015) 550 final. Viewed at: <https://ec.europa.eu/transparency/regdoc/rep/1/2015/EN/1-2015-550-EN-F1-1.PDF>. See also the European Council conclusions on Strengthening the Balance in the Pharmaceutical Systems in the EU and its member States, 17 June 2016, available at: <http://www.consilium.europa.eu/en/press/press-releases/2016/06/17-epsco-conclusions-balance-pharmaceutical-system/>.

<sup>288</sup> Article 20.27, para.9. Viewed at: <http://ec.europa.eu/trade/policy/in-focus/ceta/ceta-chapter-by-chapter/>.

<sup>289</sup> Intellectual Property Rights Intensive Industries and Economic Performance in the European Union, Industry-Level Analysis Report, October 2016. Viewed at: [https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/IPContributionStudy/performance\\_in\\_the\\_European\\_Union/performance\\_in\\_the\\_European\\_Union\\_full.pdf](https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/IPContributionStudy/performance_in_the_European_Union/performance_in_the_European_Union_full.pdf).

<sup>290</sup> OJEU L 227/1, 1 September 1994.

<sup>291</sup> For more details regarding the protection of plant variety rights in the EU, see also WTO document WT/TPR/S/284/Rev.2, 28 November 2013, para. 3.269.

<sup>292</sup> See CPVO statistics. Viewed at: <http://cpvo.europa.eu/en/about-us/what-we-do/statistics>.

<sup>293</sup> OJEU L 121/31, 1 June 1995.

<sup>294</sup> OJEU L 314/22, 1 December 2015.

other means remains unchanged at €650.<sup>295</sup> The system for online CPVO applications was introduced in March 2010. In 2016, almost 93% of applications were submitted online, which has allowed the CPVO to reduce processing times for applications.

3.289. Pursuant to Commission Implementing Regulation (EU) No. 2016/2141 of 6 December 2016<sup>296</sup>, the following other CPVO fees apply from 1 January 2017: €1,530 to €3,350 for a technical examination, depending on the species to which the plant variety belongs; and an annual fee at a flat rate of €330 per variety and per year of protection. The fee for proceedings before the Board of Appeal amounts to €1,500.<sup>297</sup>

3.290. The CPVO is also represented in the legal and enforcement working groups of the European Observatory on Infringements of IPRs. It provided input into the Observatory's case-law database project which will collect national case law regarding IPR enforcement. Since 2015, the CPVO has also been building up its own database that aims at facilitating access to relevant case law in EU member States and other relevant instances.<sup>298</sup>

#### 3.3.8.2.4 Trademarks

3.291. Among the IPR-intensive industries, the trademark-intensive industry contributed by far the biggest share to employment and GDP in the EU. Almost 46 million people were directly employed in this sector, and another 20 million employments depended indirectly on this industry. This represented 21% of total direct employment and 30% of total direct and indirect employment on average from 2011 to 2013. The sector contributed €4.8 trillion value added, which was equivalent to 36% of the EU's total GDP, in that same period. The trademark-intensive industry's exports represented €1.275 trillion in 2013, while net exports only amounted to €14.5 billion, given that the EU imports in this sector were also the highest among all IPR-intensive industries (€1.26 trillion).<sup>299</sup>

3.292. Trademarks can be registered in the EU either under national trademark systems or as an EU trademark which provides the right holder with EU-wide protection by means of a single registration at the EUIPO. Since the EU's adherence to the Madrid Protocol in 2004, international registration of a trademark at WIPO is also available to seek protection in any country that is a signatory of the Madrid Protocol.

3.293. In 2015, more than 130,000 trademark applications were filed at the EUIPO. This represented a total increase of more than 11% compared to 2014; direct applications saw a growth of 8.2%, amounting to 108,000 applications, while applications for international registrations increased by 27.4% (almost 22,000 applications, equivalent to 16.8% of the total number of applications). Ninety-eight per cent of the applications were filed electronically with the Office.<sup>300</sup> On average, it took less than 20 weeks to register a trademark, and 5 weeks for an opposition decision, down from 18 weeks in 2010, despite the growth of oppositions which increased by almost 10% to more than 17,000 in 2015. A total of 1,337,709 EU trademarks were registered by the EUIPO from 1996 to February 2017.<sup>301</sup>

3.294. During the reporting period, the EU's trademark regime witnessed a substantive overhaul. Following the Commission's announcement of its intention to review and modernize the EU's

<sup>295</sup> Viewed at: <http://cpvo.europa.eu/en/applications-and-examinations/fees-and-payments>.

<sup>296</sup> OJEU L 332/13, 7 December 2016.

<sup>297</sup> Commission Regulation (EC) No. 572/2008 of 19 June 2008 amending Regulation (EC) No. 1238/95 as regards the level of the annual fee and the fees relating to technical examination, payable to the CPVO, and the manner of payment, OJEU L 161/7, 20 June 2008.

<sup>298</sup> PVR case law is available at: <https://cpvoextranet.cpvo.europa.eu/PVRCasLaw>.

<sup>299</sup> EPO/EUIPO, Intellectual Property Rights Intensive Industries and Economic Performance in the European Union, Industry-Level Analysis Report, 2<sup>nd</sup> edition, October 2016. Viewed at: [https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/IPContributionStudy/performance\\_in\\_the\\_European\\_Union/performance\\_in\\_the\\_European\\_Union\\_full.pdf](https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/IPContributionStudy/performance_in_the_European_Union/performance_in_the_European_Union_full.pdf).

<sup>300</sup> EUIPO, Annual Report 2015. Viewed at: <https://euipo.europa.eu/ohimportal/en/annual-report>

<sup>301</sup> Viewed at: [https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/contentPdfs/about\\_euipo/the\\_office/statistics-of-european-union-trade-marks\\_en.pdf](https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/contentPdfs/about_euipo/the_office/statistics-of-european-union-trade-marks_en.pdf). This also includes trademarks which are not valid anymore. According to the Chief Economist of the EUIPO, there were 1,132,532 validly registered EU trademarks in force on 29 January 2017.



trademark regime in 2011 and the submission of legislative proposals in 2013<sup>302</sup>, the trademark reform package was adopted in December 2015. The legislative reform aims at making the trademark regime more accessible and efficient, including through reduced costs, simpler and faster procedures, as well as enhanced predictability and legal security. It also provides more effective tools to fight counterfeit products, including those transiting EU territory.<sup>303</sup>

3.295. The trademark reform package consists of two legislative measures:

- Regulation (EU) 2015/2424 amending Council Regulation (EC) No. 207/2009 on the Community trademark and Commission Regulation (EC) No. 2868/95 implementing Council Regulation (EC) No. 40/94 on the Community trademark and repealing Commission Regulation (EC) No. 2869/95 on the fees payable to the Office for Harmonization in the Internal Market (OHIM).<sup>304</sup> It amends the legal framework for EU trademarks (formerly "Community trademarks") administered by the EUIPO (formerly known as the "Office for Harmonization in the Internal Market"). Among others, the Regulation introduced the EU certification mark. It also streamlined the procedures before the EUIPO by excluding the possibility to file EU trademark applications with national offices. Furthermore, fees for EU trademarks were reduced and are the same now for applications and renewals (€1,000/€850, if electronically filed); the opposition fee has been brought down to €320 (previously €350). The Regulation is directly applicable in the EU's member States. It entered into force on 23 March 2016; and
- Directive (EU) 2015/2436 to approximate the laws of the member States relating to trademarks.<sup>305</sup> It further harmonizes the legal framework for national trademark regimes in EU member States which coexist with the EU trademark regime, including as regards the protection of trademarks with reputation, collective trademarks, procedural rules and the classification of goods and services. The Directive entered into force on 12 January 2016; member States have until 14 January 2019 to transpose the Directive into national law.

3.296. Among the common features of the trademark reform package is an updated definition of what may constitute a trademark, which removed the requirement of graphic representability. Pursuant to Article 4 of the Regulation and Article 3 of the Directive, "a trademark may consist of any sign, in particular words, including personal names, or designs, letters, numerals, colours, the shape of goods or of the packaging of goods, or sounds". Such signs must be distinctive and be represented "in a manner which enables the competent authorities and the public to determine the clear and precise subject matter of the protection".

3.297. The trademark reform package also includes provisions that are specifically directed towards combating trademark counterfeiting more effectively. Both the Regulation (Article 9(4)) and the Directive (Article 10(4)) thus entitle the right holder, among others, to prevent all third parties from bringing counterfeit goods originating from third countries into the territory of the member State where the trademark is registered without being released for free circulation (goods in transit). The recitals (15 and 21, respectively) emphasize the compatibility with the EU's WTO obligations, in particular GATT Article V and the Doha Declaration on the TRIPS Agreement and Public Health. They also clarify that this entitlement applies to all customs situations, including transit, transshipment, warehousing, free zones, temporary storage, inward processing or temporary admission, also when the goods are not intended to be placed on the EU market (recitals 16 and 22, respectively). However, goods transiting the EU customs territory that bear a trademark that is confusingly similar to an EU trademark, or goods infringing other IPRs are not covered by this provision. Furthermore, the entitlement lapses if the declarant or holder of the goods provides evidence in subsequent proceedings before the EU trademark court that the right holder is not entitled to prohibit the placing of the goods on the market of the country of final destination. Also, recitals 19 and 25, respectively, recall the need for appropriate measures to ensure the smooth transit of generic medicines and, for that purpose, clarify that the right holder

<sup>302</sup> See previous TPR report, WT/TPR/S/317/Rev.1, para. 3.284.

<sup>303</sup> See statement by the European Commission at the TRIPS Council meeting on 7-8 June 2016, IP/C/M/82/Add.1, paras. 7-19.

<sup>304</sup> OJEU L 341/21, 24 December 2015.

<sup>305</sup> OJEU L 336/1, 23 December 2015.

cannot take action based upon similarities between international non-proprietary names for active ingredients in the medicines and related trademarks.

3.298. As discussed in the previous TPR report<sup>306</sup>, these substantive trademark provisions complement the procedural rules on goods in transit in Regulation (EU) No. 608/2013 which covers enforcement measures at the EU's external borders. The latter clarified that when medicines merely transit EU territory, customs should take account of any substantial likelihood of the diversion of such medicines onto the EU market when assessing a risk of IPR infringement.

3.299. When the European Commission introduced the trademark reform package to the TRIPS Council in June 2016, it stressed that the new legislation was not intended to impede access to legitimate generic medicines that were transiting EU territory in order to be delivered to patients in developing countries.<sup>307</sup> At the same meeting, however, a number of developing countries expressed concerns about the potentially negative impact of the relevant provisions on trade in legitimate goods transiting EU territory. In particular, shifting the burden of proof to the declarant or holder of the goods was seen as problematic, as well as the absence of sufficient safeguards against the abuse of enforcement procedures.<sup>308</sup>

3.300. Much of the IPR-specific case law of the CJEU and the General Court continues to address trademark matters.<sup>309</sup> This section limits itself to discussing one important case during the reporting period. Other cases relevant to trademark law can also be found in the enforcement section below.

3.301. The CJEU interpreted the geographical reach of reputation of a Community trademark in its preliminary ruling of 3 September 2015.<sup>310</sup> This is important, since earlier registered trademarks with reputation enjoy a higher level of protection under EU law. They are protected not only against later registration of identical or confusingly similar trademarks that are used for similar goods or services, but also when such trademarks are used for goods or services that are not similar, provided that the use takes unfair advantage of, or is detrimental to, the distinctive character or the reputation of the earlier trademark. The Court interpreted the relevant provision (Article 4(3) of Directive 2008/95/EC, now Article 5(3)(a) of Directive (EU) 2015/2436) as meaning that an earlier trademark can be considered as having acquired reputation in the EU if the reputation can be established in a substantial part of the EU's territory<sup>311</sup> which may coincide with the territory of a single member State, not necessarily including the country in which the application for the later trademark was filed. To benefit from protection in such cases, the right holder had to provide evidence, however, that a commercially significant part of the public in the member State where the application for the later trademark had been filed was familiar with the Community trademark and made a connection with the later national mark. The right holder also had to prove that there was injury caused to the earlier mark or that there was at least a serious risk of such injury occurring in the future.

### 3.3.8.2.5 Geographical indications

#### 3.3.8.2.5.1 Agricultural products

3.302. Geographical indications (GIs) continue to play a significant role in the EU market for wine, spirits, agricultural products and foodstuffs.<sup>312</sup> According to an EUIPO report of April 2016<sup>313</sup>, the

<sup>306</sup> WT/TPR/S/317/Rev.1, paras. 3.285-3.286.

<sup>307</sup> See minutes of the TRIPS Council meeting on 7-8 June 2016, IP/C/M/82/Add.1, para. 15.

<sup>308</sup> See statement by Brazil, IP/C/M/82/Add.1, paras. 30-37, supported by India (IP/C/M/82/Add.1, paras. 38-44), South Africa (IP/C/M/82/Add.1, paras. 45-47), China (IP/C/M/82/Add.1, paras. 51-54) and Indonesia (IP/C/M/82/Add.1, paras. 55-56).

<sup>309</sup> For a comprehensive overview of case law regarding trademark and design matters, see EUIPO, Overview of GC/CJ Case Law 2015; viewed at: <https://euipo.europa.eu/ohimportal/en/web/guest/news/-/action/view/2930045>. A database is accessible at: <https://euipo.europa.eu/eSearchCLW/#basic>.

<sup>310</sup> Case C-125/14 (Iron&Smith kft v Unilever NV). Viewed at: <http://curia.europa.eu/juris/liste.jsf?num=C-125/14>.

<sup>311</sup> For the definition of what constitutes "having a reputation in the EU", see the earlier landmark judgment in Case C-301/07 (PAGO International GmbH v Tirol Milch registrierte Genossenschaft mbH), 6 October 2009. Viewed at: <http://curia.europa.eu/juris/liste.jsf?num=C-301/07>.

<sup>312</sup> For details regarding the economic relevance of GIs, see the previous TPR report, WT/TPR/S/317/Rev.1, para. 3.289.



estimated GI product market in the EU amounted to more than €54 billion in 2010, of which products worth more than €11 billion were exported. The report also assumed that domestic consumption of products protected by EU GIs represented €48 billion in 2014, with wine representing more than half of the share of this consumption.

3.303. A joint EPO/EUIPO report of October 2016<sup>314</sup> estimated that GI-intensive industries generated about 0.1% of the EU's overall GDP, equivalent to €18 billion, value added, in the period 2011-2013. It represented a 0.2% share of total employment in the EU. As regards the EU's external trade, about 20% of total sales of EU GI products are exported outside the EU, between 25% and 30% of processed agricultural products are covered by GIs, and 80% of total wine exports and almost all spirits exports are also covered by GIs.

3.304. The top 10 GIs came from Germany, Spain, France, Italy and the U.K. and represented 28% of the sales in the EU.<sup>315</sup> In France, approximately 32% of products sold were GI-protected.<sup>316</sup> Sales of products protected by third-country GIs were dominated by a few products, such as Café de Colombia from Colombia and Tequila from Mexico. The average premium price that consumers were prepared to pay for GI products was 2.23 times higher than the price for a comparable non-GI product, with the highest premiums paid for wines and spirits.

3.305. Protection of GIs for agricultural products at EU level can be obtained in one of the following ways: as protected designation of origin (PDOs) or protected GI (PGIs) for wines and agricultural products and foodstuffs, or as GI for spirits and aromatized wines (for an overview of relevant legislation, see Table A3.3).

3.306. To do so, the EU has established exclusive and unitary GI protection systems for wines (1970), spirits (1989), aromatized wines (1991), and other agricultural products and foodstuffs (1992). Through these systems, protected names for the products covered enjoy far-reaching protection throughout the EU, based on a single application process. The key provisions are currently laid down for wine in Regulation (EU) No. 1308/2013 of 17 December 2013<sup>317</sup>, for aromatized wines in Regulation (EU) No. 251/2014 of 26 February 2014<sup>318</sup>, for spirits in Regulation (EC) No. 110/2008 of 15 January 2008<sup>319</sup>, and for agricultural products and foodstuffs in Regulation (EU) No. 1151/2012 of 21 November 2012.<sup>320</sup>

3.307. Procedures for the application for registration of GIs originating in the EU have been described in previous reports.<sup>321</sup> As regards GIs of products of non-EU origin, they may be protected in the EU either through direct application or by means of inclusion in FTAs. In the former, the application may be sent either directly, or through the authorities of the country where the geographical area is located, to the Commission. No fees are required for applications from third countries. The average registration time for EU and non-EU GIs in the past two years has been approximately two years.

<sup>313</sup> See the EUIPO Report on Infringement of Protected Geographical Indications for Wine, Spirits, Agricultural Products and Foodstuffs in the EU, April 2016. Viewed at: [https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/Geographical\\_indications\\_report/geographical\\_indications\\_report\\_en.pdf](https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/Geographical_indications_report/geographical_indications_report_en.pdf).

<sup>314</sup> Intellectual Property Rights Intensive Industries and Economic Performance in the European Union, Industry-Level Analysis Report, October 2016. Viewed at: [https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/IPContributionStudy/performance\\_in\\_the\\_European\\_Union/performance\\_in\\_the\\_European\\_Union\\_full.pdf](https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/IPContributionStudy/performance_in_the_European_Union/performance_in_the_European_Union_full.pdf).

<sup>315</sup> See the EUIPO Report on Infringement of Protected Geographical Indications for Wine, Spirits, Agricultural Products and Foodstuffs in the EU, April 2016, p. 28. Viewed at: [https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/Geographical\\_indications\\_report/geographical\\_indications\\_report\\_en.pdf](https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/Geographical_indications_report/geographical_indications_report_en.pdf).

<sup>316</sup> Ibid, p. 5.

<sup>317</sup> OJEU L 347/671, 20 December 2013. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:347:0671:0854:EN:PDF>.

<sup>318</sup> OJEU L 84/14, 20 March 2014.

<sup>319</sup> OJEU L 39/16, 13 February 2008. Consolidated version. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2008R0110:20090120:EN:PDF>.

<sup>320</sup> OJEU L 343/1, 14 December 2012. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:343:0001:0029:en:PDF>. See also previous TPR report, WT/TPR/S/317/Rev.1, para. 3.291.

<sup>321</sup> Notably in WT/TPR/S/284/Rev.2, 28 November 2013, paras. 3.280-3.281.

3.308. According to the 2016 EUIPO report referred to above, nearly 3,400 EU GI names are registered in four databases maintained by the European Commission. In addition, in December 2016, the EUIPO database listed about another 1,500 third-country GIs that are protected pursuant to bilateral agreements concluded by the EU with a number of countries.<sup>322</sup>

3.309. The Commission administers the following databases that provide access to EU and third-country GIs registered in the EU:

- The Database of Origin and Registration (DOOR)<sup>323</sup> for agricultural products and foodstuffs contains names registered or applied for as PDOs and PGIs. As of 1 December 2016, there were 1,323 GIs registered (619 PDOs and 704 PGIs), including 23 third-country names, such as Dongshan Bai Lu Sun and nine other GI names from China; Khao Sangyod Muang Phatthalung and three other GI names from Thailand; Darjeeling from India; Café de Colombia from Colombia; and Café de Valdesia from the Dominican Republic. As of early January 2017, DOOR also showed another 114 applications for registration and 37 names that were published for opposition.
- DOOR is a transparency tool, but has no legal status. It includes non-EU GIs registered in the EU through direct applications. GIs for third-country products protected under an international agreement to which the EU is a party may also be entered in the register. In this regard, the list of relevant international agreements and the list of protected GIs under those agreements are to be published and regularly updated by the Commission pursuant to Article 11 of Regulation (EU) No. 1151/2012.<sup>324</sup>
- The wine register "E-Bacchus"<sup>325</sup> is a database which includes the register of protected designations of origin and protected GIs from member States and third countries that are protected in the EU under Regulation (EU) No. 1308/2013. As of 1 December 2016, 1,291 wine names qualified as PDOs and 459 as PGIs were registered for EU wine, as well as two PDOs for third-country wine, namely Vale dos Vinhedos (Brazil) and Napa Valley (United States). At the same date, the wine register also listed 437 third-country GIs and 696 names of origin protected in the EU in accordance with bilateral agreements on trade in wine that the EU has concluded with a number of its trading partners.
- Spirits bearing a GI are registered in Annex III of Regulation (EC) No. 110/2008. According to Article 17 of the Regulation, applications for a new GI to be registered may be submitted to the Commission by the member State of origin of the spirit or, in the case of third-country GIs, either by the competent authorities in that country or directly to the Commission.
- "E-Spirit Drinks"<sup>326</sup>, a register of GIs protected, or applied for, in the EU for spirits originating in member States and third countries, listed a total of 245 established EU names on 1 December 2016, as well as third-country names protected in the EU (Ron de Guatemala (Guatemala) and Pisco (Peru)). In addition, seven applications for new EU GIs and two applications for third-country names are under examination (Tequila (Mexico) and Russian Vodka (Russian Federation)).
- The Register of Geographical Designations for Aromatised Drinks Based on Wine Products<sup>327</sup> contains a list of five names protected in the EU.

3.310. In its judgment of 21 January 2016<sup>328</sup>, the CJEU had an opportunity to provide an interpretation of the term "evocation" in Article 16 of Regulation (EC) No. 110/2008. The provision

<sup>322</sup> The database can be accessed at: <https://euipo.europa.eu/ohimportal/en/practice>.

<sup>323</sup> Viewed at: <http://ec.europa.eu/agriculture/quality/door/list.html>.

<sup>324</sup> Viewed at: <http://ec.europa.eu/trade/policy/countries-and-regions/agreements/>

<sup>325</sup> Viewed at: <http://ec.europa.eu/agriculture/markets/wine/e-bacchus/>.

<sup>326</sup> Viewed at: <http://ec.europa.eu/agriculture/spirits/>.

<sup>327</sup> Viewed at: [https://ec.europa.eu/agriculture/sites/agriculture/files/quality/documents-links/pdf/rqi-aromatised-wine-products\\_en.pdf](https://ec.europa.eu/agriculture/sites/agriculture/files/quality/documents-links/pdf/rqi-aromatised-wine-products_en.pdf).

<sup>328</sup> Case C-75/15 (*Viiniverla Oy v Sosiaali- ja terveystieteiden tutkimuskeskus*). Viewed at: <http://curia.europa.eu/juris/liste.jsf?num=C-75/15>.

protects registered GIs, among others, "against any misuse, imitation or evocation, even if the true origin of the product is indicated or the GI is used in translation or accompanied by an expression such as "like", "type", "style", "made", "flavor" or any other similar term". According to the CJEU, the act of evocation is determined by reference to the perception of the average, reasonably well-informed, observant and circumspect, consumer, the concept being understood as covering European consumers and not only consumers in the member State where the product concerned is manufactured. The Court found that the use of a name that evokes a registered GI may not be authorized, even if there is no likelihood of confusion.

3.311. Given the importance of GIs for the EU's external trade, the Commission has sought to include a comprehensive section on GI protection for agricultural products in the more recent generation of FTAs. As a consequence, a large number of EU and third-country GIs are now protected through bilateral and regional agreements.<sup>329</sup>

3.312. The following agreements with GI coverage have been finalized or have entered into force since the last report<sup>330</sup>:

- The FTA with Viet Nam for which negotiations were concluded on 1 February 2016 includes one of the more comprehensive GI sections. As well as detailed provisions regarding the protection of GIs, exceptions and their relationship with trademarks, it requires both parties to maintain a registration system. In addition, a list of GIs protected under the Agreement is contained in Annex GI; it includes 39 names from Viet Nam. On the institutional side, a Working Group, including GIs, will be established, among others, to amend the list of registered GIs and to exchange information on legislative and policy developments in this area;
- In a similar vein, Protocol 3 attached to the Economic Partnership Agreement with Southern African Development Community (SADC) EPA States<sup>331</sup>, signed on 10 June 2016 and provisionally applied since 10 October 2016, covers GI protection together with winemaking practices and certification requirements, but is applied only to South Africa and the EU for the time being. It includes detailed rules about the scope of protection, the relationship with trademarks and enforcement of GIs, as well as Annex I with a non-exhaustive list of more than 100 GIs from South Africa and more than 250 from the EU that are to be protected in both parties' jurisdictions and that third-country manufacturers will no longer be allowed to use for exports of their products to the EU and South Africa. On the other hand, the Economic Partnership Agreement concluded with the East African Community Partner States in October 2014 has only limited provisions in the field of GIs, recognizing their importance for sustainable agriculture and rural development. GIs are included in areas of future cooperation to develop policies and legal frameworks that support the identification, registration and marketing of GI-protected products<sup>332</sup>;
- The Stabilisation and Association Agreements concluded with Bosnia and Herzegovina (entry into force: 1 June 2015), as well as with Kosovo (entry into force: 1 April 2016) both include an agreement on the reciprocal recognition, protection and control of wine, spirit and aromatized wine names with detailed provisions regarding the protection of GIs and a list of protected names;
- The Association Agreements concluded with Ukraine (provisionally applied since 1 November 2014 and the Deep and Comprehensive Free Trade Agreement since 1 January 2016), as well as Georgia and Moldova (both entered into force on 1 July 2016) all comprise comprehensive provisions regarding the protection and

<sup>329</sup> For a list of selected earlier agreements, see previous TPR report, WT/TPR/S/317/Rev.1, para. 3.296, FN. 287.

<sup>330</sup> The texts of the agreements can be accessed at: <http://ec.europa.eu/trade/policy/countries-and-regions/agreements/>.

<sup>331</sup> The SADC EPA Group consists of 6 out of 15 members of the SADC (Botswana, Lesotho, Mozambique, Namibia, Swaziland and South Africa). Angola has observer status and may join the Agreement in the future.

<sup>332</sup> As regards the CARIFORUM-EU EPA, the parties are engaged in exploratory talks to implement Article 145 regarding the rendez-vous clause on GIs, in order to reach an agreement on the protection of GIs in their respective territories in the near future.

enforcement of GIs. Elements for the registration and control of GIs and criteria to be included in objection procedures as well as lists of protected names are covered in annexes to the respective agreements. On the institutional side, each agreement also provides for the establishment of GI sub-committees, which aim at addressing specific problems regarding the protection of GIs as well as updating GI lists.

- As part of the CETA that was signed at the EU-Canada Summit on 30 October 2016<sup>333</sup>, Canada undertook to grant the higher level of protection under Article 23 of TRIPS to the majority of the 143 listed GIs that are protected in the EU, upon entry into force of the Agreement. Exceptions will only apply with respect to 19 names that are conflicting with names already in use in Canada.<sup>334</sup> In particular, for the first time in 20 years, EU producers will be allowed to use certain famous names, such as 'Prosciutto di Parma' and 'Prosciutto di San Daniele' for their exports to Canada. These names are protected GIs in the EU, and will, departing from the principle of "first in time, first in right", be allowed to coexist with Canadian trademarks that were registered earlier. Canada also agreed to strengthen its border measures, including with respect to goods infringing GIs.<sup>335</sup>
- Similarly, the EU and Kazakhstan Enhanced Partnership and Cooperation Agreement (EPCA), provisionally applied since 1 May 2016, includes a section on GIs that provides for detailed rules concerning the scope of protection, the relationship with trademarks and the enforcement of GIs. The EPCA foresees negotiations on the protection of GI names within seven years from its entry into force.

3.313. In addition to the wide range of FTAs that provide for GI protection and an institutional framework to enhance cooperation, other forms of cooperation activities are in place with a number of developing countries.<sup>336</sup>

#### 3.3.8.2.5.2 Non-agricultural products

3.314. The protection of GIs for non-agricultural products is not harmonized at EU level, and therefore remains governed by different national laws.<sup>337</sup> National appellation systems are available in 15 EU member States.<sup>338</sup> In addition, GIs for non-agricultural products may also be protected as collective EU trademarks<sup>339</sup>, as well as under unfair competition laws.

3.315. The European Commission continued to explore the possibility of extending GI protection to non-agricultural products at EU level.<sup>340</sup> In its Communication on Upgrading the Single Market, of 28 October 2015<sup>341</sup>, it committed to take work forward on how to make the most of Europe's traditional know-how.

#### 3.3.8.2.6 Industrial designs

3.316. According to a joint study by the EUIPO and the EPO<sup>342</sup>, industrial designs rank among the top three IPR-intensive industries in terms of job creation and share of the EU's total GDP. They

<sup>333</sup> Viewed at: <http://ec.europa.eu/trade/policy/in-focus/ceta/>.

<sup>334</sup> See Commission Summary of the Final Negotiating Results of December 2014. Viewed at: [http://trade.ec.europa.eu/doclib/docs/2014/december/tradoc\\_152982.pdf](http://trade.ec.europa.eu/doclib/docs/2014/december/tradoc_152982.pdf).

<sup>335</sup> Viewed at: <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1567>.

<sup>336</sup> See previous report WT/TPR/S/317/Rev.1, 21 October 2015, para. 3.297.

<sup>337</sup> For a detailed description of the protection provided in certain EU member States and the legal instruments currently available at the level of the EU, see previous TPR report, WT/TPR/S/317/Rev.1, 21 October 2015, para. 3.298.

<sup>338</sup> Belgium (Wallonia), Bulgaria, Croatia, Czech Republic, Estonia, France, Germany, Hungary, Latvia, Poland, Portugal, Romania, Slovakia, Slovenia and Spain (region of Murcia).

<sup>339</sup> See explanation provided in an earlier Secretariat report, WT/TPR/S/284/Rev.2, 28 November 2013, para. 3.287.

<sup>340</sup> See the information on ongoing work provided at: [http://ec.europa.eu/growth/industry/intellectual-property/geographical-indications/non-agricultural-products\\_en](http://ec.europa.eu/growth/industry/intellectual-property/geographical-indications/non-agricultural-products_en).

<sup>341</sup> COM (2015) 550 final. Viewed at: <https://ec.europa.eu/transparency/regdoc/rep/1/2015/EN/1-2015-550-EN-F1-1.PDF>.

<sup>342</sup> Intellectual Property Rights Intensive Industries and Economic Performance in the EU, Industry-Level Analysis Report, 2<sup>nd</sup> edition, October 2016. Viewed at: <https://euiipo.europa.eu/tunnel-web/secure/webdav/>

are reported to have generated about 12%, or 25.6 million, of direct employments, and contributed about 13.5%, or €1.8 trillion, to the EU's GDP on average from 2011 to 2013. As regards the EU's external trade, the design industry has by far generated the biggest surplus, with total exports amounting to €945 billion, and net exports to €243 billion.

3.317. In the EU, there are three ways of registering industrial designs:

- Registration as a Community design at the EUIPO.<sup>343</sup> A Registered Community Design (RCD) is protected throughout the EU for a maximum period of 25 years. Furthermore, Regulation (EC) No. 6/2002 also provides for the protection of unregistered Community designs for a period of no more than three years from the date of making the design available to the public in the EU;
- Under any of the national design systems maintained by EU member States. Directive 98/71/EC<sup>344</sup> on the legal protection of designs harmonized the design laws of member States with respect to provisions in national systems that most directly affect the functioning of the EU's internal market, so that right holders are given consistent and equivalent protection in all member States; or
- Through international registration at WIPO.<sup>345</sup> This is possible since the approval of the EU's accession to the Hague Agreement concerning the international registration of industrial designs in December 2006.<sup>346</sup>

3.318. By December 2016, more than 1 million RCDs were registered at the EUIPO, and about 85,000 new designs are registered each year.<sup>347</sup> In 2015, the Office saw a slightly reduced number of applications for RCDs compared to 2014, amounting to 97,500 applications in total. More than 86,000 applications were filed directly with the Office, while international filings increased by 10.5% to over 11,300 applications in the same year.<sup>348</sup> Design e-filing saw steady growth, and reached 92% of all applications filed in 2015, which represents a 7% increase compared to 2014.<sup>349</sup> On average, it took five days to register a design in 2015. Registration and publication fees together amount to €350; renewal fees range from €90 (first time) to €180 (fourth time).<sup>350</sup>

3.319. The EUIPO makes two databases available to search for registered designs: eSearch plus, which provides access to a database of RCDs, and DesignView<sup>351</sup>, which combines entries in the EUIPO's database of designs with the registered design information held by any of the participating national offices. As of 20 June 2016, international design data held by WIPO have also been integrated into DesignView, thus adding more than 227,000 designs to the search facility. In total, DesignView thus makes information about more than 10 million designs accessible.

3.320. Industrial design protection in the EU has been the object of a comprehensive assessment, both in legal and economic terms. The final Report on the Economic Review of Industrial Design in Europe was released in January 2015.<sup>352</sup> It reviewed the economic contribution of designs, how these are protected in the EU, and the rationale for protecting designs. It also discussed specific issues, including in relation to enforcement and the advent of new technologies such as 3D printing, as well as the divergent situation in EU member States regarding the availability of design protection for visible spare parts for complex products. The Report noted that only a minority of

---

[quest/document\\_library/observatory/documents/IPContributionStudy/performance\\_in\\_the\\_European\\_Union/performance\\_in\\_the\\_European\\_Union\\_full.pdf](#).

<sup>343</sup> Council Regulation (EC) No. 6/2002 of 12 December 2001 on Community Designs, OJEU L 3/1, 5 January 2002.

<sup>344</sup> OJEU L 289/28, 28 October 1998.

<sup>345</sup> For more details, see previous TPR report, WT/TPR/S/284/Rev.2, 28 November 2013, paras. 3.291-3.292.

<sup>346</sup> Council Decision 2006/954/EC of 18 December 2006, OJEU L 386/28, 29 December 2006.

<sup>347</sup> See the EUIPO design portal at <https://euipo.europa.eu/ohimportal/en/designs>.

<sup>348</sup> EUIPO Annual Report 2015, p. 15. Viewed at: [https://euipo.europa.eu/tunnel-web/secure/webdav/quest/document\\_library/contentPdfs/about\\_euipo/annual\\_report/annual\\_report\\_2015\\_en.pdf](https://euipo.europa.eu/tunnel-web/secure/webdav/quest/document_library/contentPdfs/about_euipo/annual_report/annual_report_2015_en.pdf).

<sup>349</sup> EUIPO Annual Report 2015, p. 16.

<sup>350</sup> Viewed at: <https://euipo.europa.eu/ohimportal/en/rcd-fees-directly-payable-to-euipo>

<sup>351</sup> Both databases can be accessed at <https://euipo.europa.eu/ohimportal/en/rcd-search-availability>.

<sup>352</sup> Viewed at: [http://ec.europa.eu/growth/tools-databases/newsroom/cf/itemdetail.cfm?item\\_id=8844](http://ec.europa.eu/growth/tools-databases/newsroom/cf/itemdetail.cfm?item_id=8844).



designs are formally protected in the EU, partly because firms seek other ways to protect their designs, partly because they are simply not aware of existing avenues to protect them.

3.321. The final Report on the Legal Review on Industrial Design Protection in Europe was published in April 2016.<sup>353</sup> It examined the impact of harmonization in terms of facilitating the system of design protection, assessed the coexistence of design protection at national and EU level, and discussed the need for updating the current legal framework and for further harmonizing legislation in EU member States. Key substantive issues that were addressed by the Report include the definition of industrial design, the impact of new technologies in areas such as spare parts and 3D printing, the relationship between laws providing for the protection of designs and copyright, etc.

### 3.3.8.2.7 Undisclosed information

#### 3.3.8.2.7.1 Trade secrets

3.322. There have been important legislative developments regarding the harmonization of the protection and enforcement of trade secrets in the EU. Since the previous TPR report<sup>354</sup>, the Directive on the Protection of Undisclosed Know-How and Business Information (Trade Secrets) Against Their Unlawful Acquisition, Use and Disclosure<sup>355</sup> has been adopted after approval by the European Parliament<sup>356</sup> and by the Council.<sup>357</sup> EU member States have until June 2018 to comply with the Directive.

3.323. While other categories of IP, including patents, design rights and copyright, play an important role for businesses that seek to protect the results of their innovative activities, trade secrets are an alternative or complementary means to achieve this objective. Companies generally value them at least as much as other forms of IP. This was confirmed by a survey on trade secret use by companies in the EU that was launched in November 2012: 75% of the respondents ranked trade secrets as strategically important for their company's growth, competitiveness and innovative activity; and 20% reported at least one attempt to misappropriate trade secrets, also noting that the risk had increased since 2002.<sup>358</sup> The protection of undisclosed, valuable knowledge can thus have an important function in order to stimulate innovative activity and cooperation among private sector actors, in particular SMEs, and also research institutions.

3.324. However, misappropriation of trade secrets has been on the rise in the EU for some time. Among others, this has been facilitated by the significant heterogeneity of laws regarding the protection of trade secrets in EU member States so far, notwithstanding the minimum standards set by the TRIPS Agreement, potentially causing a fragmentation of the internal market. The Directive therefore aims at harmonizing the legal framework through the establishment of certain standards that are applicable across the EU while also preserving the possibility for EU member States to provide for stricter rules at national level.

3.325. To do so, the Directive provides for a common definition of trade secrets in line with Article 39.2 of TRIPS. Trade secrets are thus understood to cover know-how, as well as business and technological information, provided that there is a legitimate interest in keeping them confidential and a legitimate expectation that the confidentiality will be preserved. The protected know-how or information must be of actual or potential commercial value to the person lawfully controlling the trade secret. Trivial information, the experience and skills gained by employees in the normal course of their employment, as well as information that is known among, or readily accessible to,

<sup>353</sup> Viewed at: [http://ec.europa.eu/growth/tools-databases/newsroom/cf/itemdetail.cfm?item\\_id=8845](http://ec.europa.eu/growth/tools-databases/newsroom/cf/itemdetail.cfm?item_id=8845).

<sup>354</sup> See the section on trade secrets in WT/TPR/S/317/Rev.1, para. 3.300.

<sup>355</sup> Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016, OJEU L 157/1 of 15 June 2016; the initial Commission proposal of 28 November 2013 was circulated in document COM(2013) 813 final, and is available at: [http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:opoku8ukki52013\\_PC0813](http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:opoku8ukki52013_PC0813).

<sup>356</sup> See EP legislative resolution of 14 April 2016. Available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2016-0131+0+DOC+XML+V0//EN>.

<sup>357</sup> Press release 244/16 of 27 May 2016 (<http://www.consilium.europa.eu/en/press/press-releases/2016/05/27-trade-secrets-new-directive/>).

<sup>358</sup> See Section 2.1. of the Commission proposal for a directive on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure, COM(2013)813 final of 28 November 2013.

persons within the circles that normally deal with the kind of information concerned, are excluded from the scope of the Directive. In a similar vein, the independent discovery of the same know-how or information, as well as reverse engineering of a lawfully acquired product remain possible, as they are defined as lawful acquisitions of trade secrets.

3.326. While not providing for criminal sanctions, the Directive requires EU member States to make civil procedures and remedies available to trade-secret holders so that they can take effective action in order to either prevent or obtain redress for the unlawful acquisition, use or disclosure of their trade secret. These measures should make it easier for holders of trade secrets to defend their rights in courts and to seek compensation where such trade secrets have been misappropriated.

3.327. The general provisions are inspired by the general obligations evoked in Article 41 of TRIPS. They call for fair and equitable procedures that are effective and dissuasive, are not unnecessarily complicated or costly, and do not entail unreasonable time-limits or unwarranted delays. Also, EU member States are required to provide for safeguards against the abuse of the measures, procedures and remedies provided for by the Directive, and to avoid the creation of barriers to legitimate trade in the internal market.

3.328. The Directive has been conceived as a contribution to the smooth functioning of the EU's internal market. It aims at establishing a deterrent effect against the illegal disclosure of trade secrets in order to allow for the safe exchange of knowledge between research institutions and the private sector, in particular SMEs which usually rely more on trade secret protection. This clear and uniform legal framework is expected to boost an environment that is supportive of innovation, research and development, as well as competitiveness within the EU.<sup>359</sup>

3.329. At the same time, in an attempt to address concerns raised with respect to the Directive's potential impact on a range of fundamental rights, the Directive seeks to take a balanced approach to preserve the freedom of expression, as well as the public interest in access to information. In particular, provisions are included to ensure the exercise of investigative journalism and the protection of journalistic sources, as well as the mobility of workers and the protection of whistle-blowers who act in order to protect the general public interest. While industry welcomed the Directive as a useful tool to fight more effectively against the misappropriation of trade secrets, critics deplored the broad definition of trade secrets, as well as the lack of clarity of the exceptions to the unlawful acquisition, use and disclosure of trade secrets, which would create legal uncertainty.

#### 3.3.8.2.7.2 Clinical trial data

3.330. The legal framework currently in force in the EU in order to provide for the protection of clinical trial data, as required by Article 39.3 of TRIPS, was set out in earlier TPR reports.<sup>360</sup> In particular, it provides for a regime of exclusivity periods of eight plus two plus one years during which generic manufacturers cannot rely on the data submitted by the originator company to the regulatory authorities, nor market the generic product.<sup>361</sup>

3.331. The EU's recent policy and legal framework regarding public access to clinical trial data was also described in the previous TPR report.<sup>362</sup> Regulation (EU) No. 536/2014 of the European Parliament and of the Council of 16 April 2014 on Clinical Trials on Medicinal Products for Human Use<sup>363</sup> thus provides, among others, that an EU database be set up and maintained by the European Medicines Agency (EMA) with a view to ensuring an appropriate level of transparency in clinical trials. The Regulation is expected to become applicable by October 2018 once the full functionality of the EU database has been verified.

<sup>359</sup> See the statement by the EU delegation at the TRIPS Council meeting on 8-9 November 2016, IP/C/M/83/Add.1, paras. 48-59.

<sup>360</sup> WT/TPR/S/284/Rev.2, paras. 3.295-3.297 and WT/TPR/S/317/Rev.1, paras. 3.301-3.303.

<sup>361</sup> Directive 2004/27/EC of 31 March 2004 amending Directive 2001/83/EC on the Community code relating to medicinal products for human use (OJEU L 136/34, 30 April 2004).

<sup>362</sup> WT/TPR/S/317/Rev.1, paras. 3.301-3.303.

<sup>363</sup> OJEU L 158/1, 27 May 2014.



3.332. Following the adoption of the EMA's new policy on the publication of clinical data for medicinal products for human use in October 2014<sup>364</sup> and extensive consultations with stakeholders, the EMA, as the first regulatory authority worldwide, has already started providing open access to such data on 20 October 2016.<sup>365</sup> The objective is to avoid duplication of clinical trials and to encourage innovative activities to develop new medicines, and also to allow academics and researchers to reassess clinical trial data.

3.333. For applications for marketing authorization in the EU submitted since January 2015, as well as for applications to vary a marketing authorization submitted since July 2015, reports presented by originator companies will thus be made publicly accessible 60 days after the European Commission's decision regarding an application.<sup>366</sup> The data include the clinical overview and summary, as well as study reports on individual clinical studies and their appendices. After the initial publication of data for six medicines in 2016<sup>367</sup>, the EMA intends to progressively add online data for all applications received since early 2015.

3.334. The EU database, provided for under Regulation (EU) No. 536/2014, shall contain information submitted in the clinical trials application and during the assessment procedure. In principle, this information will be accessible to the public, unless the confidentiality of the information can be justified on a number of grounds.<sup>368</sup> It is expected that the database will be put in place as of October 2018. A summary of the results of a clinical trial and a layperson summary shall be submitted in the database within one year from the end of the clinical trial in all member States, irrespective of the outcome. Additionally, the clinical study report shall be submitted 30 days after a marketing authorization for a medicinal product has been granted, the procedure completed, or the marketing authorization application withdrawn.<sup>369</sup>

### 3.3.8.3 Enforcement

#### 3.3.8.3.1 Economic impact

3.335. Mapping the economic impact of counterfeiting and piracy in the EU helps to better understand the importance that the fight against IPR-infringing activities has taken in recent years for the European Commission and national authorities. The magnitude of such activities was illustrated by a joint OECD/EUIPO study on Trade in Counterfeit and Pirated Goods that was presented on 18 April 2016. It provided empirical evidence regarding the magnitude of counterfeiting and piracy at global level.<sup>370</sup> As specifically regards the situation in the EU, the study found that imports of counterfeit and pirated goods into the EU market were worth almost \$116 billion in 2013, which was the equivalent of 5% of the EU's total imports. Section 6 of the study lists Hong Kong, China; China; the United Arab Emirates; and Turkey as the top four provenance economies of counterfeit goods imported into the EU. Watches, leather articles and footwear were identified as the top three industries exposed to the import of counterfeit goods. This said, the scope of the study needs to be read in conjunction with the definitions and parameters on which it is based. Thus, counterfeiting and piracy in this context encompasses infringements of copyright, trademarks, design rights and patents, and is thus defined in a broader manner than is the case under the TRIPS Agreement.<sup>371</sup> At the same time, only IPR infringements related to tangible goods were assessed, not those occurring online.

3.336. Since March 2015, the EUIPO has released a number of sectoral studies that illustrate the impact of counterfeiting and piracy on the EU's economy, including as regards lost sales and revenues, lost jobs and also lost government revenues. Among the sectors that were reportedly most affected by IPR-infringing activities were clothing, accessories and footwear;

<sup>364</sup> Available at: [http://www.ema.europa.eu/docs/en\\_GB/document\\_library/Other/2014/10/WC500174796.pdf](http://www.ema.europa.eu/docs/en_GB/document_library/Other/2014/10/WC500174796.pdf).

<sup>365</sup> Press release. Viewed at: [http://www.ema.europa.eu/ema/index.jsp?curl=pages/news\\_and\\_events/news/2016/10/news\\_detail\\_002624.jsp&mid=WC0b01ac058004d5c1](http://www.ema.europa.eu/ema/index.jsp?curl=pages/news_and_events/news/2016/10/news_detail_002624.jsp&mid=WC0b01ac058004d5c1).

<sup>366</sup> The EMA's clinical data publication website can be accessed at: <https://clinicaldata.ema.europa.eu/web/cdp/home>.

<sup>367</sup> Available at: <https://clinicaldata.ema.europa.eu/web/cdp/home>.

<sup>368</sup> Article 81.4 of Regulation (EU) No. 536/2014 as outlined also in WT/TPR/S/317/Rev.1, para 3.301.

<sup>369</sup> Article 37 of Regulation (EU) No. 536/2014.

<sup>370</sup> See summary of main findings at: [http://ec.europa.eu/growth/tools-databases/newsroom/cf/itemdetail.cfm?item\\_id=8774](http://ec.europa.eu/growth/tools-databases/newsroom/cf/itemdetail.cfm?item_id=8774).

<sup>371</sup> See footnote 14 to Article 51 of TRIPS.

pharmaceuticals; as well as cosmetics and personal care. Table 3.31 provides an overview of the main findings in the 11 sectors covered by these studies.

**Table 3.31 EUIPO - quantification of IPR infringement by sector**

Sector	Sales lost by the sector	Revenues lost by the sector	Sales lost in related sectors	Direct jobs lost	Direct and indirect jobs lost	Government revenue lost
Cosmetics, personal care	7.8%	€4.7 bn	€4.8 bn	51,561	78,959	€1.7 bn
Clothing, accessories, footwear	9.7%	€26.3 bn	€17 bn	363,000	518,281	€8.1 bn
Sports goods	6.5%	€500 mn	€350 mn	2,800	5,800	€150 mn
Toys, games	12.3%	€1.4 bn	€850 mn	6,150	13,168	€370 mn
Jewellery, watches	13.5%	€1.9 bn	€1.6 bn	15,000	28,500	€600 mn
Handbags, luggage	12.7%	€1.6 bn	€1.6 bn	12,100	25,700	€516 mn
Recorded music industry	5.2%	€170 mn	€166 mn	829	2,155	€63 mn
Spirits, wine	3.3% (4.4% spirits sales, 2.3% wine sales)	€1.3 bn	€1.7 bn	4,800	23,300	€1.2 bn
Pharmaceuticals	4.4%	€10.2 bn	€7.1 bn	37,700	90,900	€1.7 bn
Pesticides	13.8%	€1.3 bn	€1.5 bn	2,600	11,700	€238 mn
Smartphones	8.3%	€4.2 bn	n.a	n.a	n.a	n.a

n.a. Not applicable.

Source: EUIPO, Sectoral Studies, published between March 2015 and March 2017.<sup>372</sup>

3.337. Another EUIPO report of April 2016<sup>373</sup> estimated the market of goods infringing EU GIs at €4.3 billion in 2014, which corresponds to 9% of the EU's total GI product market, and the consumer loss at up to €2.3 billion during the same period. Infringements were mostly caused by acts of imitation or evocation of protected GIs (42%), as well as by misleading information about the origin of non-GI products (38%). In addition, about 20% of infringements resulted from non-conformity with product specifications by producers from the relevant GI area.

3.338. Also, a 2015 Situation Report on Counterfeiting in the EU<sup>374</sup>, jointly prepared by Europol and OHIM, emphasized the absence of a comprehensive analysis of the criminal dimension of counterfeiting in the EU, in particular in the online environment, and called for a more structured and systematic intelligence effort. While the Report noted that much of the counterfeiting activities were still taking place in third countries, it also pointed to the growing importance of free trade zones for counterfeiters, as well as to the production of counterfeit goods in the EU as a less costly and lower risk operation to market such IPR-infringing goods in the internal market. The Report found that the Internet was the most significant enabler for the distribution of an ever-increasing range of counterfeit goods.

### 3.3.8.3.2 Enforcement within the EU

3.339. Enforcement of IPRs in the EU, both in traditional commerce and online, continued to be framed by Directive 2004/48/EC on the Enforcement of IPRs (IPRED) and Directive 2001/29/EC on the Harmonisation of Certain Aspects of Copyright and Related Rights in the Information

<sup>372</sup> Available at: <https://euiipo.europa.eu/ohimportal/en/web/observatory/quantification-of-ipr-infringement>. The study on the Economic Cost of IPR Infringement in the Smartphones Sector was carried out in collaboration with the ITU.

<sup>373</sup> EUIPO Report on Infringement of Protected GIs for Wine, Spirits, Agricultural Products and Foodstuffs in the EU. Viewed at: [https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/Geographical indications report/geographical indications report en.pdf](https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/Geographical%20indications%20report/geographical%20indications%20report%20en.pdf).

<sup>374</sup> Viewed at: <https://euiipo.europa.eu/ohimportal/documents/11370/80606/2015+Situation+Report+on+Counterfeiting+in+the+EU>.

Society.<sup>375</sup> An overview of the main enforcement provisions was provided by the previous TPR report.<sup>376</sup>

3.340. As also noted in the previous report<sup>377</sup>, consultations on the civil enforcement of IPRs in the EU, including the operation and possible review of the Enforcement Directive, have been held since 2011, but have not yet resulted in any concrete legislative proposal.

3.341. In its Communication on a Digital Single Market Strategy for Europe of 6 May 2015<sup>378</sup>, the European Commission announced its intention to make legislative proposals, among others, to modernize the EU's regime of IPR enforcement, with particular attention being paid to commercial-scale infringements and the applicability across borders. In December 2015, this was followed by a public consultation on the evaluation and modernization of the current legal framework, including as regards the operation of the Enforcement Directive in the online environment.<sup>379</sup> In parallel, the European Commission also consulted the public on due diligence and supply chain integrity.<sup>380</sup> The purpose was to identify existing private sector mechanisms to survey supply chains and, on this basis, to map and promote best practices in order to reduce the risk of IPR infringements in legitimate supply chains. However, only few responses were received, given that companies were not prepared to reveal the requested information that was considered to be too confidential and detailed, and also preferred to focus exclusively on illegitimate supply chains.

3.342. An assessment of the role of intermediaries regarding the enforcement of IPRs, including counterfeit goods, in the Digital Single Market was also part of the European Commission's ongoing work regarding the evaluation and modernization of the IPR enforcement regime in the EU. This included consideration of the need to amend the existing legal framework in this regard, and the promotion of voluntary cooperation mechanisms.<sup>381</sup> As part of the latter approach, the European Commission proactively supported the putting into place of memoranda of understanding (MoU) in order to dissuade online, commercial-scale IPR infringements.<sup>382</sup> Following the 2011 MoU on the sale of counterfeit goods via the Internet<sup>383</sup>, another MoU was thus opened for signature on 21 June 2016 with a view to establishing a code of best practices to combat the sale of counterfeit goods over the Internet.<sup>384</sup> In particular, the signatories committed themselves to offer efficient and effective notice and take-down procedures, and to cooperate with each other, as well as with customs and law enforcement authorities.

3.343. First launched in 2009 by the European Commission and subsequently transferred to the OHIM in 2013<sup>385</sup>, renamed EUIPO since March 2016, the European Observatory on Infringements of IPRs (Observatory) has among its principal tasks to collect and monitor information regarding counterfeiting and piracy in the EU's internal market, as well as to foster collaboration through a network of public and private sector actors. In order to provide evidence and data required for EU policymakers to take informed decisions, the Observatory hosts a number of important information resources regarding IPR enforcement. In particular, it administers two databases, i.e. the Enforcement Database<sup>386</sup> that provides access to information on IPR-protected goods and supports enforcement agencies in identifying counterfeit goods, and the Anti-Counterfeiting Intelligence

<sup>375</sup> OJEU L 157/45, 30 April 2004; and OJEU L 167/10, 22 June 2001.

<sup>376</sup> See para. 3.307, Table 3.23, Document WT/TPR/S/317/Rev.1.

<sup>377</sup> WT/TPR/S/317/Rev.1, para. 3.311.

<sup>378</sup> Document COM(2015) 192 final.

<sup>379</sup> The summary of the responses can be viewed at: <http://ec.europa.eu/growth/tools-databases/newsroom/cf/itemdetail.cfm?id=8580>.

<sup>380</sup> The report on this consultation can be viewed at: <http://ec.europa.eu/growth/tools-databases/newsroom/cf/itemdetail.cfm?id=8603>.

<sup>381</sup> European Commission, Communication on Online Platforms and the Digital Single Market Opportunities and Challenges for Europe, COM(2016) 288 final, 25 May 2016. Viewed at: <https://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-288-EN-F1-1.PDF>.

<sup>382</sup> See Commission Declaration on the Facilitation and Monitoring of MoUs Seeking to Dissuade Commercial Scale IP-Infringing Activities in the Internal Market, COM(2016) 3724 final, 20 June 2016. Viewed at: <http://ec.europa.eu/DocsRoom/documents/18023/attachments/2/translations/>.

<sup>383</sup> Viewed at: <http://ec.europa.eu/DocsRoom/documents/10468/attachments/1/translations/>.

<sup>384</sup> Viewed at: <http://ec.europa.eu/DocsRoom/documents/18023/attachments/1/translations/>.

<sup>385</sup> See previous TPR report, WT/TPR/S/317/Rev.1, para. 3.315.

<sup>386</sup> The database can be accessed at: <https://euipo.europa.eu/ohimportal/en/web/observatory/enforcement-database>.

Support Tool (ACIST).<sup>387</sup> The latter offers statistics with respect to goods suspected of infringing IPRs that are detained at borders and in the internal market. Information that can be accessed includes, in particular, detention by a member State, both at the border and inland, countries of provenance, categories of infringing goods, and how the IPR was infringed.

3.344. During the reporting period, the Enforcement Directive was the object of a number of preliminary rulings issued by the CJEU. For example, in its judgment of 17 March 2016<sup>388</sup>, the Court had an opportunity to provide an interpretation of Article 13(1) of the Directive and, in particular, the kind of damages that the competent judicial authority shall order the infringer who, knowingly, or with reasonable grounds to know, engaged in an infringing activity to pay. The CJEU found that merely calculating the damages on the basis of hypothetical royalties would not be sufficient for the purposes of providing the right holder with full compensation, as it would only cover the material damage suffered by him or her. Therefore, the Court held that the right holder must also be entitled to claim compensation for the moral prejudice that he or she has suffered as a result of the infringing activity.

3.345. In another judgment of 7 July 2016<sup>389</sup>, the CJEU pronounced itself on the meaning of an "intermediary whose services are being used by a third party to infringe an IPR" and the conditions that apply for an injunction to be issued against such intermediary within the meaning of Article 11 of the Enforcement Directive. Considering that the Directive was not limited to electronic commerce but also applied to the provision both of online and physical sales points, the Court draws on earlier jurisprudence in which it had examined the issues at stake with respect to online marketplaces. The Court thus confirmed that, in an analogy with its earlier findings, according to which an online access provider who permits access without proposing any other services or exercising a review, provided a service within the meaning of Article 11 and therefore had to be considered as an intermediary, the tenant of market halls who sublet sales points to traders who used them to sell counterfeit products also constituted an intermediary in the context of the Enforcement Directive. As regards the conditions applying to an injunction pursuant to Article 11, third sentence, of the Directive, the Court recalled the principles established in an earlier judgement concerning injunctions against intermediaries in an online marketplace.<sup>390</sup> In particular, it confirmed that such injunctions had to be equitable, proportionate and balanced, protecting IPRs whilst not creating any barriers to legitimate trade.

### 3.3.8.3.3 Enforcement at the EU's external borders

3.346. Since 1 January 2014, enforcement at the EU borders is governed by Regulation (EU) No. 608/2013 of the European Parliament and of the Council, as well as Commission Implementing Regulation (EU) No. 1352/2013.<sup>391</sup>

3.347. As noted in the previous TPR report, Regulation (EU) No. 608/2013 also addressed the handling of medicines transiting the EU territory by customs.<sup>392</sup> In a different context, the detention of generic medicines in transit was again considered in the Council for TRIPS at its meeting on 7-8 June 2016<sup>393</sup> when a number of developing countries expressed serious concerns about the EU's newly adopted trademark reform package and how it related to the provisions in the Customs Regulation.<sup>394</sup> Regarding the overall scale of goods transiting the EU territory,

<sup>387</sup> The database can be accessed at: <https://euipo.europa.eu/ohimportal/en/web/observatory/anti-counterfeiting-intelligence-support-tool>.

<sup>388</sup> Case C-99/15 (Christian Liffers v Producciones Mandarina SL, Mediaset España Comunicación SA). Viewed at: <http://curia.europa.eu/juris/document/document.jsf?text=&docid=175159&pageIndex=0&doclang=EN&mode=reg&dir=&occ=first&part=1&cid=757416>.

<sup>389</sup> Case C-494/15 (Tommy Hilfiger Licensing LLC, Urban Trends Trading BV, Rado Uhren AG, Facton Kft., Lacoste SA, Burberry Ltd v Delta Center a.s.). Viewed at: <http://curia.europa.eu/juris/document/document.jsf?text=&docid=181465&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=645661>.

<sup>390</sup> Judgement of 12 July 2011, Case C-324/09 (L'Oréal and Others). Viewed at: <http://curia.europa.eu/juris/liste.jsf?num=C-324/09>.

<sup>391</sup> OJEU L 181/15, 29 June 2013, also notified to the WTO in document IP/N/1/EU/E/1, 10 July 2013; and OJEU L 341/10, 18 December 2013. For a more detailed description of Regulation (EU) No. 608/2013, see previous TPR report, WT/TPR/S/317/Rev.1, paras. 3.304-3.305. For an overview of the main provisions relating to border measures, see also Table 3.23 of document WT/TPR/S/317/Rev.1.

<sup>392</sup> WT/TPR/S/317/Rev.1, 21 October 2015, para. 3.305.

<sup>393</sup> See minutes of the meeting in IP/C/M/82/Add.1.

<sup>394</sup> See section on trademarks above, para. 3.271.

however, customs statistics for 2015 showed a further decrease of detention of such goods to only 0.20% of the total number of actions undertaken by customs authorities at the EU's external borders.<sup>395</sup>

3.348. The Commission was requested to submit a report on the implementation of Regulation (EU) No. 608/2013 by end-2016 that would also cover any relevant incidents concerning medicines transiting the EU customs territory, including the potential impact on the EU's commitments on access to medicines under the 2001 Doha Declaration on the TRIPS Agreement and Public Health, as well as measures taken to address any adverse effects. The report will be available within the first half of 2017.

3.349. At the external border of the EU, customs authorities may suspend the release of, or detain, goods that are suspected of infringing or found to have infringed IPRs. In most cases, customs authorities act upon applications from right holders. However, customs may also act ex officio if they have sufficient grounds for suspecting that goods infringe an IPR. In such cases, they will notify the detention/suspension to the importer within one working day, and to the right holder on the same day or promptly thereafter. The right holder must submit an application for action within four working days of receiving the notification. If no application is submitted within this period, the goods are released.

3.350. The European Commission's annual reports provide statistical information and data about customs interventions which support the analysis of IPR infringements occurring in the EU. According to the latest report<sup>396</sup>, there were 81,000 cases of IPR-infringing goods being detained by customs in 2015, representing a total of more than 40 million articles with a domestic retail value of the genuine products of over €640 million (Table 3.32). The observed decrease in the number of cases compared to previous years was reportedly due to the smaller number of cases in postal traffic.

3.351. Cigarettes accounted for 27% of the articles detained, followed by other goods (10%), toys (9%), labels, tags and stickers (8%) and foodstuffs (7%). The share of products potentially harmful to human health and safety remained high, amounting to 25.8% in 2015. Alcoholic and non-alcoholic beverages, tobacco products and medicines were among the product categories that saw fewer articles detained than in previous years, whereas increases were observed with respect to foodstuffs, other body care items, handbags, etc.

3.352. In terms of countries of provenance of IPR-infringing goods imported into the EU, the report noted that China continued to be the main source. As regards specific product categories, other countries also ranked high, including Benin for foodstuffs, Mexico for alcoholic beverages, Turkey for clothing, and India for medicines.

3.353. The close cooperation between customs and the private sector is illustrated by the steadily increasing number of applications for action submitted by right holders to customs, rising from 2,888 in 2004 to 33,191 in 2015; only about 2.45% of interventions by customs were initiated ex officio. In more than 80% of the detention procedures, the goods concerned were destroyed with the agreement of the holder of the goods and the right holder. In more than 9% of the cases, the right holder initiated a court case to determine the infringement. In another 8.5%, the goods were subsequently released by customs because either the right holder did not take action (5.75%) or the goods were found to be original (2.77%). In over 85% of the cases, customs action began while the goods were under an import procedure; in almost 12%, goods were discovered while in transit within the EU, and only 0.20% of the cases concerned goods in transit to a declared destination outside the EU.

---

<sup>395</sup> DG Taxation and Customs Union, Report on EU Customs Enforcement of IPRs 2015. Viewed at: [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/2016\\_ipr\\_statistics.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/2016_ipr_statistics.pdf), see Chart 17.

<sup>396</sup> DG Taxation and Customs Union, Report on EU Customs Enforcement of IPRs 2015. Viewed at: [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/2016\\_ipr\\_statistics.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/2016_ipr_statistics.pdf).



Table 3.32 Enforcement of IPRs, 2013-15

	2013	2014	2015
<b>Customs actions</b>			
Applications by right holders	26,865	20,929	33,191
Number of cases	86,854	95,194	81,098
Number of articles	35,940,294	35,568,982	40,728,675
Domestic retail value (€)	768,227,929	617,046,337	642,108,323

Breakdown of cases in 2015		(%)
<b>IPR in relation to detained articles</b>	Trademark	93.83
	Patent	0.86
	Design and model right	3.94
	Copyright/related right	0.58
<b>Results</b>	Destruction of goods	81.98
	Court case initiated	9.21
	No action undertaken	5.75
	Original goods	2.77
	Settlement out of court	0.29
<b>Cases per procedure</b>	Imports	85.27
	Transit EU	11.81
	Transit	0.20
	Warehouse	1.41
	Transshipment	0.21
	(Re-)Export	1.10
<b>Top 5 categories by articles</b>	Cigarettes	27.00
	Other goods	10.00
	Toys	9.00
	Labels, tags, stickers	8.00
	Foodstuff	7.00

Source: European Commission (2014), Report on EU Customs Enforcement of IPRs: Results at the EU Border – 2013. Viewed at: [http://ec.europa.eu/taxation\\_customs/resources/documents/customs/customs\\_controls/counterfeit\\_piracy/statistics/2014\\_ipr\\_statistics\\_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/customs/customs_controls/counterfeit_piracy/statistics/2014_ipr_statistics_en.pdf).

### 3.3.8.3.4 International cooperation

3.354. Building on its 2014 Strategy for the Enforcement of IPRs in Third Countries<sup>397</sup>, the European Commission released an updated survey in July 2015.<sup>398</sup> Based on input by various sources, including the Observatory, national authorities and private sector stakeholders, the survey identified a list of priority countries in which IPR enforcement remained a particular concern, and also listed countries in which the situation had improved. In its report of 13 May 2015<sup>399</sup>, the European Parliament's Committee on International Trade supported the European Commission's approach to promote enhanced IPR protection and enforcement through the WTO and other international bodies, as well as through bilateral trade agreements. This would help EU IPR owners to enforce their rights, and also developing countries to develop their domestic frameworks to support R&D activities. At the same time, the Committee also recalled that the TRIPS Agreement needed to be implemented in a balanced and effective manner. The Committee therefore called on the Commission and EU member States to ensure that, among others, generic medicines transiting EU territory are not negatively affected by the border measures put in place to ensure that counterfeit medicines are not imported into the EU.

3.355. The EU continued to address IPR enforcement and related technical cooperation in many of its bilateral and regional trade agreements, taking into account the level of development of its trading partners. Among the trade agreements that were established during the reporting period were: the Association Agreements with Georgia and Moldova (applied as of 1 July 2016)<sup>400</sup>, the Association Agreement with Ukraine (applied as of 1 January 2016), the Enhanced Partnership and Cooperation Agreement with Kazakhstan (provisionally applied as of 1 May 2016), the CETA signed

<sup>397</sup> See previous TPR report, WT/TPR/S/317/Rev.1, para. 3.316.

<sup>398</sup> Commission Staff Working Document, SWD(2015) 132 final, 1 July 2015. Viewed at: <https://euipo.europa.eu/ohimportal/documents/11370/0/Report+on+the+protection+and+enforcement+of+intellectual+property+rights+in+third+countries>.

<sup>399</sup> Viewed at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A8-2015-0161+0+DOC+PDF+V0//EN>.

<sup>400</sup> The texts of these agreements can be viewed at: [http://ec.europa.eu/trade/policy/countries-and-regions/agreements/#\\_europa](http://ec.europa.eu/trade/policy/countries-and-regions/agreements/#_europa).



with Canada on 30 October 2016, and the Free Trade Agreement between the EU and Viet Nam for which negotiations were concluded in February 2016. Other trade agreements, such as the Stabilisation and Association Agreements concluded with Bosnia and Herzegovina (1 June 2015) and with Kosovo (1 April 2016), as well as the EPAs concluded with the SADC (signed on 10 October 2016, provisionally applied) and West Africa (provisionally applied as of 3 September 2016) do not, however, include a detailed section on IPR enforcement.

3.356. The Commission finances and steers several technical cooperation programmes aimed at strengthening IPR protection and enforcement in third countries. Present cooperation programmes include, in particular, China, the ASEAN region, the Russian Federation, and India. Future cooperation programmes will extend to the region of Latin America. In general, the EUIPO is entrusted with the technical implementation of those cooperation programmes.<sup>401</sup> Through the Observatory, the EUIPO has also established a database in collaboration with the European Commission. The Anti-Counterfeiting Rapid Intelligence System (ACRIS) serves the collection of data of IPR-infringement cases affecting European companies in third countries.<sup>402</sup> Furthermore, the EUIPO has also intensified cooperation with Europol with a view to better monitoring online IP crime.

---

<sup>401</sup> Under Regulation (EU) No. 386/2012, OJ EU L 129/1, 16 May 2012, the EUIPO was tasked with building strategies and developing tools to enforce IPRs through international cooperation with IP offices in third countries, as well as to build capacity in third countries.

<sup>402</sup> The database can be accessed at: <https://euipo.europa.eu/ohimportal/en/web/observatory/anti-counterfeiting-rapid-intelligence-system>.

## 4 TRADE POLICIES BY SECTOR

### 4.1 Agriculture

4.1. The output value of agricultural goods in the EU declined to €371.2 billion in 2015, having peaked at €387.5 billion in 2013. Crops represented 57% of production value in 2015 with wheat and spelt, and fresh vegetables as the most important crops. Animals and animal products represented 43% of production value, with milk alone representing 14% of total agricultural output followed by pigs and cattle with nearly 9% each (Table 4.1).

**Table 4.1 Total production value of agricultural products in the EU, 2011-15**

(€ million at producer prices)

	2011	2012	2013	2014	2015
All products	365,394	376,926	387,495	379,972	371,221
Crops	209,768	212,909	218,269	209,503	211,175
Cereals	55,241	59,028	55,195	52,574	49,581
Wheat and spelt	26,321	29,151	26,889	26,350	26,182
Grain maize	13,874	12,612	12,308	11,734	9,260
Oil seeds	12,259	12,757	11,842	12,041	11,947
Forage plants	27,777	26,757	28,773	25,130	23,951
Fresh vegetables	27,400	29,092	30,769	29,702	33,200
Plants and flowers	21,347	20,261	20,067	20,341	20,358
Fruits	22,579	21,988	25,116	23,635	26,025
Wine	18,676	18,496	21,860	21,722	22,391
Potatoes	10,865	9,849	11,694	9,345	9,877
Animals and animal products	155,626	164,017	169,226	170,468	160,045
Cattle	29,601	32,473	32,394	31,170	31,883
Pigs	33,676	36,668	37,426	35,961	33,571
Poultry	19,137	20,527	21,629	21,529	21,655
Milk	53,584	51,910	57,538	60,724	51,744
Eggs	7,754	10,082	8,805	8,987	9,463

Source: Eurostat.

4.2. For the EU, crop and animal production, and hunting and related service activities contributed 1.4% to total gross value added in 2014, while the manufacture of food products, beverages, and tobacco products contributed another 2.1%. The importance of agriculture in the economy varies from one member State to another, from less than 1% of total GVA in Belgium, Germany, Luxembourg, Malta, Austria, Finland, Sweden and the United Kingdom to 5% in Romania and Bulgaria. Among the member States, the four biggest producers (France, Germany, Italy, and Spain) represented over half of total output value in 2015.

4.3. In 2013, there was the equivalent of 9.5 million full time jobs in agriculture in the EU; nearly 6 million of these are in five member States (Poland, Romania, Italy, Spain, and France). Agricultural structures varied considerably among the member States with average farm size ranging from 1.2 ha in Malta up to 133 ha in the Czech Republic, and standard output per holding varying from €3,303 in Romania to €303,765 in the Netherlands (Table 4.2).

**Table 4.2 Selected indicators of agricultural structure in the EU, 2013**

	Utilized agricultural area (UAA) '000 ha	Number of holdings '000	Average UAA per holding ha	Standard output per holding €/holding	Standard output per ha €/ha
Belgium	1,307.9	37.8	34.6	222,634	6,428
Bulgaria	4,650.9	254.4	18.3	13,111	717
Czech Republic	3,491.5	26.3	133.0	169,408	1,274
Denmark	2,619.3	38.8	67.5	246,722	3,657
Germany	16,699.6	285.0	58.6	162,271	2,770
Estonia	957.5	19.2	49.9	35,243	706
Ireland	4,959.5	139.6	35.5	35,906	1,011

	Utilized agricultural area (UAA) '000 ha	Number of holdings '000	Average UAA per holding ha	Standard output per holding €/holding	Standard output per ha €/ha
Greece	4,856.8	709.5	6.8	11,421	1,668
Spain	23,300.2	965.0	24.1	37,284	1,544
France	27,739.4	472.2	58.7	120,527	2,052
Croatia	1,571.2	157.5	10.0	12,887	1,291
Italy	12,098.9	1,010.3	12.0	43,346	3,620
Cyprus	109.3	35.4	3.1	14,003	4,531
Latvia	1,877.7	81.8	23.0	12,103	527
Lithuania	2,861.3	171.8	16.7	11,171	671
Luxembourg	131.0	2.1	63.0	150,871	2,395
Hungary	4,656.5	491.3	9.5	11,352	1,198
Malta	10.9	9.4	1.2	10,341	8,896
Netherlands	1,847.6	67.5	27.4	303,765	11,095
Austria	2,726.9	140.4	19.4	40,385	2,080
Poland	14,409.9	1,429.0	10.1	15,254	1,513
Portugal	3,641.6	264.4	13.8	17,053	1,238
Romania	13,055.9	3,629.7	3.6	3,303	918
Slovenia	485.8	72.4	6.7	13,943	2,078
Slovakia	1,901.6	23.6	80.7	76,887	953
Finland	2,282.4	54.4	42.0	62,464	1,489
Sweden	3,035.9	67.2	45.2	69,674	1,541
United Kingdom	17,327.0	185.2	93.6	117,817	1,259
<b>EU-28</b>	<b>174,613.9</b>	<b>10,841.0</b>	<b>16.1</b>	<b>30,542</b>	<b>1,896</b>

Source: Eurostat.

#### 4.1.1 Trade

4.4. In 2015, the EU had a surplus in trade in agricultural products (WTO definition<sup>1</sup>) with exports of US\$141 billion and imports of US\$126 billion. In U.S. dollar terms, both exports and imports of agricultural products have declined since 2013, although agricultural imports as a percentage of total imports increased to 6.5% in 2015 and agricultural exports as a percentage of total exports increased to 6.9%. Distilled spirits followed by wine are the biggest exports, while coffee and soya bean cake are the main imports (Table 4.3).

**Table 4.3 Exports and imports of agricultural products (HS2012 4 digit), 2012-15**

(US\$ million)

Exports		2012	2013	2014	2015	Top 4 destinations
TOTAL	Exports of all products	2,250,137	2,326,342	2,339,709	2,041,196	United States; China; Switzerland; Turkey
Total agriculture exports		144,222	156,299	160,014	141,150	United States; China; Switzerland; Russian Federation
of which						
2208	Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 % vol.; spirits, liqueurs and other spirituous beverages	13,072	13,294	12,800	11,416	United States; Singapore; China; Russian Federation
2204	Wine of fresh grapes	11,394	11,913	11,974	10,890	United States; Switzerland; China; Canada
1001	Wheat and meslin	5,163	7,605	8,372	7,025	Algeria; Egypt; Saudi Arabia; Morocco

<sup>1</sup> For the purposes of this section of the Trade Policy Report, the definition of agriculture products used is that set out in Annex 1 of the Agreement on Agriculture where fish and fish products are taken to include tariff lines under HS2012 Headings 020840, 03, 050800, 050900, 051191, 1504, 1603, 1604, 1605, and 230120.

Exports		2012	2013	2014	2015	Top 4 destinations
1901	Malt extract; food preparations of flour, groats, meal, starch or malt extract, not containing cocoa or containing less than 40% by weight of cocoa n.e.s.	4,687	5,760	7,207	6,260	China; Hong Kong, China; Saudi Arabia; Nigeria
2106	Food preparations not elsewhere specified or included	5,592	6,425	6,618	5,665	United States; Russian Federation; Switzerland; Saudi Arabia
0203	Meat of swine, fresh, chilled or frozen	4,853	5,073	4,893	4,387	Japan; China; Republic of Korea; United States
1806	Chocolate and other food preparations containing cocoa	4,032	4,459	4,855	4,213	United States; Russian Federation; Switzerland; UAE
0406	Cheese and curd	4,632	5,024	4,787	3,863	United States; Switzerland; Japan; Saudi Arabia
2309	Preparations of a kind used in animal feeding	3,432	3,825	4,109	3,781	Russian Federation; United States; Switzerland; Japan
1905	Bread, pastry, cakes, biscuits and other bakers' wares	3,526	3,921	4,135	3,753	United States; Switzerland; Norway; Saudi Arabia
Imports		2012	2013	2014	2015	Top 4 sources
TOTAL	Imports of all products	2,357,624	2,243,427	2,281,342	1,947,831	China; United States; Russian Federation; Switzerland
Total agricultural imports		130,568	134,048	137,402	125,984	Brazil, United States; Argentina; China
of which						
901	Coffee	11,749	9,843	10,410	9,828	Brazil; Switzerland; Viet Nam; Colombia
2304	Oil-cake ... of soyabean oil	9,584	9,677	10,018	8,265	Argentina; Brazil; United States; Paraguay
1201	Soya beans, whether or not broken	6,959	7,418	6,995	5,852	Brazil; United States; Paraguay; Canada
802	Other nuts, fresh or dried, whether or not shelled or peeled	6,004	6,010	6,062	5,562	United States; Turkey; Iran; Australia
1511	Palm oil	3,211	4,024	4,776	4,843	Indonesia; Malaysia; Papua New Guinea; Colombia
1801	Cocoa beans	4,042	3,501	4,208	4,649	Côte d'Ivoire; Ghana; Cameroon; Nigeria
803	Bananas, including plantains, fresh or dried	3,710	3,993	4,129	3,743	Colombia; Ecuador; Costa Rica; Dominican Republic
2204	Wine of fresh grapes, including fortified wines; grape must other than that of heading 20.09	2,528	3,391	3,544	3,071	Chile; United States; Australia; South Africa
2401	Unmanufactured tobacco; tobacco refuse	3,210	3,272	3,262	3,010	Brazil; United States; Malawi; Tanzania
2009	Fruit juices (including grape must) and vegetable juices, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter	3,150	3,077	3,227	2,634	Brazil; Costa Rica; Thailand; Turkey

Source: UNSD Comtrade.

#### 4.1.2 Agricultural policies

4.5. Agricultural policies have not changed substantially since the last Review of the EU, but the implementation of the reforms adopted in 2013 have been fully applied since 2015 based on the 2013 regulations and the secondary regulations adopted in March 2014. The European Agriculture Guarantee Fund (EAGF) covers direct payments and market measures (Pillar I), and the European Agricultural Fund for Rural Development (EAFRD) finances the EU contribution to rural development programmes (Pillar II).

#### 4.1.2.1 Domestic support

##### 4.1.2.1.1 Direct payments

4.6. Since 1 January 2015, a new direct payments scheme has been applied, based on Regulation (EU) No. 1307/2013 and implementing legislation in Commission Regulations (EU) Nos. 639/2014 and 641/2014. The national ceilings for each member State for each year were set out in Regulation (EU) No. 1307/2013<sup>2</sup> (as amended). The national ceilings provide for convergence among the member States and the rules governing direct payments require internal convergence within each member State so that payments per hectare move towards a more uniform level within each member State and among the member States.

4.7. Each member State had some flexibility to transfer some funding from direct payments to rural development, or vice versa. Eleven member States<sup>3</sup> chose to transfer funds from direct payments to rural development with a total transfer of €6.4 billion over the 2015-20 period, and five member States<sup>4</sup> transferred a total of €3.4 billion from rural development to direct payments. The net amount for direct payments for each member State is shown in Table 4.4.

4.8. Since 1 January 2015, active farmers have had access to the compulsory schemes provided by all member States (the basic payment or single area payment, the greening payment, and the young farmers' scheme) and, if the member State has so decided, the voluntary schemes (redistributive payment, support in areas with natural constraints, and coupled support). Member States also have the option of applying a small farmers' scheme, which is a simplified scheme that replaces all other direct payments and exempts eligible farmers from greening and cross-compliance controls. Apart from the small farmers' scheme, all direct payment programmes are subject to provisions to ensure compliance with basic standards relating to the environment, food safety, animal and plant health and animal welfare (cross-compliance).<sup>5</sup>

**Table 4.4 Net amounts for direct payments, 2015-20<sup>a</sup>**

(€ million)

	2015	2016	2017	2018	2019	2020
Belgium	524	510	502	489	482	505
Bulgaria	721	789	790	791	793	799
Czech Republic	840	839	839	857	857	873
Denmark	870	852	834	826	818	880
Germany	4,913	4,881	4,848	4,820	4,793	5,018
Estonia	114	115	124	134	144	169
Ireland	1,215	1,213	1,212	1,211	1,211	1,211
Greece	2,110	2,087	2,064	2,043	2,022	2,119
Spain	4,902	4,911	4,926	4,940	4,953	4,954
France	7,302	7,271	7,239	7,214	7,190	7,437
Croatia	183	202	240	278	316	304
Italy	3,897	3,847	3,797	3,750	3,702	3,704
Cyprus	51	50	50	49	49	49
Latvia	181	206	230	255	280	303
Lithuania	418	443	467	492	517	517
Luxembourg	34	34	34	34	33	33
Hungary	1,277	1,276	1,274	1,274	1,274	1,270
Malta	5	5	5	5	5	5

<sup>2</sup> Regulation (EU) No. 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No. 637/2008 and Council Regulation (EC) No. 73/2009.

<sup>3</sup> France, Latvia, the United Kingdom, Belgium, the Czech Republic, Denmark, Germany, Estonia, Greece, the Netherlands, and Romania.

<sup>4</sup> Croatia, Malta, Poland, Slovakia, and Hungary.

<sup>5</sup> Regulation (EU) No. 1306/2013 on the financing, management and monitoring of the common agricultural policy, Regulation (EU) No. 640/2014 with regard to the integrated administration and control system and conditions for refusal or withdrawal of payments and administrative penalties applicable to direct payments, rural development support and cross-compliance and Regulation (EU) No. 809/2014 laying down rules for the application of Regulation (EU) No. 1306/2013.

	2015	2016	2017	2018	2019	2020
Netherlands	749	737	724	713	701	832
Austria	693	692	692	692	692	692
Poland	3,359	3,376	3,392	3,411	3,430	3,062
Portugal	566	574	582	591	599	599
Romania	1,600	1,773	1,801	1,873	1,903	1,903
Slovenia	138	137	136	135	134	134
Slovakia	436	439	442	445	449	304
Finland	523	523	524	524	525	525
Sweden	697	697	698	699	700	700
United Kingdom	3,170	3,177	3,184	3,192	3,201	3,592

a Additional temporary exceptional aid to farmers in the livestock sectors (Commission Delegated Regulation (EU) 2015/1853).

Note: The crop specific payments for cotton are included in the figures above. The figures are before the application of the financial discipline. They do not cover direct payments for POSEI ("Programme d'Options Spécifiques à l'Éloignement et l'Insularité" (for the outermost regions of the EU)), and SAI (smaller Aegean Islands) in Regulations (EU) Nos. 228/2013 and 229/2013.

Source: Regulation (EU) No. 1307/2013 (as last amended by Regulation (EU) No. 1378/2014 and Commission Delegated Regulation (EU) No. 2016/142).

### ***Basic Payments and Single Area Payments***

4.9. Eighteen member States apply the Basic Payment Scheme<sup>6</sup>, while all others apply the Single Area Payment Scheme. Each of the ten member States using the Single Area Payment Scheme provides a uniform payment per eligible hectare. Eligibility for the Basic Payment Scheme or the Single Area Payment Scheme is a precondition for the complementary payments under the decoupled income schemes (greening payment, the young farmers' scheme, payments for areas with natural constraints, the small farmers' scheme, and redistributive payments).

4.10. For those member States that apply the Basic Payments Scheme, the entitlement to receive payments under the old single payment system expired at the end of 2014 and new entitlements were allocated in 2015. As a general rule, entitlements were allocated to those that applied for an allocation and:

- were active farmers in 2015 (that is those people and businesses: involved in producing, rearing, or growing agricultural produce; keeping land in a suitable state for grazing or cultivation; or doing the minimum necessary to land that is naturally kept suitable for grazing or cultivation); and
- had been entitled to direct payments in 2013.

In addition, member States had the option to extend eligibility to those who were active farmers in 2015 and:

- in 2013, were producing fruits, vegetables, seed potatoes, ware potatoes, or ornamental plants, or who cultivated vineyards; or
- were allocated an entitlement to the Single Payment System in 2014, or were active farmers in 2013.

4.11. Allocations from the national ceilings to the Basic Payment Scheme or the Single Area Payments vary from 12.4% in Malta, to 68% in Luxembourg (Table 4.6).

### ***Greening payment***

4.12. Each member State was required to allocate 30% of the national ceiling for direct payments to agricultural practices beneficial for the climate and the environment (Greening). To qualify for

<sup>6</sup> Austria, Belgium, Croatia, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Malta, the Netherlands, Portugal, Slovenia, Spain, Sweden, and the United Kingdom.



payments, three basic requirements must be met relating to crop diversification and maintenance of permanent grass land, and each holding over 15 ha must have at least 5% of the area designated as an "ecological focus area". To qualify as an ecological focus area, land use must meet a number of criteria which vary from one member State to another and include landscape features (e.g. trees in groups, field margins, trees in lines, ditches, and hedges), buffer strips, short rotation coppice, catch crops, or nitrogen-fixing crops.

4.13. Exemptions to these criteria may apply, such as for farmers participating in the small farmers' scheme, farmers with a large proportion of grassland, and farmers that meet the requirements for organic production.<sup>7</sup>

#### ***Payment for young farmers' scheme***

4.14. Each member State is required to operate the young farmers' scheme which provides additional payments to farmers aged 40 years or under who are setting up in farming for the first time as head of an agricultural holding, or who have already done so within the five years preceding the scheme. Each member State can reserve up to 2% of the ceiling or direct payments to the scheme and has the flexibility to decide the method for calculating the payment, the number of hectares for which the payment is granted (between 25 and 90), and whether to add additional criteria.

#### ***Redistributive payments***

4.15. Seven member States, plus Belgium (Wallonia) and U.K. (Wales), opted to apply redistributive payments in 2015 by providing additional direct payments for the first 3 to 54 hectares. The additional payments varied from €133 per hectare for the first 30 hectares in Belgium (Wallonia) to €25 per hectare for the first 52 hectares in France. Under the redistributive payments scheme, each member State may use up to 30% of the national ceiling for payments for the first 30 hectares or up to the average farm size.

4.16. Five of these member States, plus Belgium (Wallonia), did not apply the reduction of payments mechanism, which allows for a cap in basic payments at €150,000 or reductions for payments over this threshold. Other member States applied caps at various levels, or the minimum reduction of 5% on basic payments greater than €150,000 (Table 4.6).

#### ***Payments for areas with natural constraints***

4.17. In addition to various schemes under Pillar II that support areas with natural constraints, each member State had the option to reserve up to 5% of the national ceiling or support for areas with natural constraints. Denmark is the only member State that opted to provide payments under Pillar I.

#### ***Voluntary coupled support***

4.18. All member States, except Germany, opted to provide coupled support where payments are linked to production by amounts that, in 2016, varied from 0.2% of the national ceiling (Ireland) to 20.5% (Portugal) and 57.2% (Malta). In general, coupled support was limited to 8 or 13% of the national ceiling, plus an additional 2% for protein crops. For coupled support greater than these limits, approval from the Commission was required. Malta's allocation of 57.2% arises from a derogation allowing a member State to use €3 million for voluntary coupled support.

4.19. Beef and veal production is the most supported sector, followed by dairy products, sheep and goat meat, and protein crops.

4.20. In addition to voluntary coupled support, the EU provides for payments for cotton in Greece, Spain, and Bulgaria (Table 4.5).<sup>8</sup>

<sup>7</sup> Council Regulation (EC) No. 834/2007 of 28 June 2007 on organic production and labelling of organic products and repealing Regulation (EEC) No. 2092/91.

**Table 4.5 Crop-specific payments for cotton**

	Area ha	Fixed yield tonne/ha	Payment €/ha
Bulgaria	3,342	1.2	2015: 584.88
			2016 and onward: 649.45
Greece	250,000	3.2	234.18
Spain	48,000	3.5	362.15

Source: Regulation (EU) No. 1307/2013, Article 58.

**Table 4.6 Implementation of direct payments**

(Of national ceiling for 2016 calendar year (unless stated otherwise))

	BPS/ SAP <sup>a</sup> <sub>b</sub>	Redistributive <sup>a</sup>		Reduction of payments mechanism <sup>c</sup>	Young farmer payment <sup>a</sup>		Voluntary coupled support <sup>a</sup>	
					25% of			Products <sup>d</sup>
Belgium (Wallonia)	42.2%	9.5%	First 30 entitlements – €133	None	1.7%	Average direct payment/ha	16.7%	Beef, milk, sheep meat
Belgium (Flanders)				Cap €150,000				
Bulgaria	47.8%	7.1%	First 30 ha – €77	5% over €150,000, 100% over 300,000 after deduction for salaries	0.1%	SAPS rate	15.0%	Beef, fruit and veg, milk, protein, sheep meat
Czech Republic	54.8%	..	..	5% over €150,000	0.2%	SAPS rate	15.0%	Beef, fruit and veg, hops, milk, protein, sheep meat, potatoes, sugar beet
Denmark	66.2%	..	..	5% over €150,000	0.6%	Average direct payment/ha	2.8%	Beef
Germany	62.0%	7.0%	First 30 entitlements – €50, next 16 – €30	None	1%	Basic payment flat rate	..	..
Estonia	66.0%	..	..	5% over €150,000 after deduction for salaries	0.3%	SAPS rate	3.7%	Beef, fruit and veg, milk, sheep meat
Ireland	67.8%	..	..	Cap at €150,000	2%	Average direct payment/ha	0.2%	Protein
Greece	60.2%	..	..	Cap at €150,000 after deduction for salaries	2%	Average value of entitlements	7.8%	Beef, cereals, fruit and veg, grains and legumes, protein, rice, seeds, sheep meat, silkworms, sugar beet
Spain	55.9%	..	..	5% over €150,000 after deduction for salaries	2%	Average value of entitlements	12.1%	Beef, fruit and veg, grain legumes, milk, nuts, protein, rice, sheep meat, sugar beet
France	44.0%	10.0%	First 52 entitlements – €25	None	1.0%	Average direct payment/ha	15.0%	Beef, cereals, fruit and veg, hemp, hops, milk, protein, sheep meat, potatoes
Croatia	43.5%	10.0%	First 20 entitlements – €34	None	2%	Basic payment flat rate	15.0%	Beef, fruit and veg, milk, protein, sheep meat, sugar beet
Italy	58.0%	..	..	5% over €150,000, cap at 500,000 after deduction for salaries	1%	Average value of entitlements	11.0%	Beef, cereals, fruit and veg, grain legumes, milk, oilseeds, olive oil, protein, sheep meat, potatoes
Cyprus	61.3%	..	..	5% over €150,000	0.7%	Average direct payment/ha	8.0%	Fruit and veg, milk, sheep meat
Latvia	53.4%	..	..	5% over €150,000 after deduction for salaries	1.56%	Average direct payment/ha	15.0%	Beef, cereals, fruit and veg, milk, oilseeds, protein, seeds, sheep meat, potatoes
Lithuania	38.8%	15.0%	First 30 ha – €50	None	1.25%	Average direct payment/ha	15.0%	Beef, fruit and veg, milk, protein, sheep meat

<sup>8</sup> Regulation (EU) No. 1307/2013 also provides for payments in Portugal but there is no production in Portugal, and no payments are made.

	BPS/ SAP <sup>a</sup> <sup>b</sup>	Redistributive <sup>a</sup>		Reduction of payments mechanism <sup>c</sup>	Young farmer payment <sup>a</sup>		Voluntary coupled support <sup>a</sup>	
						25% of		Products <sup>d</sup>
Luxembourg	68.0%	..	..	5% over €150,000 after deduction for salaries	1.5%	Lump sum	0.5%	Protein
Hungary	54.6%	..	..	5% over €150,000, cap at 176,000	0.4%	Average direct payment/ha	15.0%	Beef, fruit and veg, milk, protein, rice, sheep meat, sugar beet
Malta	12.4%	..	..	5% over €150,000	0.4%	Average value of entitlements	57.2%	Beef, fruit and veg, milk, sheep meat
Netherlands	67.5%	..	..	5% over €150,000	2%	Average direct payment/ha	0.5%	Beef, sheep meat
Austria	65.9%	..	..	Cap at €150,000 after deduction for salaries	2%	Average direct payment/ha	2.1%	Beef, sheep meat
Poland	45.7%	8.3%	First 3 ha – €0, next 27 ha – €41	Cap at €150,000	1%	Average direct payment/ha	15.0%	Beef, flax, fruit and veg, hemp, hops, milk, protein, sheep meat, potatoes, sugar beet
Portugal	47.5%	..	..	5% over €150,000	2%	Basic payment flat rate	20.5%	Beef, fruit and veg, milk, rice, sheep meat
Romania	50.7%	5.3%	First 5 ha – €5, next 25 ha – €45	None	0.85%	SAPS rate	13.1%	Beef, fruit and veg, grain legumes, hemp, hops, milk, protein, rice, seeds, sheep meat, silkworms, sugar beet
Slovenia	53.5%	..	..	5% over €150,000 after deduction for salaries	1.5%	Average direct payment/ha	15.0%	Beef, cereals, fruit and veg, milk, protein
Slovak Republic	56.7%	..	..	5% over €150,000	0.3%	Average direct payment/ha	13.0%	Beef, fruit and veg, hops, milk, sheep meat, sugar beet
Finland	49.4%	..	..	5% over €150,000	1%	Average direct payment/ha	19.6%	Beef, cereals, fruit and veg, milk, protein, sheep meat, sugar beet
Sweden	55.5%	..	..	5% over €150,000	1.5%	Average direct payment/ha	13.0%	Beef
U.K. (England)	65.8%	1.0%	..	5% over €150,000	1.56%	Average value of entitlements	1.7%	Beef, sheep meat
U.K. (NI)			..	Cap at €150,000		Average direct payment/ha		
U.K. (Scotland)			..	5% over €150,000, cap at €600,000		Average value of entitlements		
U.K. (Wales)			First 54 entitlements – €25.63	5% over €150,000, 30% over 200,000, 55% over 250,000, cap at 300,000		Basic payment flat rate		

.. Not available.

a % for BPS/SAP, redistributive, young farmer payment, and voluntary coupled support refers to percentage of national ceiling.

b BPS – Basic Payment Scheme, SAP – Single Area Payment.

c The reductions of payments are a percentage of reductions applying to the total amount of the basic payments (BPS or SAP). Member States may also deduct the amounts of salaries actually paid for agriculture.

d Beef refers to beef and veal, protein refers to protein crops, and sheep meat refers to sheep and goat meat.

Note: 30% of each national ceiling is reserved for greening, therefore, percentage allocations add up to 70% in all cases except Denmark, which is the only member State to allocate some of Pillar I to areas with natural constraints (0.4% of the national ceiling).

Source: European Commission.

#### 4.1.2.1.2 Internal market support measures

4.21. For the purposes of this section, internal market support measures are defined as those that work inside the customs territory of the EU to support prices paid to farmers through reduced

production or other supply control measures, or by encouraging consumption. Market access and export measures, which can also lead to positive transfers to producers through higher domestic prices, are dealt with below under export subsidies and market access.

4.22. The Common Market Organisation (CMO) for agricultural products is set out in Regulation (EU) No. 1308/2013.<sup>9</sup> Since the last review, the public intervention regime has been simplified, e.g. through Regulation (EU) No. 2016/1238<sup>10</sup> and Implementing Regulation (EU) No. 2016/1240<sup>11</sup>, while other aspects of public intervention remain the same, such as the prices, periods, limits for intervention, list of eligible products, and reference prices for private storage aid. The Commission may initiate intervention above the limits if the market situation, especially market prices, so requires.

4.23. In 2015 and 2016, private storage aid for butter, cheese, and pig meat plus intervention and private storage aid for skimmed milk powder were used to address declining demand for these products (Table 4.7 and more details below).

**Table 4.7 Intervention and private storage aid**

(Tonnes)

	Intervention price €/tonne	Period	Limits	Purchases 2015	Purchases 2016	Sales 2015	Sales 2016
Common wheat	101.31	1 Nov.-31 May	3,000,000				
Durum wheat	101.31	1 Nov.-31 May	0				
Barley	101.31	1 Nov.-31 May	0				
Maize	101.31	1 Nov.-31 May	0				
Paddy rice	150.00	1 Apr.-31 July	0				
Beef and veal <sup>a</sup>	1,890.40	All year	0				
Butter <sup>b</sup>	2,217.51	1 Mar.-30 Sept.	50,000				
Skimmed milk powder	1,698.00	1 Mar.-30 Sept.	109,000	40,280	334,551 <sup>c</sup>		40 <sup>c</sup>
	Reference price €/tonne		Aid for storage 2014	Aid for storage 2015	Quantities aided 2016		
White sugar	404.40						
Raw sugar	335.20						
Olive oil							
Extra virgin	1,779.00						
Virgin	1,710.00						
Lampante (2 degrees)	1,524.00						
Butter	2,217.51		21,557	141,366			143,587
Cheese	..			31,877			52,950
Skimmed milk powder	1,698.00		17,342	52,062			86,989 <sup>c</sup>
Pig meat	1,509.39			63,969			90,867 <sup>c</sup>
Sheep and goat meat	..						
Flax fibre	..						

.. Not available.

a The reference price for beef and veal is fixed at €2,224 per tonne and the public intervention price is 85% of the reference threshold (Articles 7.1(d) and 13.1(c) of Regulation (EU) No. 1308/2013).

<sup>9</sup> Regulation (EU) No. 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organization of the markets in agricultural products and repealing Council Regulations (EEC) No. 922/72, (EEC) No. 234/79, (EC) No. 1037/2001 and (EC) No. 1234/2007.

<sup>10</sup> Commission Delegated Regulation (EU) 2016/1238 of 18 May 2016 supplementing Regulation (EU) No. 1308/2013 of the European Parliament and of the Council with regard to public intervention and aid for private storage.

<sup>11</sup> Commission Implementing Regulation (EU) 2016/1240 of 18 May 2016 laying down rules for the application of Regulation (EU) No. 1308/2013 of the European Parliament and of the Council with regard to public intervention and aid for private storage.

- b The reference price for butter is €246.39 per 100 kg and the public intervention price is 90% of the reference price (Article 7.1(e) of Regulation (EU) No. 1308/2013 and Article 2.1(d) of Council Regulation EU No. 1370/2013).
- c As at 15 December 2016.

Note: There are no "sales" from private storage as property remains with the private operators who store the product under contract with no obligation to sell at the end of the contract period.

Source: Regulation (EU) No. 1308/2013, Council Regulation (EU) No. 1370/2013 and European Commission.

### **Dairy**

4.24. The production quota system for milk in the EU was abolished on 31 March 2015.

4.25. Following the measures taken by the Russian Federation in August 2014<sup>12</sup>, the EU took several measures to address the decline in demand for dairy products which included extending the buying-in period for intervention for butter and skimmed milk powder (SMP) and introducing private storage aids for butter, SMP, and cheese, and increasing the quantities that may be bought into intervention. In addition, EU funding was made available for dairy, beef and veal, and sheep, goat and pig meat producers with the potential for additional member State financing (Table 4.8).

**Table 4.8 Temporary measures for dairy and livestock producers, 2014-16**

Date	Implementing/ Delegated Regulation No.	Description
4 Sept. 2014	949/2014	Buying-in period for butter and SMP intervention for 1 March to 30 September extended to 31 December 2014
	947/2014	Until 31 December 2014, private storage aids for butter for 90-120 days storage at: - €18.93 per tonne for fixed storage - €0.28 per tonne per day for contractual storage
	948/2014	Until 31 December 2014, private storage aids for SMP for 90-120 days storage at: - €8.86 per tonne for fixed storage - €0.16 per tonne per day for contractual storage
	950/2014 992/2014	Until 31 December 2014, private storage aids for certain cheeses for 60-120 days at: - €15.57 per tonne for fixed storage costs - €0.40 per tonne per day for contractual storage (Repealed 22 September 2014)
26 Nov.	1263/2014	EU aid for milk producers in Estonia, Latvia, and Lithuania of €28.7 million plus national aid up to a total of €28.7 million
16 Dec.	1337/2014	PSA for butter (947/2014) and SMP (948/2014) extended to 28 February 2015
	1336/2014	Buying in period for butter and SMP intervention opened from 1 January to 30 September 2016
19 Dec.	1370/2014	EU aid for milk producers in Finland of €10.7 million plus national aid of up to €10.7 million
25 Feb. 2015	2015/303	PSA for butter and SMP extended to 30 September 2015
17 Sept.	2015/1549	Buying-in period for butter and SMP intervention for 2015 extended to 31 December 2015 and made available from 1 January to 30 September 2016.
	2015/1548	PSA for butter (947/2014) and SMP (948/2014) extended to 29 February 2016
15 Oct.	2015/1851	PSA rates for SMP amended 90-120 days storage at: - €8.86 per tonne for fixed storage - €0.16 per tonne per day for contractual storage 365 days: - €8.86 per tonne for fixed storage - €0.36 per tonne per day for contractual storage
	2015/1852	Up to 100,000 tonnes distributed among the member States, private storage aids for certain cheeses for 60-120 days at: - €15.57 per tonne for fixed storage costs - €0.40 per tonne per day for contractual storage

<sup>12</sup> WTO document WT/TPR/S/345, 24 August 2016, paragraph 3.46.

Date	Implementing/ Delegated Regulation No.	Description
	2015/1853	For the period to 30 September 2016, €420 million EU aid for farmers in the beef and veal, milk and milk products, pig, sheep and goat meat sectors. National contributions of up to 100% allowed.
17 Feb. 2016	2016/224	PSA for butter (947/2014) and SMP (948/2014) extended to 30 September 2016
	2016/225	Setting maximum volumes per member State for PSA for cheese (2015/1852) and setting 30 September 2016 as the final date for applications
1 April	2016/482	Closing SMP intervention at fixed price for the period ending 30 September 2016. Offers received on 31 March 2016 accepted at 60.09% of the offer. Intervention up to 30 September by tender.
11 April	2016/558 and 2016/559	Period permitting producer organizations, including cooperatives, in the milk sector to enter voluntary agreements to plan production applying for periods up to 12 October 2017.
15 April	2016/591	Intervention limits for 2016 set at: - 100,000 tonnes for butter; - 218,000 tonnes for SMP
19 April	2016/606	Closing SMP intervention by tender (2016/482)
21 April	2016/626	SMP intervention buying-in price set at €1,698 per tonne.
25 May	2016/826	Closing SMP intervention at fixed price for the period ending 30 September 2016. Offers received up to 24 May accepted at 10.4707% of the offer. Intervention up to 30 September by tender
9 June	2016/914	Maximum SMP intervention price by first tender €1,698/tonne (2016/826)
23 June	2016/1020	Maximum SMP intervention price by second tender €1,698/tonne (2016/826)
24 June	2016/1042	Intervention limits for 2016 set at: - 100,000 tonnes for butter; - 350,000 tonnes for SMP
28 June	2016/1058	Closing SMP intervention by tender (2016/826)
8 Sept.	2016/1619	PSA for SMP extended to 28 February 2017 ((948/2014)
	2016/1614	Buying-in period for SMP intervention for 2016 extended to 31 December 2016 and made available from 1 January to 30 September 2017.
	2016/1613	€350 million in exceptional adjustment aid to milk producers and farmers in other livestock sectors to be spent by 30 September 2017 at the latest. National contributions of up to 100% allowed for the same measures. Measures taken by member States for producers engaged in: reducing production; small-scale farming; extensive production; environmental and climate friendly production; implementation of cooperative projects; implementation of quality or value-added schemes; and training in financial instruments and risk management.
	2016/1615	Extension of period permitting producer organizations, including cooperatives, in the milk sector to enter voluntary agreements to plan production applying for periods up to 12 April 2017.
	2016/1612	EU aid for reduction in milk production at €140 per tonne of reduction. Total funding for the programme is €150 million. The programme covers 4 reduction periods of 3 months each starting in October 2016. Applicants are limited to one of the 4 periods, except for the first and fourth.
29 Nov.	2016/2080	Opening of tenders to sell SMP from intervention stocks. Initial quantity put on sale was 22,004 tonnes.

Source: European Commission (2016), *Global overview of measures taken for the dairy sector since 2014*, last updated 8 September 2016. Viewed at: [http://ec.europa.eu/agriculture/milk/policy-instruments/global-view\\_en.pdf](http://ec.europa.eu/agriculture/milk/policy-instruments/global-view_en.pdf).

4.26. The additional aid to producers of milk and milk products, beef and veal, and pig, sheep, and goat meat under these exceptional measures was allocated among the member States as shown in Table 4.9.



**Table 4.9 Temporary exceptional aid to producers of milk and milk products, beef and veal, and pig, sheep, and goat meat by member State**

(€ million)

	2014/2015	2016	2017
Belgium	..	13.0	11.0
Bulgaria	..	6.0	8.8
Czech Republic	..	11.2	10.3
Denmark	..	11.1	9.3
Germany	..	69.2	58.0
Estonia	6.9	7.6	8.1
Ireland	..	13.7	11.1
Greece	..	2.3	1.7
Spain	..	25.5	14.7
France	..	62.9	49.9
Croatia	..	1.8	1.5
Italy	..	25.0	20.9
Cyprus	..	0.4	0.3
Latvia	7.7	8.5	9.8
Lithuania	14.1	12.6	13.3
Luxembourg	..	0.7	0.6
Hungary	..	9.5	9.5
Malta	..	0.1	0.1
Netherlands	..	29.9	23.0
Austria	..	7.0	5.9
Poland	..	28.9	22.7
Portugal	..	4.8	4.0
Romania	..	11.1	10.9
Slovenia	..	1.4	1.1
Slovakia	..	2.5	2.1
Finland	10.7	9.0	7.5
Sweden	..	8.2	6.9
United Kingdom	..	36.1	30.2

.. Not available.

Source: Commission Delegated Regulations (EU) 1263/2014 of 26 November 2014, 1370/2014, 2015/1853 of 15 October 2015, and 2016/1613 of 8 September 2016.

**Fruits and vegetables**

4.27. The EU regime for fruits and vegetables has not changed over the past two years, apart from measures taken to respond to the ban on imports of some agricultural products by the Russian Federation from August 2014 (see below). Support for fruit and vegetable production in the EU is focused on producer organizations. In order to qualify for funding, a producer organization must be recognized by the member State as meeting specific criteria, including having an operational programme. Only after being recognized as producer organizations can these entities have access to EU financial assistance through the implementation of an operational programme. The operational programme may be funded by an operational fund which is financed by the organization and/or its members and EU assistance. EU assistance is limited to 50-60% of the total operational fund and 4.1-4.7% of marketed production. Transitional assistance may also be provided to producer groups, which are legal bodies formed by farmers to help them acquire the status of recognized producer organizations.<sup>13</sup>

4.28. In addition to the measures taken for dairy and livestock in response to the ban on imports of certain agricultural products by the Russian Federation in August 2014, the EU introduced a number of temporary exceptional measures for fruits and vegetables to reduce supply. These measures were based on existing provisions for market withdrawals, green harvesting, and non-harvesting.

4.29. The temporary exceptional measures were covered by a number of Commission delegated regulations which included withdrawals from the market for free distribution, animal feed, composting, and distillation. Up to 30 November 2016, about 1.5 million tonnes of fruits and vegetables were withdrawn from the market at a cost of about €416 million.

<sup>13</sup> DG AGRI online information. Viewed at: [http://ec.europa.eu/agriculture/fruit-and-vegetables/producer-organisations/index\\_en.htm](http://ec.europa.eu/agriculture/fruit-and-vegetables/producer-organisations/index_en.htm) [November 2016].

**Table 4.10 Temporary exceptional measures for fruits and vegetables, 2014-16**

Date	Delegated Regulation (EU) No.	Description
21 August 2014	913/2014	Financial assistance to producer organizations and producers of peaches and nectarines for withdrawal operations and promotion activities. Withdrawal operations for free distribution were permitted up to 10% of each producer organization or producer's marketed production and were to operate until 30 September 2014. Support for promotion activities by producer organizations covered the period to 31 December 2014.
29 August 2014	932/2014	Support for producers of certain fruits and vegetables for withdrawal, non-harvesting, and green harvesting. Total EU aid of up to €125 million, of which €82 million was for apples and pears for the period up to 30 November 2014.
29 September 2014	1031/2014	Support for producers of certain fruits and vegetables for free distribution, withdrawal, green harvesting or non-harvesting subject to maximum support levels set out in the Regulation. The support was to be available up to the quantity limits set out in the Regulation or 31 December 2014.
19 December 2014	1371/2014	Extending the product coverage of 1031/2014 to include lemons and reopening, from 1 January 2015. The support was to be available up to the quantity limits set out in the Regulation or until 30 June 2015.
7 August 2015	2015/1369	Extending the product coverage of 1031/2014 to include peaches and nectarines and reopening, from 8 August 2015. The support was to be available up to the quantity limits set out in the Regulation or until 30 June 2016.
10 June 2016	2016/921	Laying down further temporary exceptional support measures for producers of certain fruits and vegetables.

Source: DG AGRI online information. Viewed at: [http://ec.europa.eu/agriculture/russian-import-ban/legal-acts/index\\_en.htm](http://ec.europa.eu/agriculture/russian-import-ban/legal-acts/index_en.htm) [November 2016].

### **Sugar**

4.30. Internal support measures for sugar are based on:

- production quotas for 19 member States which total 13.5 million tonnes of sugar beet;
- a minimum price of €26.29 per tonne of sugar paid by factories to farmers for in-quota sugar beet; and
- reference thresholds of €404.4 for white sugar and €335.2 per tonne for raw sugar with private storage aid possible based on the reference thresholds, market prices, costs, and margins (Table 4.7).<sup>14</sup>

4.31. For market years 2013/14 to 2016/17, out-of-quota sugar production has averaged about 3.7 million tonnes.<sup>15</sup> According to the European Commission, out-of-quota sugar was used for industrial uses, ethanol and exports within the limits set out in the EU's export subsidy commitments. Production quotas for sugar are to be abolished on 30 September 2017.

### **Other**

4.32. The School Milk Scheme remains in operation for milk and other dairy products for children in pre-school establishments, and primary and secondary schools. Under the scheme, the subsidy ranges from €16.34 per 100 kg for flavoured milk products (minimum 75% milk) to €163.14 per 100 kg for Grana Padano and Parmigiano Reggiano cheeses. The subsidy is available for 0.25 litres of milk or milk equivalent per school day per child. In the 2014/15 school year, the total EU

<sup>14</sup> DG AGRI online information. Viewed at: [http://ec.europa.eu/agriculture/sugar/index\\_en.htm](http://ec.europa.eu/agriculture/sugar/index_en.htm) [November 2016].

<sup>15</sup> DG AGRI (2016), *Committee for the Common Organisation of Agricultural Markets – update 29 September 2106, Balance Sheet*, Working Document, Point 1.2B. Viewed at: [http://ec.europa.eu/agriculture/sugar/balance-sheets/balance-sheet\\_en.pdf](http://ec.europa.eu/agriculture/sugar/balance-sheets/balance-sheet_en.pdf) [November 2016].

budget contribution was €67 million with an additional €53 million from national and private sources. Croatia (which acceded to the EU in July 2013) and Greece did not participate in the scheme in the 2014/15 school year.

4.33. EU funding of up to 100% is available for products disposed of for free distribution to charities and foundations for food aid or for distribution to penal institutions, schools, hospitals, etc., up to a maximum of 5% of the volume of production marketed by the producer organization. Under the School Fruit and Vegetable Scheme, fruits and vegetables are provided for school children together with accompanying measures to make the scheme effective at co-financing rates that vary from 75-90%. The scheme has a total allocation of €150 million for the school years 2016/17 and 2017/18. Participation in the scheme is voluntary for Finland, Sweden, and the United Kingdom.<sup>16</sup> The School Milk Scheme and the School Fruit and Vegetable Scheme are to be merged into a single scheme in August 2017.<sup>17</sup>

4.34. The Fund for European Aid to the Most Deprived (FEAD), which is administered by DG EMPL, supports the member States' actions to provide material assistance to deprived persons, including food aid, based on each member State's operational programme. A total of €3.8 billion in real terms was earmarked for the FEAD for 2014-20, with additional co-financing of at least 15% from the member States.<sup>18</sup>

#### 4.1.2.1.3 Rural development

4.35. Rural development, or Pillar II of the Common Agricultural Policy (CAP), is funded through the European Agricultural Fund for Rural Development (EAFRD) under Regulation (EU) No. 1305/2013 of 17 December 2013 and secondary legislation on its implementation.<sup>19</sup> In addition to the funds provided by the EU under the EAFRD, the member States also provide co-funding at rates that depend on the type of project and the member State. Total funding from the EAFRD for 2014-20 is €100 billion and co-funding from the member States is an additional €61 billion. The national envelopes for EAFRD funding are shown in Table 4.11.

**Table 4.11 National envelopes for rural development, 2014-20**

(€ million)

	2014	2015	2016	2017	2018	2019	2020
Belgium	41	97	110	97	97	103	103
Bulgaria	-	503	505	340	340	339	339
Czech Republic	-	470	503	345	343	323	322
Denmark	90	90	136	145	153	152	152
Germany	665	1,498	1,686	1,404	1,401	1,398	1,395
Estonia	104	104	111	123	126	127	129
Ireland	-	470	460	313	313	313	313
Greece	-	907	1,008	703	702	700	698
Spain	-	1,780	1,780	1,186	1,184	1,183	1,183
France	4	2,336	3,364	1,666	1,668	1,671	1,675
Croatia	-	448	448	282	282	282	282
Italy	-	2,223	2,232	1,493	1,496	1,499	1,502
Cyprus	-	28	28	19	19	19	19
Latvia	138	151	153	155	157	159	161
Lithuania	230	230	230	230	230	230	230
Luxembourg	-	21	21	14	14	14	15

<sup>16</sup> Commission Implementing Decision of 30 March 2016 on the definitive allocation of Union aid to member States under the school fruit and vegetables scheme for the period from 1 August 2016 to 31 July 2017, C(2016) 1729 final. Viewed at: <http://ec.europa.eu/agriculture/sfs/documents/decision.pdf> [November 2016].

<sup>17</sup> DG AGRI online information. Viewed at: [http://ec.europa.eu/agriculture/milk/school-milk-scheme\\_en](http://ec.europa.eu/agriculture/milk/school-milk-scheme_en) [November 2016].

<sup>18</sup> DG EMPL online information. Viewed at: <http://ec.europa.eu/social/main.jsp?langId=en&catId=1089> [February 2017].

<sup>19</sup> Commission Delegated Regulation (EU) Nos. 807/2014 of 17 November 2014 and 994/2014 of 13 May 2014, Commission Implementing Regulation (EU) No. 808/2014 of 17 July 2014, and European Union Guidelines for State aid in the agriculture and forestry sectors and in rural areas 2014 to 2020.

	2014	2015	2016	2017	2018	2019	2020
Hungary	-	743	737	489	488	487	487
Malta	-	21	21	14	14	14	14
Netherlands	87	87	118	118	118	118	118
Austria	558	559	561	562	564	566	567
Poland	1,570	1,176	1,193	1,192	1,191	1,189	1,187
Portugal	577	578	579	580	581	582	582
Romania	-	1,723	1,752	1,187	1,185	1,142	1,140
Slovenia	119	119	119	120	120	120	121
Slovakia	271	213	216	215	215	215	215
Finland	335	337	338	340	342	343	345
Sweden	-	387	378	249	250	250	250
United Kingdom	476	848	851	755	754	755	756
Technical assistance	34	34	34	34	34	34	34

Note: The amounts for rural development include transfers between pillars. Technical assistance is not assigned to member States.

Source: Regulation (EU) No. 1305/2013, Annex I (as last amended by Regulation (EU) No. 1307/2016).

4.36. Regulation (EU) No. 1305/2013 sets out common priorities for rural development and each member State, or region in a member State, has drawn up a rural development programme based on at least four of these priorities. Each priority has a number of focus areas and the rural development programmes include quantitative targets for each focus area (Table 4.12).

4.37. There are 118 rural development plans in the 28 member States, with 20 national programmes and eight member States with two or more regional programmes. Each plan sets targets for the priorities and at least 30% of funding must be for measures relating to the environment and climate change and 5% for the LEADER programme which provides grants for a variety of community-led programmes under the sixth priority on social inclusion, poverty reduction and economic development in rural areas.

4.38. As noted in the previous review, some of the Pillar II programmes and measures are targeted at farmers and intended to improve efficiency (e.g. investments in physical assets), productivity in the sector (e.g. aid for young farmers) (under Priority 2), and risk reduction (e.g. aid for restoring production potential after damage by natural disasters, subsidies for insurance premiums, and income stabilization) (under Priority 3).<sup>20</sup> According to the Commission, 44% of funds of all the rural development plans are for improving ecosystems, 20% for improving farm viability and competitiveness, and 10% for food chain organization, animal welfare and risk management (Table 4.12).

**Table 4.12 Rural development priorities and focus areas**

	Priority	% of funds
<b>1</b>	<b>Knowledge transfer and innovation</b>	
1.A	Innovation, cooperation, and the development of the knowledge base	
1.B	Links between agriculture, food production and forestry and research and innovation, including for the purpose of improved environmental management and performance	
1.C	Learning and vocational training	
<b>2</b>	<b>Farm viability and competitiveness, and promoting innovative farm technologies and sustainable management of forests</b>	<b>20</b>
2.A	Improving the economic performance of all farms	
2.B	Entry of adequately skilled farmers	
<b>3</b>	<b>Food chain organization, including processing and marketing of agricultural products, animal welfare, and risk management</b>	<b>10</b>
3.A	Improving competitiveness	
3.B	Risk prevention and management	
<b>4</b>	<b>Restoring, preserving and enhancing biodiversity</b>	<b>44</b>
4.A	Biodiversity	
4.B	Water management	
4.C	Preventing soil erosion and improving soil management	

<sup>20</sup> WTO document WT/TPR/S/317/Rev.1, 21 October 2015, para. 4.48.

	Priority	% of funds
<b>5</b>	<b>Resource efficiency and supporting the shift towards a low carbon and climate resilient economy in agriculture, food and forestry sectors</b>	<b>8</b>
5.A	Efficiency in water use	
5.B	Efficiency in energy use	
5.C	Supply and use of renewable sources of energy	
5.D	Reducing greenhouse gas and ammonia emissions	
5.E	Carbon conservation and sequestration	
<b>6</b>	<b>Social inclusion, poverty reduction and economic development</b>	<b>15</b>
6.A	Diversification, creation and development of small enterprises	
6.B	Local development	
6.C	Accessibility, use and quality of information and communication technologies	

Source: Regulation (EU) No. 1305/2013 of 17 December 2013; and DG AGRI (2016), *Rural Development Programmes 2014-2020*.

#### 4.1.2.2 Export subsidies

4.39. The European Commission stated that no export subsidies have been granted by the EU since July 2013. The most recent notification from the EU for the 2014/15 marketing year shows that no export refunds were provided in that year, although the EU continued to notify exports of out-of-quota sugar as being subsidized although no export refunds are provided.<sup>21</sup> As noted above, production quotas for sugar will be abolished from end-September 2017. Furthermore, although Regulation (EU) No. 1308/2013 does provide for the export refunds in exceptional situations, the refund rates were set at zero in 2013 and have not changed, and the European Commission stated that the EU applies the Decision of the Nairobi Ministerial Conference on the elimination of export subsidies.

#### 4.1.2.3 Market access

4.40. During the period under review there was no substantial change to market access for agricultural products in the EU.

4.41. On average, bound tariffs on agricultural products (WTO definition) (simple average MFN tariff of 14.1%) remain higher than on non-agricultural products (simple average MFN tariff of 4.3%) and vary considerably from one agricultural product to another with a standard deviation of 23.7 compared to 4.4 for non-agricultural products (Section 3.1.4). In addition, many agricultural products are subject to non-*ad valorem* duties that can also vary from simple specific duties to more complex forms, such as those in the Meursing Table.<sup>22</sup> However, imports of agricultural products from least developed countries and from many developing countries can enter the EU at zero or reduced tariffs under the EU's everything-but-arms initiative, its GSP and GSP+ schemes, and its network of trade agreements.

4.42. Tariffs for some cereals may be adjusted based on import prices. For high quality common wheat, durum wheat (high, medium and low quality), maize, flint maize, sorghum, and rye<sup>23</sup>, the duty is €157.0305<sup>24</sup> minus the c.i.f. import price with further adjustments depending on the product, port of unloading, quality, and other factors as set out in Commission Regulation (EU) No. 642/2010.<sup>25</sup> On the basis of these calculations, the import duty was fixed at zero in November 2014 in Commission Implementing Regulation (EU) No. 1206/2014.<sup>26</sup>

<sup>21</sup> WTO document G/AG/N/EU/29, 20 May 2016.

<sup>22</sup> Regulation (EU) No. 510/2014 of the European Parliament and of the Council of 16 April 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.

<sup>23</sup> CN codes 1001 11 00, 1001 19 00, ex 1001 91 20 (common wheat seed), ex 1001 99 00 (high quality common wheat other than for sowing), 1002 10 00, 1002 90 00, 1005 10 90, 1005 90 00, 1007 10 90 and 1007 90 00.

<sup>24</sup> That is, the intervention price (€101.31 per tonne) plus 55%.

<sup>25</sup> Commission Regulation (EU) No. 642/2010 of 20 July on rules of application (cereal sector import duties) for Council Regulation (EC) No. 1234/2007.

<sup>26</sup> Commission Implementing Regulation (EU) No. 1206/2014 of 7 November fixing the import duties in the cereals sector applicable from 8 November 2014.

4.43. The entry price system applying to certain fruits and vegetables<sup>27</sup> continues to be applied as set out in Commission Implementing Regulation (EU) No. 543/2011.

4.44. The EU has notified the systems for the administration of 124 tariff quotas, of which: 44 are current access quotas; 6 are non-tariffed product quotas; 36 are minimum access quotas; and 42 are post-Uruguay Round quotas opened under Article XIV.6 or XXVIII of GATT. A variety of administration methods are used although the majority are open to all supplying countries and are open for 12 months, and about half are allocated on a first-come, first-served basis (Table 4.13).<sup>28</sup>

**Table 4.13 Tariff quotas in the EU in 2016**

Country allocation	Number of quotas
Erga omnes	83
Country specific	41
<b>Quota opened</b>	
1 July to 30 June	53
1 January to 31 December	55
<b>Quota allocation</b>	
First-come, first-served	60
Import licences issues by the competent authorit(y)(ies) of the member State(s)	64

Source: WTO document G/AG/N/EU/31, 2 September 2016; and EU/31/Corr.1, 13 January 2017.

4.45. The most recent notification for imports within tariff quotas for the EU is for marketing year 2015/2016 and calendar year 2015 for 122 tariff quotas. Fill rates for these quotas varied considerably with 37 fully, or very nearly filled (over 90%), another 11 were 50-90% filled, another 39 less than half filled, and 35 had no in-quota imports reported.<sup>29</sup>

4.46. The EU has reserved the right to use the special agricultural safeguard on 539 tariff lines. Actual use has been much less. At end-2016 the most recent notification on use of the SSG in the EU noted that the volume-based SSG was not invoked in 2014/15 although it was made operational on 15 fruit and vegetable products (corresponding to 28 tariff lines), while the price-based SSG was made operational on 8 tariff lines for poultry products. In these cases the term "made operational" means prices are monitored and the price-based SSG may be charged if the import price is below the trigger price or, for the volume-based SSG, import volumes are calculated, but the EU has never invoked the volume-based SSG.<sup>30</sup>

### 4.1.3 Domestic support levels

#### 4.1.4 WTO notifications

4.47. The last DS:1 notification from the EU for domestic support was for marketing year 2013/14 and includes the changes that resulted from the 2013 reform of the CAP as implemented during the marketing year 2013/14. The notified value of support shows little change compared to the previous notifications for the three years before 2013/14.

<sup>27</sup> The products covered by Implementing Regulation (EU) No. 543/2011 are: tomatoes; cucumbers; artichokes; courgettes; sweet oranges; clementines; mandarins; lemons; table grapes; apples; pears; apricots; cherries, other than sour; peaches and nectarines; plums; cucumbers for processing; and sour cherries

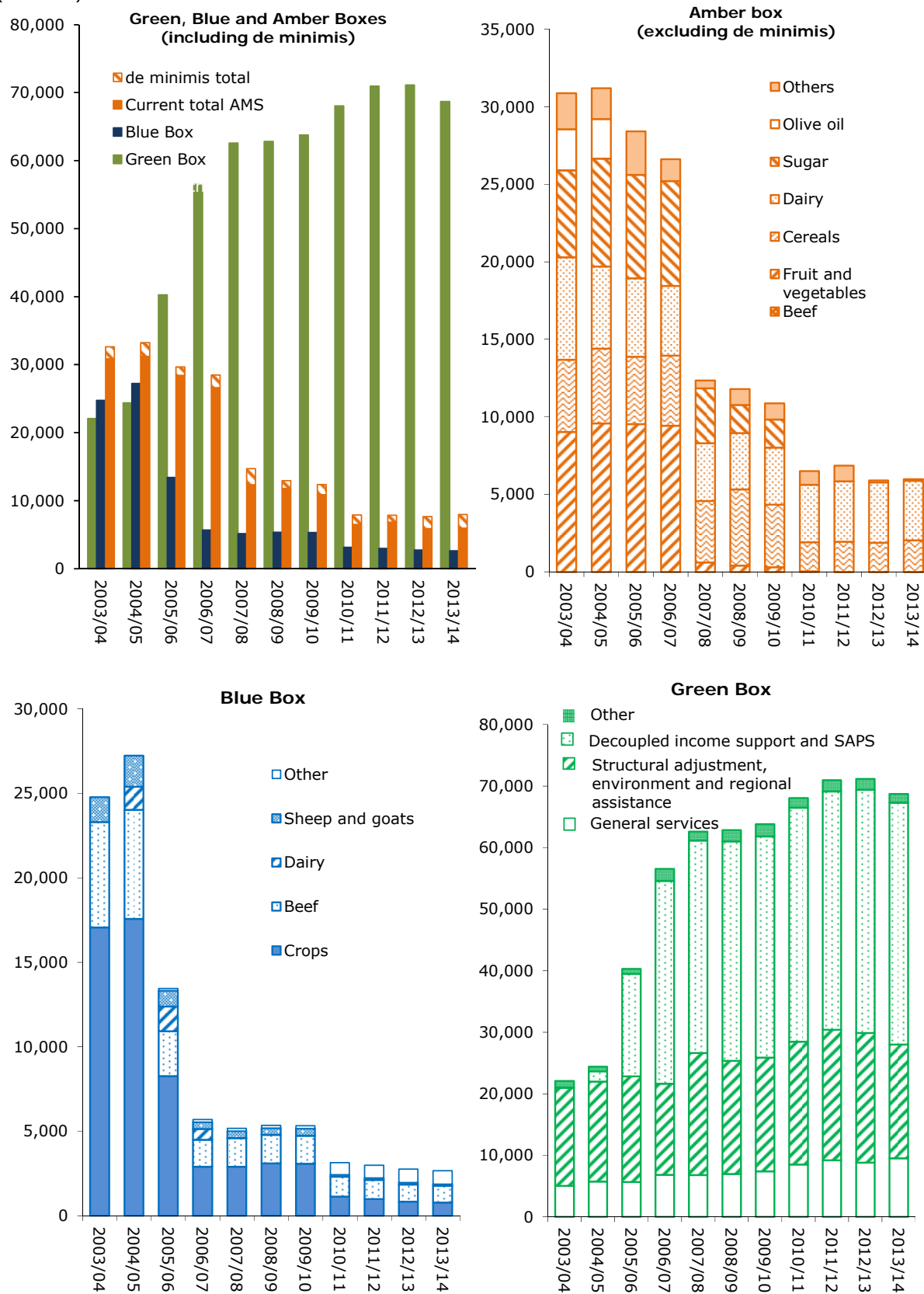
<sup>28</sup> WTO document G/AG/N/EU/31, 2 September 2016 and 31/Corr.1, 13 January 2017

<sup>29</sup> WTO documents G/AG/N/EU/33, 13 January 2017.

<sup>30</sup> WTO document G/AG/N/EU/28, 17 May 2016.

**Chart 4.1 Domestic support in the EU, 2003/04-2013/14**

(€ million)



Source: WTO notifications.



#### 4.1.5 OECD monitoring and evaluation of agricultural policies

4.48. Compared to the methodology used to calculate the level of support provided under the Amber, Blue, and Green Boxes in the WTO, the OECD's annual monitoring and evaluation reports on support to agriculture in OECD countries use a different methodology to calculate the value of support which is expressed in a number of indicators, including: the Produce Support Estimate (PSE) for gross transfers from consumers and tax payers to agricultural producers; the Total Support Estimate (TSE) for transfers to the agricultural sector in general; and the Single Commodity Transfers (SCT) for transfers to specific commodities. As previously noted, the PSE represents the value of transfers to producers, unlike support under the Amber Box, Blue Box and Green Box, which measure compliance with WTO commitments. Therefore, the value of support as notified to the WTO is neither compatible nor comparable with the values calculated by the OECD.<sup>31</sup>

4.49. Overall, the percentage PSE (that is support as a percentage of gross farm receipts), has been fairly stable over the 2011-15 period, ranging from 20.0% to 18.1%, considerably below the levels of the 1990s. Market price support increased to nearly €21 billion, from a low of €11 billion in 2011. The increase in the value of market price support is the result of several factors, including lower commodity prices as domestic producers in the EU are, to some extent, protected from changes in world market prices by tariffs. As a result, market price support for common wheat, and sugar increased from zero in 2011 to €3.9 billion and €1.4 billion respectively in 2015.

**Table 4.14 OECD indicators for support to agriculture in the EU, 2009-15**

(€ million (except producer NPC))

	2009	2010	2011	2012	2013	2014	2015
<b>Total</b>							
Value of production	304,303	329,707	363,372	374,778	385,031	385,031	368,516
TSE	98,340	91,726	91,581	99,335	104,107	94,227	93,972
PSE	86,166	79,206	78,380	86,003	91,018	81,560	81,119
SCT	26,898	18,022	15,226	21,058	26,409	20,519	26,420
MPS	21,511	13,725	10,971	17,096	22,499	16,357	20,914
Producer NPC							
<b>Common wheat</b>							
Value of production	14,803	19,449	26,744	27,870	29,893	28,094	28,612
SCT	2	0	0	0	1,008	552	3,948
MPS	0	0	0	0	1,008	552	3,948
Producer NPC	1.00	1.00	1.00	1.00	1.03	1.02	1.16
<b>Refined sugar</b>							
Value of production	3,581	3,161	3,971	3,927	3,704	4,425	3,588
SCT	623	76	41	71	759	1,165	1,422
MPS	551	0	0	23	706	1,146	1,233
Producer NPC	1.19	1.00	1.00	1.01	1.24	1.35	1.53
<b>Milk</b>							
Value of production	39,303	44,815	50,732	50,066	55,203	58,581	49,786
SCT	611	685	655	720	736	950	1,758
MPS	0	0	0	0	(41)	(25)	347
Producer NPC	1.01	1.01	1.01	1.01	1.01	1.01	1.02
<b>Beef and veal</b>							
Value of production	24,034	25,036	26,588	28,666	28,290	27,362	28,864
SCT	9,798	4,547	4,196	9,598	11,768	7,082	8,641
MPS	7,785	2,919	2,592	8,076	10,294	5,643	6,794
Producer NPC	1.48	1.13	1.11	1.39	1.58	1.26	1.32
<b>Pig meat</b>							
Value of production	30,031	30,373	33,822	36,852	37,621	34,211	31,329
SCT	112	536	23	27	650	(60)	(471)
MPS	0	511	0	0	641	(65)	(472)
Producer NPC	1.00	1.02	1.00	1.00	1.02	1.00	1.00

<sup>31</sup> WTO document WT/TR/S/284/Rev.2, 28 November 2013, paragraph 4.34.

	2009	2010	2011	2012	2013	2014	2015
<b>Poultry</b>							
Value of production	12,907	13,411	14,990	15,715	16,237	16,464	16,597
SCT	4,902	3,852	3,472	3,187	1,715	2,088	958
MPS	4,806	3,833	3,453	3,161	1,708	2,082	957
Producer NPC	1.59	1.40	1.30	1.25	1.12	1.15	1.09
<b>Sheep meat</b>							
Value of production	3,742	3,835	4,830	4,678	4,578	4,639	4,648
SCT	1,323	792	325	310	709	470	589
MPS	839	475	0	3	401	50	(27)
Producer NPC	1.29	1.14	1.00	1.00	1.10	1.01	1.00

Note: Total support estimate (TSE) is the annual monetary value of all gross transfers from taxpayers and consumers arising from policy measures that support agriculture, net of associated budgetary receipts, regardless of their objectives and impacts on farm production and income, or consumption of farm products.

Producer support estimate (PSE) is the annual monetary value of gross transfers from consumers and taxpayers to agricultural producers, measured at the farm-gate level, arising from policy measures that support agriculture, regardless of their nature, objectives or impacts on farm production or income.

Single commodity transfer (SCT) is the annual monetary value of gross transfers from consumers and taxpayers to agricultural producers, measured at the farm-gate level, arising from policy measures directly linked to the production of a single commodity such that the producer must produce the designated commodity in order to receive the transfer.

Market price support (MPS) is an indicator of the annual monetary value of gross transfers from consumers and taxpayers to agricultural producers arising from policy measures creating a gap between domestic producer prices and reference prices of a specific agricultural commodity measured at the farm-gate level.

The Producer Nominal Protection Co-efficient (Producer NPC) is an indicator of the nominal rate of protection for producers measuring the ratio between the average price received by producers (at farm gate), including payments per tonne of current output, and the border price (measured at farm-gate level).

Source: OECD Producer and Consumer Support Estimates database. Viewed at: <http://www.oecd.org/chile/producerandconsumersupportestimatesdatabase.htm> [December 2014].

## 4.2 Fisheries

### 4.2.1 Fisheries in the EU

4.50. Fisheries represented about 0.05% of total gross value added (GVA) in 2014 although its importance varies from one member State to another, being most important in Greece (0.43% of GVA), Malta (0.37% of GVA), and Croatia (0.35% of GVA). Greece, France, Italy, Spain and the United Kingdom accounted for nearly 70% of EU GVA in fishing in 2014.<sup>32</sup> Employment in the fisheries and aquaculture sectors also represents a small proportion of total employment (0.07% of total employment in 2015).<sup>33</sup>

4.51. Demand for fish and fish products in the EU has continued to increase. In 2015, EU consumers spent €54 billion on fish and fish products, an increase of 3.2% compared to 2014. In 2014, per capita fish consumption also increased to 25.5 kg, 3.5% higher than in 2013.<sup>34</sup>

4.52. A recent study shows that the profitability of the EU fishing fleet increased in 2014 as compared to 2013 and this trend is expected to have continued in 2015 and 2016 mainly as a result of increased landings and lower fuel costs.<sup>35</sup>

<sup>32</sup> Eurostat. Viewed at: <http://ec.europa.eu/eurostat/web/national-accounts/data/database> [February 2017].

<sup>33</sup> Statistical information was provided by the EU authorities.

<sup>34</sup> EUMOFA, *The EU Fish Market – 2016 Edition*, pp. 15-16.

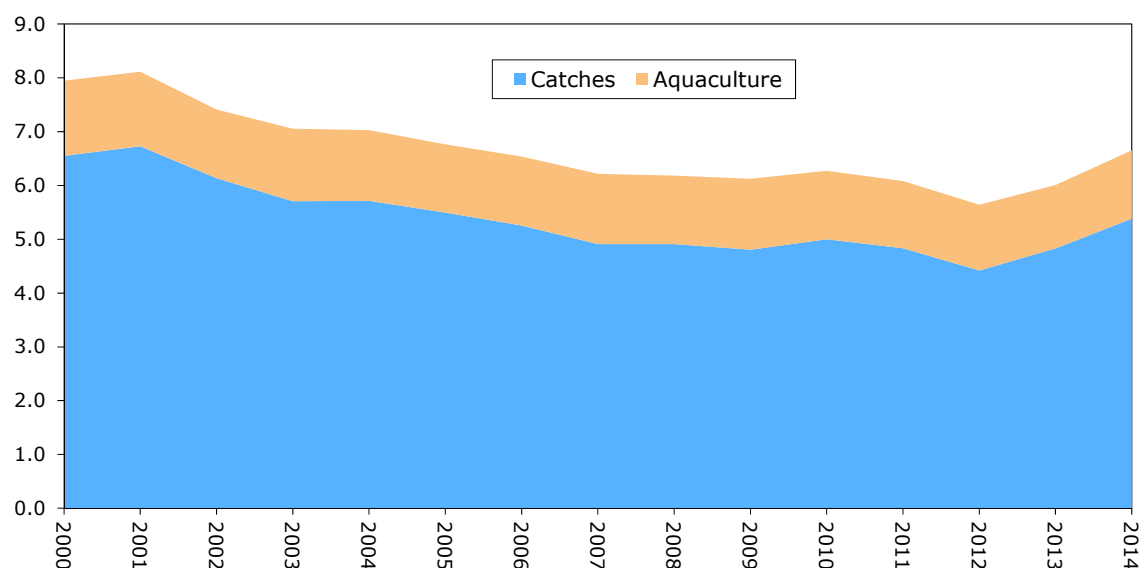
<sup>35</sup> STECF, *JRC Scientific and Policy Reports: The 2016 Annual Economic Report on the EU Fishing Fleet (STECF 16-11)*, July 2016. Viewed at: [https://stecf.jrc.ec.europa.eu/documents/43805/1481615/201607\\_TECF+16-11+-+AER+2016\\_RC103591.pdf](https://stecf.jrc.ec.europa.eu/documents/43805/1481615/201607_TECF+16-11+-+AER+2016_RC103591.pdf), p. 21 [February 2017].

#### 4.2.2 Fish catches and aquaculture

4.53. From 2001 to 2012, total fisheries production in the EU followed a downward trend driven by a fall in capture production. A rise was then observed from 2012 for capture production, increasing by 11.5% from 2013 to 2014. According to the EU authorities, no clear pattern can be identified from the most recent figures, especially the 5% decrease registered in fish catch in 2015 indicating that EU total fisheries production is likely to shrink again. On the other hand, although the EU has experienced a slight decline in aquaculture production over the last 15 years, recent figures showed a 7.8% increase in 2014 after production reached its lowest level since 2000 in 2013.

**Chart 4.2 Fish production in the EU-28, 2000-14**

(Million tonnes)



Source: WTO Secretariat estimates, based on Eurostat (fish\_ca\_main), (fish\_aq\_q) and (fish\_aq2a). Viewed at: <http://ec.europa.eu/eurostat/data/database> [February 2017].

4.54. The EU's total fish catch was estimated at 5.4 million tonnes in 2014, which accounted for 81% of total EU production. Most of the EU catch was in the Northeast Atlantic (over 70% of total EU catches), followed by the Mediterranean and the Black Sea (8% of total EU catches).<sup>36</sup> In terms of weight landed in 2014, herring (741,000 tonnes) was the most important, followed by Atlantic mackerel (591,000 tonnes), and European sprat (383,000 tonnes). In terms of landed value, Atlantic mackerel was the most important at €542 million, followed by European hake (€366 million), Norway lobster (€310 million), and yellow fin tuna (€297 million).<sup>37</sup> Within the EU, the most important producers in terms of volume in 2014 were Spain, Denmark, the United Kingdom, France, and the Netherlands, representing about 65% of the total EU catch production (Table 4.15).

**Table 4.15 Summary of fishery production, 2010-15**

('000 tonnes live weight)

	2010	2011	2012	2013	2014	2015
<b>Total production</b>						
EU-28	6,271	6,081	5,641	6,007	6,653	..
EU-28 as % of world	3.7%	3.4%	3.1%	3.1%	3.4%	..
Spain	995	1,073	1,024	1,130	1,394	..
United Kingdom	807	794	832	821	967	914

<sup>36</sup> Eurostat. Viewed at: <http://ec.europa.eu/eurostat/web/fisheries/data/database> [February 2017].

<sup>37</sup> STECF, JRS Scientific and Policy Reports, *The 2016 Annual Economic Report on the EU Fishing Fleet (STECF 16-11)*, July 2016. Viewed at: [https://stecf.jrc.ec.europa.eu/documents/43805/1481615/2016-07\\_STECF+16-11+-+AER+2016\\_JRC103591.pdf](https://stecf.jrc.ec.europa.eu/documents/43805/1481615/2016-07_STECF+16-11+-+AER+2016_JRC103591.pdf), p. 78 [February 2017].

	2010	2011	2012	2013	2014	2015
Denmark	860	716	536	700	779	905
France	643	681	666	729	544	..
Netherlands	443	409	391	371	439	427
Total top-5 producers	3,748	3,672	3,450	3,751	4,121	..
<i>Top-5 producers as % of total EU-28</i>	59.8%	60.4%	61.2%	62.4%	61.9%	..
<b>Catches</b>						
EU-28	4,999	4,833	4,420	4,829	5,382	5,144
<i>EU-28 as % of world</i>	5.5%	5.1%	4.8%	5.1%	5.7%	..
Spain	742	799	758	904	1,109	902
Denmark	828	716	503	668	745	869
United Kingdom	605	595	626	618	752	702
France	440	487	461	529	544	497
Netherlands	376	365	345	324	375	365
Total top-5 producers	2,991	2,961	2,693	3,043	3,525	3,335
<i>Top-5 producers as % of total EU-28</i>	59.8%	61.3%	60.9%	63.0%	65.5%	64.8%
<b>Aquaculture</b>						
EU-28	1,272	1,248	1,221	1,178	1,270	..
<i>EU-28 as % of world</i>	1.6%	1.5%	1.4%	1.2%	1.3%	..
Spain	254	274	267	226	285	..
United Kingdom	201	199	206	203	215	212
France	203	194	205	200	..	..
Italy	154	164	137	141	149	..
Greece	121	111	109	114	104	106
Total top-5 producers	933	942	923	771	753	..
<i>Top-5 producers as % of total EU-28</i>	73.3%	75.5%	75.6%	75.1%	59.3% <sup>a</sup>	..

.. Not available.

a Data for 2014 are not complete.

Note: Total catches are calculated as the sum of the seven regions covered by legal acts, namely: Northwest Atlantic (FAO Major Fishing Area 21), Northeast Atlantic (Area 27), Eastern Central Atlantic (Area 34), Mediterranean and Black Sea (Area 37), Southwest Atlantic (Area 41), Southeast Atlantic (Area 47), and Western Indian Ocean (Area 51).

Source: WTO Secretariat estimates, based on FAO Stat. Viewed at: <http://www.fao.org/fishery/statistics/en>; and Eurostat (fish\_ca\_main), (fish\_aq\_q) and (fish\_aq2a). Viewed at: <http://ec.europa.eu/eurostat/data/database> [February 2017].

4.55. Aquaculture production in the EU-28 was small relative to capture with total production of 1.3 million tonnes (19% of EU-28 fish production), valued at €3,923 million in 2014.<sup>38</sup> The EU's aquaculture production, in terms of volume, was mainly concentrated in Spain, the United Kingdom, France, Italy, and Greece, which accounted for over 70% of the total. On the other hand, in terms of value, the United Kingdom was the largest producer in the EU with 24% of the total production value, followed by France (17.7%), Spain (12.0%) and Greece (11.3%) in 2014.<sup>39</sup> This was found to be due to the lower unit value of mussels (0.50€/kg), which represented 77% of the Spanish aquaculture production volumes, but only 23% of the value.<sup>40</sup> The main aquaculture species produced in weight terms were Mediterranean mussels (321,000 tonnes), Atlantic salmon (189,000 tonnes), blue mussels (147,000 tonnes), rainbow trout (137,000 tonnes), and Pacific cupped oysters (128,000 tonnes), representing more than half (72%) of the total EU aquaculture production.<sup>41</sup>

<sup>38</sup> Eurostat. Viewed at: <http://ec.europa.eu/eurostat/web/fisheries/data/database> [February 2017].

<sup>39</sup> Eurostat. Viewed at: <http://ec.europa.eu/eurostat/web/fisheries/data/database> [February 2017]. At the time of writing, 2013 data were used for France since no 2014 data were available in the Eurostat database.

<sup>40</sup> Eurostat. Viewed at: <http://ec.europa.eu/eurostat/web/fisheries/data/database>; and EUMOFA. Viewed at: <https://www.eumofa.eu/> [February 2017].

<sup>41</sup> STECF, JRC Scientific and Policy Reports, Reports of the Scientific, Technical and Economic Committee for Fisheries (STECF) - Economic Report of EU aquaculture sector (STECF-16-19), October 2016. Viewed at: [https://stecf.jrc.ec.europa.eu/documents/43805/1491449/2016-10\\_STECF+16-19+-+EU+Aquaculture\\_JRCxxx.pdf](https://stecf.jrc.ec.europa.eu/documents/43805/1491449/2016-10_STECF+16-19+-+EU+Aquaculture_JRCxxx.pdf), p. 43 [February 2017].

4.56. Fleet capacity in the EU has continued to decline: the number of vessels decreased steadily from some 95,000 in 2000 to 84,000 in 2015. The EU-28's fishing fleet in 2015 had a combined capacity of 1.6 million gross tonnes and a total engine power of 6.4 million kilowatts (Table 4.16).<sup>42</sup>

4.57. The structure of the fishing fleet varies from one member State to another. In 2015, Greece had the greatest number of vessels (approximately 15,000), followed by Italy and Spain. Although Greece accounted for 18.2% of the total number of vessels, its fleet represented only 4.5% of the gross tonnage and 6.8% of the kilowatts of the EU fleet (Table 4.16).

**Table 4.16 Overview of the EU fleet by member State, 2015**

	Number of vessels		Gross tonnage			Kilowatts		
	Number	% of total number	Size ('000)	% of total GT	Gross tonnage (GT) per vessel	Power ('000)	% of total kilowatts	Kilowatt per vessel
European Union	84,280	100.0%	1,591	100.0%	18.9	6,393	100.0%	75.9
Belgium	76	0.1%	14	0.9%	185.2	45	0.7%	596.4
Bulgaria	1,981	2.4%	7	0.4%	3.3	58	0.9%	29.3
Croatia	7,727	9.2%	52	3.3%	6.7	419	6.6%	54.2
Cyprus	832	1.0%	3	0.2%	4.0	38	0.6%	45.4
Denmark	2,369	2.8%	66	4.2%	28.0	220	3.4%	93.0
Estonia	1,538	1.8%	13	0.8%	8.8	44	0.7%	28.8
Finland	2,723	3.2%	15	1.0%	5.7	157	2.5%	57.6
France	6,910	8.2%	172	10.8%	24.9	999	15.6%	144.6
Germany	1,443	1.7%	64	4.0%	44.3	141	2.2%	97.9
Greece	15,368	18.2%	72	4.5%	4.7	434	6.8%	28.3
Ireland	2,144	2.5%	63	4.0%	29.4	193	3.0%	89.9
Italy	12,316	14.6%	158	9.9%	12.8	987	15.4%	80.1
Latvia	686	0.8%	25	1.6%	36.0	43	0.7%	63.1
Lithuania	145	0.2%	45	2.8%	309.9	50	0.8%	347.4
Malta	1,005	1.2%	7	0.4%	6.9	73	1.1%	72.6
Netherlands	829	1.0%	127	8.0%	153.2	304	4.7%	366.1
Poland	875	1.0%	34	2.2%	39.1	82	1.3%	93.2
Portugal	8,047	9.5%	95	5.9%	11.7	357	5.6%	44.4
Romania	151	0.2%	1	0.1%	5.8	6	0.1%	39.9
Slovenia	169	0.2%	1	0.0%	3.5	9	0.1%	50.5
Spain	9,396	11.1%	341	21.4%	36.3	797	12.5%	84.8
Sweden	1,318	1.6%	29	1.8%	22.3	163	2.5%	123.5
United Kingdom	6,232	7.4%	187	11.8%	30.0	774	12.1%	124.2

Source: WTO Secretariat estimates, based on Eurostat (fish\_fleet). Viewed at: <http://ec.europa.eu/eurostat/data/database> [February 2017].

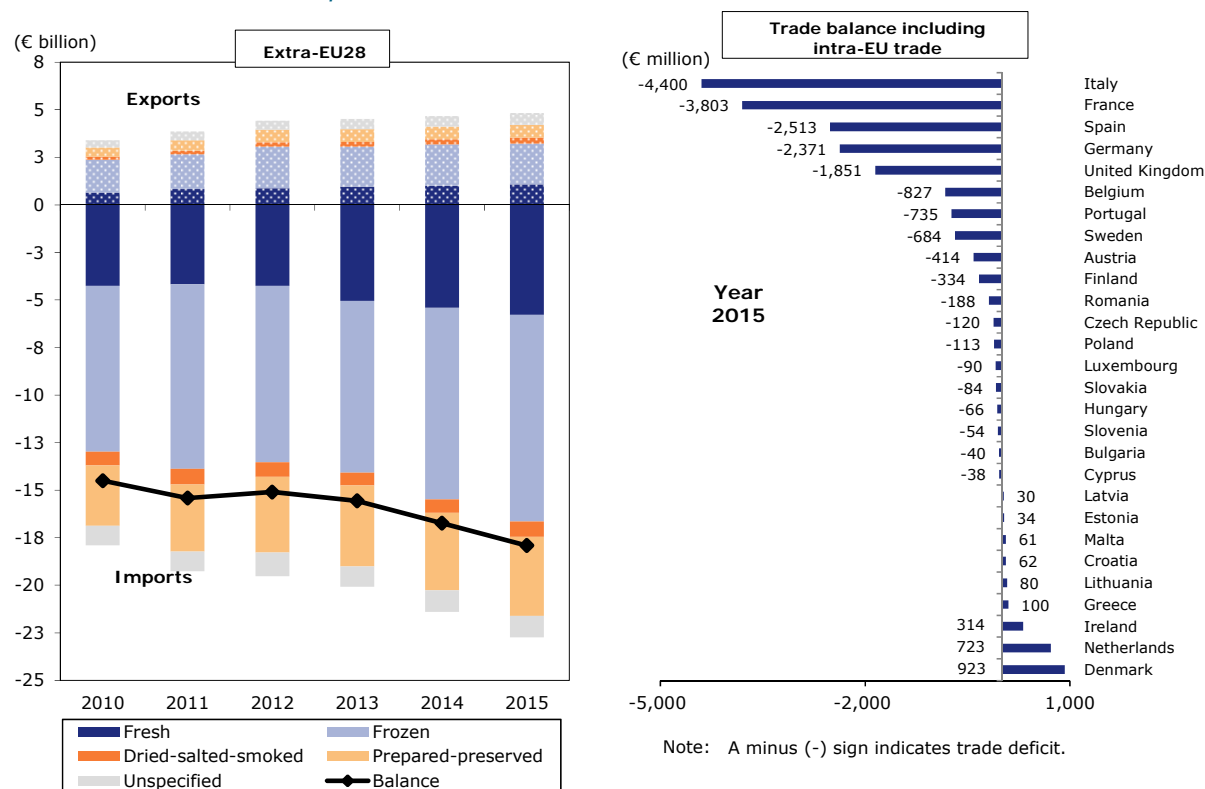
#### 4.2.3 Trade

4.58. The EU is a net importer of fish and fish products and the trade deficit has continued to grow: in 2015, the EU had a trade deficit of €17.9 billion, with imports of €22.7 billion and exports of €4.8 billion (Chart 4.3). Although the deficit increase was mainly due to imports of frozen and fresh products, imports of prepared and preserved fish have been gradually increasing (Chart 4.3). Trade in fish and fish products accounted for 1.3% of total extra EU-28 imports and 0.3% of total extra EU-28 exports in 2015.

4.59. Among EU members, and including intra-EU trade, most of the member States had trade deficits; Italy had the largest trade deficit of €4.4 billion, followed by France (€3.8 billion).

<sup>42</sup> Eurostat. Viewed at: <http://ec.europa.eu/eurostat/web/fisheries/data/database> [February 2017].

Chart 4.3 Trade balance, 2010-15



Source: Eurostat database. Viewed at: <http://epp.eurostat.ec.europa.eu/newxtweb/> [February 2017].

4.60. The major suppliers for extra-EU-28 imports of fish and fish products were Norway, China, and Iceland, which accounted for 24.6%, 7.1%, and 4.9%, respectively, in 2015. About 70% of total Norwegian supplies were salmon, followed by cod (14%), and Herring (3%). The top three EU destinations for extra-EU imports were Spain, Sweden, and the United Kingdom, representing about 44% of total extra-EU-28 imports. In terms of species imported by the EU, major imported species included salmon, cod, and tropical shrimp (Table A4.1).

4.61. The value of fish products imported into the EU grew faster than volume (4.9% per year in value from 2010 to 2015 compared to 0.2% in volume) due to increases in unit prices for several species, although unit prices for tuna and salmon remained relatively stable over this period (Chart 4.4).<sup>43</sup>

4.62. EU exports increased to €4.8 billion in 2015, having grown by an average of 7.3% per year in the period from 2010 to 2015. In 2015, the United States remained the biggest market for EU exports, accounting for 12.5% of total fishery exports, followed by Norway (10.6%), and China (8.7%). Those main export destinations showed a positive growth over the period from 2010 to 2015, except for the Russian Federation, mainly due to the Russian import ban on imports of some agri-food products from the EU (Table A4.1).<sup>44</sup> With regard to species, salmon accounted for the largest share (14.9%) of EU exports, followed by fishmeal and mackerel (6.5% for both species) (Table A4.1).

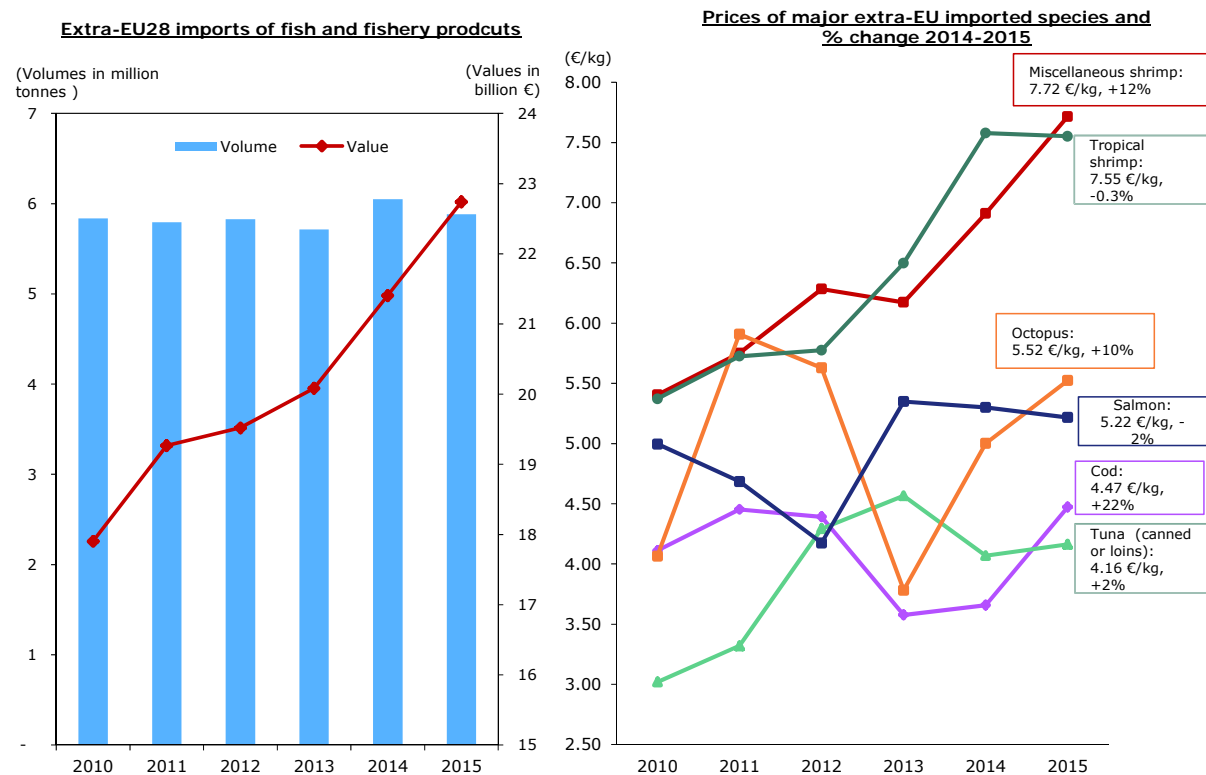
4.63. Imports in the fisheries subsector were subject to relatively high tariff protection of 12.2%, compared to the overall average of 6.3% in 2016 (Section 3.1.4.). All tariff rates were expressed as *ad valorem* tariffs with a range of 0-26%. Table 4.17 presents the simple average applied MFN tariff rates applied to major imported species in the EU market, without taking in-quota tariff rates into consideration. The EU's trade policy instruments for fishery products include WTO tariff quotas and autonomous (non-WTO) tariff quotas for the processing industry to assist its competitiveness.

<sup>43</sup> EUMOFA database. Viewed at: <http://www.eumofa.eu/> [February 2017].

<sup>44</sup> European Commission online information, "EU responses to the Russian import ban: Market data". Viewed at: [http://ec.europa.eu/agriculture/russian-import-ban/market-data/index\\_en.htm](http://ec.europa.eu/agriculture/russian-import-ban/market-data/index_en.htm) [February 2017].

The EU's autonomous tariff quotas are established every three years for certain fish and fish products.<sup>45</sup>

**Chart 4.4 Fish imports by EU member States, 2010-15**



Source: Eurostat database. Viewed at: <http://epp.eurostat.ec.europa.eu/newxtweb/>; and EUMOFA. Viewed at: <https://www.eumofa.eu/> [February 2017].

**Table 4.17 European Union's applied MFN tariff summary, 2016**

Major imported species	Simple average (%)	Tariff range (%)
Mackerel	18.8	14-25
Skipjack tuna	16.6	0-24
Miscellaneous tunas	16.6	0-25
Shrimp <i>Crangon spp.</i>	18.0	18
Anchovy	16.7	10-25
Herring	14.9	10-20
Miscellaneous shrimps	17.7	12-20
Yellowfin tuna	11.6	0-24
Other molluscs and aquatic invertebrates	15.8	0-26
Horse mackerel	15.0	15
Other marine fish	13.5	7.5-20
Other cold-water shrimps	14.7	12-20
Caviar, livers and roes	14.2	10-20
Bluefin tuna	12.0	0-22
Cod	12.2	7.5-20
Octopus	12.8	8-20
Greenland halibut	11.4	7.5-15
Salmon	5.0	2-15
Fish oil	2.7	0-10.9
Fishmeal	0.0	0.0

Note: Calculations for averages are based on the 8-digit tariff line level, excluding in-quota rates.

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

<sup>45</sup> Council Regulation (EU) No. 2015/2265, 7 December 2015.



#### 4.2.4 Policies

4.64. The EU has exclusive competence for the conservation of marine biological resources<sup>46</sup> under the Common Fisheries Policy (CFP) and for the conclusion of international agreements. Shared competence between the EU and the member States applies to other fishery issues, including responsibility for implementation of EU rules and for registration of vessels and other matters related to the jurisdiction of vessels.

4.65. The fisheries policy of the EU is covered in the CFP, which established a set of rules for managing European fishing fleets and for conserving fish stocks. Since its introduction in the 1970s, the CFP has been reformed several times, most recently in 2014.

4.66. The latest reform of the CFP took effect from 1 January 2014, after several years of negotiations. The objective of the reform is to ensure that fishing and aquaculture activities are ecologically, economically and socially sustainable in the long term, and it applies an ecosystem approach in fisheries management.<sup>47</sup> The new fisheries regime is based on three main regulations: the basic regulation on the CFP (Regulation (EU) No. 1380/2013 of the European Parliament and the Council); the common organization of the markets in fishery and aquaculture products (Regulation (EU) No. 1379/2013 of the European Parliament and the Council); and the European Maritime and Fisheries Fund (Regulation (EU) No. 508/2014 of the European Parliament and the Council). The main aspects include:

- a legally binding commitment to fishing at sustainable levels (maximum sustainable yield);
- a ban on discarding fish (the landing obligation);
- decentralized decision-making (regionalization, the bottom-up approach);
- measures to reduce overcapacity, with an obligation to report on the balance between fleet capacity and fishing opportunities;
- sustainable fisheries partnership agreements;
- data collection and management by EU countries under the Data Collection Framework;
- a policy framework for the sustainable development of EU aquaculture;
- production that is more market-oriented through the common organization of the markets; and
- funding to support the objectives of the reform of the CFP.

4.67. Under the reformed CFP, the multi-annual recovery and management plans, which were introduced in the 2002 reform, continue to play an important role in managing almost all important stocks and fisheries with clear objectives and rules at the core of the conservation policy. As of February 2017, there were 12 plans (including for over-fished species such as cod, herring, and sprat in the Baltic Sea).<sup>48</sup> They combine different fisheries management tools, including a maximum sustainable yield, the landing obligation, technical measures, and total allowance catches (TACs) and quotas.<sup>49</sup>

<sup>46</sup> Official Journal of the European Union, Consolidated version of the Treaty on the Functioning of the European Union, C2012/326/1, 26 October 2012, Article 3 and 4.

<sup>47</sup> European Parliament and the Council Regulation (EU) No. 1380/2013, Article 2.

<sup>48</sup> European Union online information, "Multi-Annual Plans". Viewed at: [http://ec.europa.eu/fisheries/cfp/fishing\\_rules/multi\\_annual\\_plans\\_en](http://ec.europa.eu/fisheries/cfp/fishing_rules/multi_annual_plans_en) [February, 2017].

<sup>49</sup> TACs are the EU's main resource management measure to set catch limits (i.e. the amount of each species to be caught) for most commercial fish stocks. TACs are shared between EU members in the form of national quotas and are fixed on an annual or bi-annual basis (for deep-sea stocks) on the basis of scientific advice on the stock status from advisory bodies such as the International Council for the Exploration of the Sea (ICES) and the Scientific, Technical and Economic Committee for Fisheries (STECF) for the Council on TACs. For stocks that are shared or jointly managed with non-EU countries, the TACs are agreed with those non-EU countries. EU countries can exchange quotas with other EU countries. Each member State is responsible for ensuring that the quotas are not overfished. Sanctions for not complying with quotas or other rules may be applied at both member States and fishing vessel level.

#### 4.2.4.1 The maximum sustainable yield (MSY)

4.68. The CFP sets the maximum sustainable yield (MSY) as the main approach to managing fishing practices. The MSY aims at restoring and maintaining fish stocks at levels that allow fishermen to catch a maximum proportion of a fish stock without leading to long-term depletion and a reduction in overall yield.<sup>50</sup> The new regulation states that the MSY exploitation rate (i.e. the level which gives the highest yield in the long run) should, where possible, be achieved by 2015<sup>51</sup> and on an incremental basis by 2020 at the latest for all stocks. According to the latest figures, in 2014, 31 stocks out of 59 MSY-assessed stocks were fished in accordance with the MSY and, in 2016, various TACs were set at or below the MSY (e.g. western and central herring, plaice, and main basin salmon in the Baltic Sea, and cod, haddock, saithe, nephrops, and herring stocks in the North Sea).<sup>52</sup>

4.69. An effective MSY approach can be implemented using fishery management instruments, including multi-annual plans, and TACs. Multi-annual plans under the new CFP include the target of fishing at MSY and a deadline for achieving this target. TACs have been managed on the basis of MSY since 2015.

#### 4.2.4.2 Discards and the landing obligation

4.70. The landing obligation was introduced as an important element of the new CFP in order to end discarding of by-catch.<sup>53</sup> The landing obligation requires that all fish catches must be landed, except when subject to specific exemptions. The ban applies to all species in EU waters that are managed through TACs and quotas and, in the Mediterranean, those subject to minimum legal landing sizes. This new instrument leads to more reliable catch data and thus supports better management. It also serves as a driver for the use and improvement of more selective gear and fishing techniques to reduce unwanted catches.<sup>54</sup>

4.71. Since 1 January 2015, the new policy has been put in place on a fishery-by-fishery basis and it will cover all EU fisheries by January 2019, both within EU waters and in non-EU waters. Time frames for fish species and geographical areas are set out in Article 15(1) of Council Regulation (EU) No. 1380/2013. For instance, as of January 2015, all pelagic fisheries such as for herring, mackerel, and swordfish and fisheries for salmon in the Baltic Sea were covered. Details of the implementation are specified in multi-annual plans or in specific discard plans when no multi-annual plan is in place.<sup>55</sup> The use of undersized fish under the landing obligation is restricted to non-direct human consumption, such as fish meal, pet food, pharmaceuticals, and cosmetics.<sup>56</sup> In order to ensure compliance by the EU with its international obligations, the landing obligation does not apply to fisheries covered by agreements under the International Commission for the Conservation of Atlantic Tunas (ICCAT) (only for bigeye tuna, yellowfin tuna, bluefin tuna in the Atlantic and Mediterranean and swordfish in the Atlantic) and the Northwest Atlantic Fisheries Organization (NAFO) (industrial fisheries for capelin).<sup>57</sup>

4.72. Given that previously discarded fish must now be landed, the CFP provides some flexibility for stocks which are subject to the landing obligation. The member States may use a year-to-year flexibility of up to 10% of their permitted landings. Moreover, in case of catches of species that are subject to the landing obligation and are caught in excess of quotas of the stocks (or if there is no

<sup>50</sup> European Parliament and the Council of Regulation (EU) No. 1380/2013, Article 2 (2).

<sup>51</sup> At the 2002 World Summit on Sustainable Development in September 2002, the Commission and member States signed up to the aim of achieving MSY for depleted stocks by 2015 at the latest. Viewed at: <http://eur-lex.europa.eu/legal-content/all/ALL/?uri=URISERV:l66037> [February, 2017].

<sup>52</sup> European Union online information, "The 2016 quotas to ensure sustainable fisheries in EU". Viewed at: [https://ec.europa.eu/fisheries/2016-quotas-ensure-sustainable-fisheries-eu\\_en](https://ec.europa.eu/fisheries/2016-quotas-ensure-sustainable-fisheries-eu_en) [February, 2017].

<sup>53</sup> Discarding is the practice of returning unwanted catches to the sea during the process of being caught. Fish are already dead or damaged; technical restrictions prohibit landing, for example due to undersized fish or no quota availability.

<sup>54</sup> Maritime Affairs and Fisheries online magazine, "Reform of the Common Fisheries Policy: a sustainable future for fish and fishermen", August 2013. Viewed at: <https://ec.europa.eu/dgs/maritimeaffairs/fisheries/magazine/en/policy/reform-common-fisheries-policy-sustainable-future-fish-and-fishermen> [October 2016].

<sup>55</sup> European Parliament and the Council Regulation (EU) 1380/2013, Article 15 (5) and (6).

<sup>56</sup> European Parliament and the Council Regulation (EU) 1380/2013, Article 15 (11).

<sup>57</sup> Commission delegated regulation (EU) 2015/98 and 2016/171.

quota), these additional catches may be deducted from the remaining quota of another stock provided that they do not exceed 9% of the quota for that species. However, this is only applicable when the stock exceeding the quota is within safe biological limits.<sup>58</sup>

4.73. Under certain conditions, catches can be discarded after 1 January 2015. These catches are not counted against the relevant quota, but they must be fully recorded. The landing obligation does not apply to<sup>59</sup>:

- species for which fishing is legally prohibited;
- species for which scientific evidence demonstrates high survival rates; and
- catches falling under *de minimis* exemptions, which can be applied to up to 5% of total annual catches of all species in certain cases.

4.74. The member States are required to ensure that all fishing activities are sufficiently documented in order to monitor compliance with the landing obligation. Monitoring compliance is ensured through various measures, such as professional observers or closed-circuit television (CCTV). The European Maritime and Fisheries Fund (EMFF) requires member States to report on results (number of serious infringements detected and landings subject to physical controls) and output (number of projects on implementing the Union's control, inspections and enforcement system) indicators in their EMFF operational programmes and implementing reports.

#### 4.2.4.3 Regionalization

4.75. The reform has put an emphasis on more decentralized governance by having a decision-making process at national and regional level. The Green Paper that preceded the 2014 reform of the CFP recognized that different regions and communities may require specific local measures: "The current decision-making framework of the CFP does not distinguish principles from implementation: all decisions are taken in Council at the highest political level. This has resulted in a focus on short-term considerations at the expense of the longer term environmental, economic and social sustainability of European fisheries."<sup>60</sup>

4.76. Under the reformed CFP, the member States may submit joint recommendations for achieving the conservation objectives of the Union, if certain conditions are met, such as having consulted relevant Advisory Councils. The recommendations must be based on scientific advice and be compatible with relevant conservation measures and/or multi-annual plans. If these conditions are met, the Commission may adopt those measures by means of delegated or implementing acts.<sup>61</sup> As of February 2017, the European Commission had received joint recommendations by three member States (Denmark, Germany, and Sweden) for fisheries in two basins (North Sea and Baltic Sea).<sup>62</sup>

#### 4.2.4.4 Management of fishing capacity

4.77. The reform of the CFP requires member States to adjust their fishing capacities to bring them into line with fishing opportunities. The member States are required to submit an annual report on the balance between the fishing capacity of their fleet and the fishing opportunities, using the guidelines prepared by the European Commission.<sup>63</sup> If imbalances between capacity and opportunities are identified, action plans should be incorporated into the report. These reports are required to be submitted to the Commission by 31 March each year, and are made publicly available. A failure to report, or to implement actions, may result in a suspension or interruption of relevant EU financial assistance.

<sup>58</sup> European Parliament and the Council Regulation (EU) 1380/2013, Article 15 (8).

<sup>59</sup> European Parliament and the Council Regulation (EU) 1380/2013, Article 15 (4).

<sup>60</sup> European Commission document COM (2009)163, 22 April 2009. Viewed at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52009DC0163&from=EN> [February 2017].

<sup>61</sup> European Parliament and the Council Regulation (EU) 1380/2013, Article 18.

<sup>62</sup> European Union online information, "Managing fisheries". Viewed at: [http://ec.europa.eu/fisheries/cfp/fishing\\_rules\\_en](http://ec.europa.eu/fisheries/cfp/fishing_rules_en) [February 2017]; and Commission Delegated Regulation (EU) 2017/117 and 2017/118, 5 September 2016.

<sup>63</sup> European Commission document COM (2014) 545 final, 2 September 2014. Viewed at: <http://eur-lex.europa.eu/legal-content/all/ALL/?uri=COM:2014:0545:FIN> [February 2017].

4.78. The member States are required to comply with a fleet entry/exit scheme without introducing additional fishing capacity. Departures from the fishing fleet should not be supported by public aid unless fishing licences and authorizations are withdrawn. In addition, when fishing vessels are withdrawn with public aid, their corresponding fishing capacities should not be replaced.

4.79. Under the CFP reform, a member State may introduce a system for transferable fishing concessions (TFC), which is a way to allocate the yearly national quotas among fishermen in a given member State. Among EU members, TFCs have been used for example in Denmark, Estonia, Lithuania, the Netherlands, Sweden, and the United Kingdom.<sup>64</sup>

#### 4.2.4.5 External policy

4.80. EU fishing activities outside EU waters are based on the same principles as fishing within the EU. Arrangements for fishing outside the EU are to be developed through Regional Fisheries Management Organizations (RFMOs) and through Sustainable Fisheries Partnership Agreements (SFPAs).

4.81. The EU has actively continued to participate in two types of RFMOs: for highly migratory fish stocks (6 tuna RFMOs) and for other fish stocks (11 non-tuna RFMOs).<sup>65</sup> The EU is also an active participant in multilateral negotiations on the law of the sea and international fisheries law under the United Nations Convention on the Law of the Sea (UNCLOS), and other international agreements and conventions dealing with fishing such as UN FAO, and the UN Conference on Sustainable Development. The EU continues to cooperate with third countries and international organizations to fight illegal, unreported, and unregulated (IUU) fishing worldwide.

4.82. Regarding arrangements with non-EU countries, the EU has two types of fishing agreements: "Northern Agreements" on joint management of shared stocks with Norway, Iceland and the Faeroe Islands (reciprocal agreements); and SFPAs, in the context of which the EU provides financial and technical support in exchange for fishing rights, mainly with developing countries.

4.83. SFPAs aim at improving some aspects of earlier Fisheries Partnership Agreements, by stressing resource conservation and environmental sustainability in the exclusive economic zone (EEZ) of partner countries. For instance: European vessels must possess authorization to fish in waters in accordance with partnership agreements; and they may catch only surplus stock, which can be exploited in a sustainable manner (consistent with the MSY approach) based on scientific assessments provided by scientific committees or RFMOs' recommendations and on information exchanges with partner countries.<sup>66</sup>

4.84. There are two types of SFPAs currently in force, tuna agreements and mixed agreements. While tuna agreements allow EU vessels to pursue migrating tuna stocks along the shores of Africa and the Indian Ocean, mixed agreements provide them with access to a wide range of fish stocks in a partner's EEZ. The EU currently has 12 active SFPA protocols in force with non-EU countries (Table 4.18). Additionally, the EU has nine dormant bilateral agreements without a protocol in force with Comoros, Equatorial Guinea, Gabon, the Gambia, Kiribati, Mauritius, Micronesia, Mozambique, and Solomon Islands. This implies that EU vessels are not allowed to carry out fishing activities in waters of these countries.<sup>67</sup>

<sup>64</sup> According to the EU authorities, member States exchange part of their quotas on a yearly basis; these exchanges are referred to as swaps, which are done at member State level. Tonnes exchanged represent close to 13% of the total TAC agreed by the Council.

<sup>65</sup> European Union online information, "Regional fisheries management organisations (RFMOs)". Viewed at: [http://ec.europa.eu/fisheries/cfp/international/rfmo\\_en](http://ec.europa.eu/fisheries/cfp/international/rfmo_en) [February 2017].

<sup>66</sup> European Parliament and the Council Regulation (EU) 1380/2013, Article 31 (4).

<sup>67</sup> European Union online information, "Bilateral agreements with countries outside the EU". Viewed at: [https://ec.europa.eu/fisheries/cfp/international/agreements\\_en](https://ec.europa.eu/fisheries/cfp/international/agreements_en) [February 2017].

Table 4.18 List of fisheries agreements

Country	Expiry date	Type	Total contribution from the EU budget per year	Earmarked for fisheries policy development
Cabo Verde	22.12.2018	Tuna	€550,000/€500,000	€275,000/€250,000
Cook Islands	13.10.2020	Tuna	€385,000/€350,000	€350,000
Côte d'Ivoire	30.6.2018	Tuna	€680,000	€257,500
Greenland	31.12.2020	Mixed	€16,099,978	€2,931,000
Guinea-Bissau	23.11.2017	Mixed	€9,200,000	€3,000,000
Liberia	8.12.2020	Tuna	€715,000/€650,000/ €585,000	€357,500/€325,000/ €292,500
Madagascar	31.12.2018	Tuna	€1,566,250/€1,487,500	€700,000
Mauritania	15.11.2019	Mixed	€59,125,000	€4,125,000
Morocco	27.2.2018	Mixed	€30 million	€14 million
São Tomé and Príncipe	22.5.2018	Tuna	€710,000/€675,000	€325,000
Senegal	19.11.2019	Tuna (+ hake component)	€1,808,000/€1,668,000	€750,000
Seychelles	17.1.2020	Tuna	€5,350,000 in 2014 to €5,000,000 in 2019	€2,600,000
Comoros	Protocol expired on 31 December 2016			
Equatorial Guinea	Protocol expired on 30 June 2001			
Gabon	Protocol expired on 23 July 2016			
The Gambia	Protocol expired on 30 June 1996			
Kiribati	No protocol in force since 16 September 2015			
Mauritius	Protocol expired on 27 January 2017			
Micronesia	No protocol in force since 25 February 2010			
Mozambique	Protocol expired on 31 January 2015			
Solomon Islands	No protocol in force since 9 October 2012			

Source: European Commission online information, "Bilateral agreements with countries outside the EU".  
Viewed at: [http://ec.europa.eu/fisheries/cfp/international/agreements\\_en](http://ec.europa.eu/fisheries/cfp/international/agreements_en) [February 2017].

#### 4.2.4.6 Aquaculture

4.85. Sustainable aquaculture is another focus of the new reform. Under the new CFP, the Commission establishes non-binding strategic guidelines on common priorities and targets for the development of sustainable aquaculture activities.<sup>68</sup> These guidelines focus on four areas: simplifying administration procedures; securing sustainable development and growth of aquaculture through coordinated spatial planning; increasing the competitiveness of EU aquaculture; and promoting the EU's high quality and environmental standards.<sup>69</sup>

4.86. In accordance with the new CFP, the member States developed multi-annual plans for the development of sustainable aquaculture within their territories in 2014-15 which address the four priorities identified in the Strategic Guidelines for the sustainable development of EU aquaculture and proposed concrete actions to address them.<sup>70</sup>

#### 4.2.4.7 Common Market Organisation

4.87. The Common Market Organisation (CMO) is an integral part of the reformed CFP. Its general objective is to guarantee sustainable fisheries and to strengthen the competitiveness of the EU fishery and aquaculture sector. The new CMO has moved away from a price and intervention mechanism to market-oriented production: only storage aid has been maintained for a limited period (i.e. until the end of 2018) to facilitate the phasing in of production and marketing plans. In addition, the new CMO aims at ensuring a level playing field in the market by means of common market standards (uniform requirements for seafood sold in the EU), regardless of the origin.

<sup>68</sup> European Parliament and the Council Regulation (EU) 1380/2013, Article 34 (1).

<sup>69</sup> European Commission document, COM (2013) 229 final, 29 April 2013. Viewed at: [https://ec.europa.eu/fisheries/sites/fisheries/files/docs/body/com\\_2013\\_229\\_en.pdf](https://ec.europa.eu/fisheries/sites/fisheries/files/docs/body/com_2013_229_en.pdf) [February 2017].

<sup>70</sup> European Union online information, "Multiannual national plans". Viewed at: [http://ec.europa.eu/fisheries/cfp/aquaculture/multiannual-national-plans\\_en](http://ec.europa.eu/fisheries/cfp/aquaculture/multiannual-national-plans_en) [February 2017].

4.88. The revised CMO regulation contains new rules on consumer information for fishery and aquaculture products. The following information must accompany the products covered by this part of the regulation<sup>71</sup>:

- the commercial designation and scientific name of the species;
- whether a product was caught at sea, in freshwater, or farmed;
- the catch or production area, and the fishing gear used; and
- whether a product has been defrosted, and the date of minimum durability, where appropriate.

4.89. Additional information may be provided voluntarily such as the date of catch or landing, information on environmental, social or ethical matters, production techniques and nutritional content. This voluntary information must be clear, non-ambiguous and verifiable and may not mislead the consumer.

4.90. In addition, the Commission has set up the European Market Observatory for Fishery and Aquaculture Products (EUMOFA) for the purpose of strengthening market transparency and efficiency, to meet the new mandate on market intelligence as defined in Article 42 of the CMO Regulation (No. 1379/2013). This tool is intended to assist stakeholders, including producers, in obtaining economic knowledge of fish markets. Information (e.g. the volume, value and price of fishery and aquaculture products) is made publicly available on EUMOFA website: [www.eumofa.eu](http://www.eumofa.eu).

#### 4.2.4.8 Science and data collection

4.91. The newly reformed CFP requires member States to increase data collection and to share information. Data should be collected covering biological, environmental, technical, and socio-economic issues for fisheries management in order to carry out the ecosystem-based approach in an effective manner.<sup>72</sup> Every year each member State submits a report on their national data collection programmes, which are made publicly available.<sup>73</sup> If a member State fails to carry out data collection and sharing in a timely manner, it may face a suspension or interruption of financial assistance.<sup>74</sup>

4.92. The acquisition and management of such data are eligible for funding through the European Maritime and Fisheries Fund (EMFF).

#### 4.2.4.9 Structural support

4.93. On 15 May 2014, the European Maritime and Fisheries Fund (EMFF) was adopted and applied retroactively from 1 January 2014. It replaced the European Fisheries Fund (EFF), which had been the structural support for the fisheries and aquaculture sector for the period 2007-2013.

4.94. The EMFF has a total budget of €6.4 billion from 2014 to 2020, of which €5.7 billion are managed under shared management and allocated to the member States. €647 million are managed by the Commission for measures concerning the Integrated Maritime Policy, control and data collection, market intelligence, advisory councils, communication activities and voluntary contributions to international organizations. Each member State is allocated a share of the total budget, based on a number of criteria related to the size of its fishing industry established in accordance with Article 16 of the EMFF Regulation (Regulation No. 508/2014). Among the EU member States, Spain is the largest recipient of the funding (20% of the total EMFF), followed by France (10.2%), and Italy (9.3%).<sup>75</sup> The member States can decide which measures covered by the EMFF to implement, based on their own operational programmes (discussed with and approved

<sup>71</sup> European Parliament and the Council Regulation (EU) 1379/2013, Article 35; and European Commission online information, "Consumer information". Viewed at: [http://ec.europa.eu/fisheries/cfp/market/consumer-information\\_en](http://ec.europa.eu/fisheries/cfp/market/consumer-information_en) [February 2017].

<sup>72</sup> European Parliament and the Council Regulation (EU) 1380/2013, Article 25 (2).

<sup>73</sup> European Parliament and the Council Regulation (EU) 1380/2013, Article 25 (3); and Commission Implementing Decision (EU) 2016/1701, August 2016.

<sup>74</sup> European Parliament and the Council Regulation (EU) 1380/2013, Article 25 (7).

<sup>75</sup> European Union (2016), *Facts and figures on the Common Fisheries Policy – 2016 Edition*, page 52. Viewed at: [https://ec.europa.eu/fisheries/sites/fisheries/files/docs/body/pcp\\_en.pdf](https://ec.europa.eu/fisheries/sites/fisheries/files/docs/body/pcp_en.pdf) [February 2017].



by the Commission) setting out their priorities and the relevant targets.<sup>76</sup> As a general condition, the pursuit of the objectives of the EMFF shall not result in an increase in fishing capacity.

4.95. The primary purpose of the EMFF is to contribute to the objectives of the CFP:

- promoting competitive, environmentally sustainable, economically viable and socially responsible fisheries and aquaculture;
- fostering the implementation of the CFP;
- promoting a balanced and inclusive territorial development of fisheries and aquaculture areas; and
- fostering the development and implementation of the Union's Integrated Maritime Policy in a manner complementary to cohesion policy and to the CFP.

4.96. In addition to the EMFF, the member States may provide state aid to the fisheries and aquaculture sector, subject to the specific rules on state aid and specific guidelines.<sup>77</sup> *De minimis* state aid cannot exceed €30,000 per beneficiary over three years and cannot exceed 2.5% of the annual turnover on fisheries output per member State. Furthermore, certain types of subsidies may be provided to small and medium-sized enterprises for projects reflecting the objectives of the EMFF and with eligible costs that do not exceed €2 million or if the amount of aid does not exceed €1 million per beneficiary per year, in accordance with Article 2 of the Fisheries Block Exemption Regulation.<sup>78</sup> Beyond the *de minimis* and block exempted aid, each member State must notify any state aid scheme to the Commission, declaring that it complies with the TFEU before it can be implemented.<sup>79</sup>

4.97. According to the OECD, in 2013 the fisheries support estimate for the EU was €353 million, of which: more than half was for general service support, such as infrastructure, management of resources, and capacity building; and the remainder went towards individual fishermen for certain payments such as for the purchase of inputs. However, data were not available for all EU member States.<sup>80</sup>

4.98. The EU budget for the fisheries and aquaculture sector averaged €790 million per year for 2012-2015 (€704 in 2012 and €916 in 2015). Over 80% of the €916 million budgeted for 2015 corresponded to structural investment funding of the fisheries and aquaculture sector (EFF and EMFF), and the remainder was for the compulsory contributions to RFMOs, other international organizations (including FAO), and SFPAs. Less than half of that budget was scheduled for support to the catch subsector. Other support included programmes related to control and data collection activities in support of the CFP, aquaculture, processing, the sustainable development of fisheries and aquaculture dependent areas, the development of maritime policy as well as for contributions to international organizations, technical cooperation, and other headings such as market intelligence.<sup>81</sup>

### 4.3 Services

#### 4.3.1 Audiovisual services

4.99. Audiovisual services, defined as motion picture, video, and television programme production, and programming and broadcasting activities, constitute a significant services sector for the EU economy, as evidenced by the figures contained in Table 4.19 below.

<sup>76</sup> European Union online information, "EMFF – country files: Operational Programmes 2014-2020". Viewed at: [http://ec.europa.eu/fisheries/cfp/emff/country-files\\_en](http://ec.europa.eu/fisheries/cfp/emff/country-files_en) [February 2017].

<sup>77</sup> Communication from the Commission – Guidelines for the examination of State aid to the fishery and aquaculture sector, OJ C217, 2 July 2015.

<sup>78</sup> Commission Regulation (EU) No. 1388/2014.

<sup>79</sup> Council Regulation (EU) 2015/1589, Article 3; and Commission Regulation 794/2004, Article 2.

<sup>80</sup> Calculations were based on OECD Stat on Fisheries Support Estimate (FSE). Viewed at: [https://stats.oecd.org/Index.aspx?DataSetCode=FISH\\_GFT#](https://stats.oecd.org/Index.aspx?DataSetCode=FISH_GFT#) [February 2017]. Data were available for 11 countries: Belgium, Denmark, Estonia, France, Greece, Netherlands, Portugal, Slovenia, Spain, Sweden, and United Kingdom.

<sup>81</sup> European Union Budgets. Budget online. Viewed at: <http://eur-lex.europa.eu/budget/www/index-en.htm> [October 2016].



Table 4.19 Main economic indicators of the audiovisual services sector<sup>a</sup>

	2013	2014	2015
<b>Gross value added and employment</b>			
Gross value added at current prices (€ billion)	70.1	..	..
% of value-added of total services	0.8	..	..
% of value-added of total economy	0.6	..	..
Total employment audio (in 1,000)	770.5	791.7	..
% in total employment in services	0.5	0.5	..
% in total employment	0.3	0.3	..
<b>Trade<sup>a</sup></b>			
Trade balance (€ billion)	0.95	-0.66	0.73
Exports (€ billion)	5.6	5.0	4.5
% of extra-EU 28's total service exports	0.8	0.6	0.5
Imports (€ billion)	4.7	5.6	3.8
% of extra-EU 28's total service imports	0.9	0.9	0.6
<b>FDI</b>			
Inward (€ billion)			
Financial transactions	0.5	-1.4	..
Position	6.0	4.1	..
Inward (% of GDP)			..
Financial transactions	0.004	-0.01	..
Position	0.04	0.03	..
Outward (€ billion)			
Financial transactions	-6.1	0.5	..
Position	21.0	19.9	..
Outward (% of GDP)			..
Financial transactions	-0.05	0.004	..
Position	0.4	0.3	..
<b>Foreign affiliates sales/turnover</b>			
Inward: € in billion	18.3	..	..
% of total inward foreign affiliates	0.6	..	..
Outward: € in billion	8.3	..	..
% of total outward foreign affiliates	0.2	..	..

.. Not available.

a Classification code J59\_J60 from NACE Rev.2 – Statistical classification of economic activities in the European Community.

Source: WTO Secretariat calculations, based on Eurostat database [January 2017].

4.100. The regulatory regime of audiovisual services in the EU was described in detail in the last TPR report<sup>82</sup> and has not changed substantially since. However, on 25 May 2016, the Commission adopted a new legislative proposal amending the Audiovisual Media Services Directive (AVMSD)<sup>83</sup> in order to adapt it to new realities.<sup>84</sup>

4.101. The main aspects requiring such an adaptation in the view of the Commission<sup>85</sup> are: the multiplication of the type of broadcasters (traditional TV broadcasters, video-on-demand (VOD) providers and video-sharing platforms), the decreasing average TV viewing time especially among young people, the increasing share of internet video in internet traffic (forecasted to increase from 64% in 2014 to 80% by 2019), the low share of revenues invested by on-demand service providers in original programming (1%) as compared to traditional TV broadcasters (20%), the

<sup>82</sup> Document TPR/S/317 dated 18 May 2015, pp. 144-154.

<sup>83</sup> Directive (EU) No. 2010/13 of 10 March 2010. Viewed at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32010L0013&from=EN>.

<sup>84</sup> Document Com (2016) 0287 final. Viewed at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016PC0287&from=EN>.

<sup>85</sup> European Commission online information, "Revision of the Audiovisual Media Services Directive (AVMSD)". Viewed at: <https://ec.europa.eu/digital-single-market/en/revision-audiovisual-media-services-directive-avmsd>.

fragmented rules across the EU faced by the industry regarding the compulsory share of European content, the fact that 31% of video-on-demand (VOD) services available in one EU member State are established in another member State, and the need for more independence of the regulators from government and industry.

4.102. The first main element of this proposal is the reinforcement of the country of origin (COO) principle. This principle will be maintained and facilitated by: (i) simplifying the rules determining which country has jurisdiction over a provider, (ii) requiring member States to provide information regarding which providers are under their jurisdiction and maintaining an up-to-date database to ensure transparency, and (iii) clarifying cooperation procedures between member States regarding permissible limitations to COO.

4.103. The second element of the proposal is enhanced promotion of European works by: (i) allowing member States to impose financial contributions on providers of on-demand services established in other member States (but only on the turnover generated in the imposing country), and (ii) requiring on-demand players to promote European content to a limited level through a minimum quota obligation (20% share of the audiovisual offer of their catalogues) and an obligation to give prominence to European works in their catalogues. An exemption from these requirements for low turnover companies, thematic services, and small and micro enterprises has been proposed.

4.104. The third element is enshrining the independence of audiovisual regulators in EU law by ensuring that they are legally distinct and functionally independent from the industry and government (i.e. they do not seek nor take instructions), operate in a transparent and accountable manner set out by law, and have sufficient powers. In addition, the role of the European Regulators Group for Audiovisual Media Services (ERGA) would be set out in the Directive. ERGA would be given an advisory role in assessing EU co-regulatory codes and in the procedures derogating from the country of origin.

4.105. Finally, the proposal also contains more flexible provisions regarding television advertising and rules on the prohibition of hate speech and on the protection of minors.

#### 4.3.2 E-commerce in the Digital Single Market

4.106. The regulatory regime of e-commerce within the EU has been described in detail, as a sub-segment of distribution services, in the last TPR report<sup>86</sup> and has not substantially changed since. However, in the framework of its Digital Single Market Strategy (DSM)<sup>87</sup>, the European Commission has presented 16 legislative and non-legislative actions. These are ongoing initiatives which are subject to the ordinary legislative procedure involving both the Council and the European Parliament and therefore their exact outcome cannot be foreseen.

4.107. Among the DSM proposals, the European Commission proposed two legislative packages in December 2015 and in May 2016, aimed at boosting e-commerce by simplifying, clarifying and harmonizing the EU's regulatory framework. It has also launched an e-commerce sector enquiry and has made proposals to reduce the administrative burden on businesses arising from the different VAT regimes. It plans to submit further proposals on single electronic registration and payment, and a common VAT threshold.

4.108. The Commission considers that the full potential of online sales is not yet well exploited in the EU: in 2015, only 10% of EU wholesalers and retailers sold online to other EU countries, while almost three times as many (27%) did so within their own country. Similarly, in 2016, only 18% of consumers purchased online from another EU country, while almost three times as many (49%) did so from their own country.<sup>88</sup>

<sup>86</sup> Document WT/TPR/S/317 dated 18 May 2015, pp. 154-159 for distribution as a whole, and p. 158 in particular for distance selling and e-trade.

<sup>87</sup> European Commission online information, "Digital Single Market". Viewed at: <https://ec.europa.eu/digital-single-market/en/digital-single-market>.

<sup>88</sup> This could be explained notably by a mix of factors such as: a low level of consumer confidence in cross-border offers stemming from a gap in EU legislation in the area of consumer protection related to defective digital content and additional costs incurred by traders when selling cross-border due to the

4.109. If, for instance, the barriers related to contract law were lifted, it is estimated that around 122,000 more businesses would sell online across borders. Cross-border EU trade could increase by around €1 billion, and the total number of consumers buying online from other EU countries could reach up to 70 million. This would open up new markets, especially for small and medium-sized enterprises (SMEs), increase competition, and contribute to economic growth – lower consumer prices are expected to boost consumption in the EU by €18 billion and EU GDP is expected to increase by €4 billion from its current level.<sup>89</sup>

4.110. The first legislative package is composed of proposals for two directives, one on the supply of digital content (e.g. streaming music)<sup>90</sup> and one on the online sale of goods<sup>91</sup> (e.g. buying clothes online). The two proposals are meant to tackle the main obstacles to cross-border e-commerce in the EU: legal fragmentation in the area of consumer contract law and resulting high costs for businesses – especially SMEs, and low consumer trust when buying online from another country.

4.111. Measures contained in the online sales of goods proposal include a clear-cut, harmonized set of consumer rights<sup>92</sup> *vis-à-vis* defective goods combined with a reversal of the burden of proof and the introduction of a two-year guarantee period. For example, if a consumer discovers today that a product he/she purchased online more than 6 months ago is defective and asks the seller to repair or replace it, he/she may be asked to prove that this defect existed at the time of delivery. Under the proposed new rules, throughout the two-year guarantee period, the consumer will be able to ask for a remedy without having to prove that the defect existed at the time of delivery.

4.112. The proposal on the supply of digital content sets clear and specific consumer rights for digital content. For instance, a consumer who downloads a game that does not work properly may currently receive only a discount on downloading other games in the future as compensation. Under the proposed directive, consumers will be able to request that such problems be fixed and, if this is not feasible or not done properly, obtain a price reduction or terminate the contract and be fully reimbursed.

4.113. These proposals aim at allowing businesses to supply digital content and sell goods online to consumers throughout the EU based on the same set of contract rules. Businesses now face an additional one-off cost of €9,000 to adapt to the national contract law of each new member State they wish to sell to. With the new EU-wide rules, a business could save up to €243,000 if it wishes to sell to all 27 other EU countries.

4.114. The second legislative package proposed by the Commission in May 2016 is composed of three draft regulations and one piece of guidance material, namely: one regulation aimed at addressing unjustified geo-blocking and other forms of discrimination on the grounds of nationality, residence, or establishment<sup>93</sup>; one regulation on cross-border parcel delivery services aimed at increasing the transparency of prices and improving regulatory oversight<sup>94</sup>; one

---

fragmentation of the national rules in this area as well as in copyright protection, as well as by insufficient market transparency in intra-EU cross-border parcel transport leading to higher prices for cross-border transport and for SME vendors.

<sup>89</sup> European Commission press release. "Commission proposes modern digital contract rules to simplify and promote access to digital content and online sales across the EU". Viewed at: [http://europa.eu/rapid/press-release\\_IP-15-6264\\_en.htm](http://europa.eu/rapid/press-release_IP-15-6264_en.htm).

<sup>90</sup> Document Com (2015) 634 final dated 9 December 2015, Proposal for a directive on certain aspects concerning contracts for the supply of digital content. Viewed at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015PC0634&from=EN>.

<sup>91</sup> Document Com (2015) 635 final dated 9 December 2015, Proposal for a directive on certain aspects concerning contracts for the online and other distance sales of goods. Viewed at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015PC0635&from=EN>.

<sup>92</sup> i.e. a right to have the defective goods repaired, replaced, a right to price reduction or to terminate the contract.

<sup>93</sup> Document COM(2016) 289 final, dated 25 May 2016, Proposal for a regulation on addressing geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulation (EC) No. 2006/2004 and Directive 2009/22/EC. Viewed at: <http://ec.europa.eu/DocsRoom/documents/16742>.

<sup>94</sup> Document COM(2016) 285 final, dated 25 May 2015, Proposal for a regulation on cross-border parcel delivery services. Viewed at: <http://ec.europa.eu/DocsRoom/documents/16805>.

regulation designed to strengthen enforcement of consumers' rights<sup>95</sup>; and finally guidance material to clarify, among others, what qualifies as an unfair commercial practice in business-to-consumer (B2C) transactions in the digital world.<sup>96</sup>

4.115. The proposed regulation on geo-blocking and other geographically based restrictions undermining online shopping and cross-border sales addresses the problem of customers not being able to buy goods and services from traders located in a different member State, or being discriminated against in terms of prices or sales conditions compared to nationals. The problem equally affects consumers and businesses as end users of products and services, and exists both in the online environment and in physical-world situations. The draft regulation on geo-blocking aims to ensure that customers seeking to buy products and services in another EU country, either online or in person, are not discriminated against in terms of access to prices, sales or payment conditions in view of their nationality, residence or place of establishment. This is achieved by identifying specific situations where no significant additional burden on companies derives from serving foreign customers and therefore no differential treatment can be justified; accordingly, the regulation does not impose an obligation to deliver across the EU and actively sell in other member States.

4.116. As part of the same package, the European Commission also adopted an initial Communication on Online Platforms in which it conducted a comprehensive assessment of the role of online platforms, formulated the Commission's policy approach to online platforms, and identified areas where action or further assessment may be necessary. The Commission is also carrying out a targeted fact-finding exercise on B2B practices in the online platforms sphere. It is, for example, analysing whether certain business users of online platforms are experiencing unfair treatment by platforms. The Commission is also, in parallel, looking at measures to render the fight against illegal content online more effective, without intermediaries losing the liability exemption under the e-Commerce Directive. The policy approach is, in this regard, to ensure a balanced development of the platform-business model, by maintaining healthy ecosystems that work for all actors, including those active in e-commerce.

4.117. The draft regulation on cross-border parcel delivery services is aimed at increasing price transparency and regulatory oversight of cross-border parcel delivery services so that consumers and retailers can benefit from more affordable deliveries and return options even to and from peripheral regions. Prices charged by postal operators to deliver a small parcel to another member State are on average 3 to 5 times higher than domestic prices, without a clear correlation to the actual costs. The Commission is not proposing a cap on delivery prices. Price regulation is only a means of last resort, where competition does not bring satisfactory results. The Commission will take stock of progress made in 2019 and assess if further measures are necessary. The regulation would give national postal regulators the data they need to monitor cross-border markets and check the affordability and cost-orientation of prices. It would also encourage competition by requiring transparent and non-discriminatory third-party access to cross-border parcel delivery services and infrastructure for those parcel delivery service providers who want to expand cross-border. They would be able to benefit from economies of scale by using the universal service providers' (existing) cross-border networks which should encourage new entrants or existing (domestic) providers to expand, creating in turn more competition. The Commission will publish the prices of universal service providers to increase peer competition and tariff transparency.

4.118. The draft regulation on cooperation between national authorities responsible for the enforcement of consumer law aims to reform the Consumer Protection Cooperation (CPC) Regulation, which governs the powers of enforcement authorities and the manner in which they can cooperate. The new regulation would give more powers to national authorities to better enforce consumer rights. They would be able to check if websites geo-block consumers or offer after-sales conditions not respecting EU rules (e.g. withdrawal rights); to order the immediate take-down of websites hosting scams; and to request information from domain registrars and banks to detect the identity of the responsible trader. In case of EU-wide breaches of consumer

---

<sup>95</sup> Document COM (2016) 283 final, dated 25 May 2016, Proposal for a regulation on cooperation between national authorities responsible for the enforcement of consumer protection laws. Viewed at: [http://ec.europa.eu/consumers/consumer\\_rights/unfair-trade/docs/cpc-revision-proposal\\_en.pdf](http://ec.europa.eu/consumers/consumer_rights/unfair-trade/docs/cpc-revision-proposal_en.pdf).

<sup>96</sup> Document SWD (2016) 163 final, dated 25 May 2016, Commission staff working document guidance on the implementation/application of Directive 2005/29/EC on unfair commercial practices. Viewed at: [http://ec.europa.eu/justice/consumer-marketing/files/ucp\\_guidance\\_en.pdf](http://ec.europa.eu/justice/consumer-marketing/files/ucp_guidance_en.pdf).

rights, the Commission would be able to coordinate common actions with national enforcement authorities to stop these practices. It would ensure swifter protection of consumers, while saving time and resources for member States and businesses.

4.119. The updated guidance material on unfair commercial practices clarifies the application of the Unfair Commercial Practices Directive. For instance, any online platform that qualifies as a "trader" and promotes or sells goods, services, or digital content to consumers must make sure that its own commercial practices fully comply with EU consumer law. Platforms must state clearly that rules on unfair commercial practices do not apply to private persons selling goods, and search engines would be required to clearly distinguish paid placements from natural search results. The revised guidance also incorporates two sets of self-regulatory principles agreed among stakeholders: one will help comparison tools better comply with the Directive and the other will assist in the enforcement of the unfair commercial practices rules against misleading and unfounded environmental claims.

4.120. During the period under review, the European Commission also launched an e-commerce sector enquiry aimed at obtaining an overview of the prevailing market trends, gathering evidence on potential barriers to competition linked to the growth of e-commerce, and understanding the prevalence of certain, potentially restrictive, business practices and the underlying rationale for their use. The results are not expected to be available by the EU TPR meetings.

4.121. Finally, e-commerce related proposals concerning a modern and more European copyright framework were adopted on 9 December 2015 (see Section 3.3.7 on intellectual property rights).

### 4.3.3 Financial services

#### 4.3.3.1 Market size and structure

4.122. Tables 4.20 to 4.25 list the main indicators of the three sub-segments of financial services: banking, insurance, and securities at EU level.

##### 4.3.3.1.1 Banking

**Table 4.20 Consolidated banking indicators, 2014 and 2015**

	2014	2015
<b>Number of credit institutions, by type of unit</b>		
Stand-alone credit institutions	3,971	3,797
Banking groups	441	449
<b>Number of credit institutions, by origin</b>		
Domestic credit institutions	3,419	3,277
Foreign-controlled subsidiaries and branches	993	969
<b>Total number of credit institutions</b>	<b>4,412</b>	<b>4,246</b>

(€ billion)

<b>Assets of credit institutions</b>	2014	2015
Domestic credit institutions, of which:	34,490.61	33,797.88
Large	25,301.45	24,376.23
Medium-sized	8,203.97	8,364.61
Small	985.19	1,057.04
Foreign-controlled subsidiaries and branches	9,180.28	8,793.04
As % of total	21.02	20.65
<b>Total assets</b>	<b>43,670.89</b>	<b>42,590.92</b>

<b>Employment</b>	2014	2015
Euro area	2,020,091	2,009,591
EU	2,888,258	2,864,106

Source: Information provided by the European Commission based on the ECB's SDW.

**Table 4.21 Performance indicators, 2014 and 2015**

(%)

(%)

Capital adequacy indicators	Domestic banks								Foreign banks	
	All		Large		Medium-sized		Small			
	2014	2015	2014	2015	2014	2015	2014	2015	2014	2015
Overall solvency ratio	20.55	17.51	22.95	17.68	16.55	16.99	18.47	18.24	31.81	19.15
Tier 1 ratio	17.24	14.70	18.85	14.49	14.58	15.02	15.65	15.78	27.24	16.60
Capital buffer	12.55	9.51	14.95	9.68	8.55	8.99	10.47	10.24	23.81	11.15

(%)

Non-performing debt instruments and accumulated impairment	Domestic banks								Foreign banks	
	All <sup>a</sup>		Large		Medium-sized		Small			
	2014	2015	2014	2015	2014	2015	2014	2015	2014	2015
Gross non-performing debt instruments <sup>b</sup>	-	4.73	4.87	3.58	7.71	7.54	3.21	2.97	5.16	3.87
Net non-performing debt instruments <sup>c</sup>	-	30.19	19.09	21.83	56.67	52.79	21.23	18.59	16.57	13.96
Total accumulated impairment <sup>d</sup>	-	49.53	53.42	53.85	44.77	45.77	30.15	33.74	52.57	53.89

a No figures available for 2014.

b Per total gross debt instruments.

c Per total own funds for solvency purposes.

d Per total gross non-performing debt instruments.

Source: Information provided by the European Commission based on the ECB's SDW.

**4.3.3.1.2 Insurance****Table 4.22 Main economic indicators of the insurance sector (EU level)**

Number of EU insurances companies (2015)	3,786 (top 3 member States: Germany – 463; United Kingdom – 402; and Spain – 315)
Number of employees (2015)	985,000 (top 3 member States: Germany – 295,000; France – 147,000; and United Kingdom – 101,000)
EU premiums as percentage of world total premiums (%)	2013: 35%; 2014: 35.5%; 2015: 32.3%
EU total gross written premiums (2015, € bln)	1,207
EU life gross written premiums (2015, € bln)	733
EU non-life gross written premiums (2015, € bln)	347
EU health gross written premiums (2015, € bln)	127
EU total insurers' investment portfolio (2015, € bln)	9,897

Source: Information provided by the European Commission based on EIOPA, Insurance Europe.

**Table 4.23 Number of insurance companies, by type, origin and location of activity, 2015**

	Total
<b>Life enterprises</b>	
1 National enterprises	745
2 Branches of third (non-EU/EEA) countries	16
1 + 2 Total under national supervision	761
3 Branches of EU/EEA countries	123
1 + 2 + 3 Total activity in the country	884
Branches in EU/EEA countries	86
Branches in third (non-EU/EEA) countries	5
<b>Non-life enterprises</b>	
1 National enterprises	1,704
2 Branches of third (non-EU/EEA) countries	30
1 + 2 Total under national supervision	1,734
3 Branches of EU/EEA countries	521
1 + 2 + 3 Total activity in the country	2,255
Branches in EU/EEA countries	355
Branches in third (non-EU/EEA) countries	33



	Total
<b>Composite enterprises</b>	
1 National enterprises	216
2 Branches of third (non-EU/EEA) countries	0
1 + 2 Total under national supervision	216
3 Branches of EU/EEA countries	35
1 + 2 + 3 Total activity in the country	251
Branches in EU/EEA countries	32
Branches in third (non-EU/EEA) countries	15
<b>Reinsurance enterprises</b>	
1 National enterprises	377
2 Branches of third (non-EU/EEA) countries	2
1 + 2 Total under national supervision	379
3 Branches of EU/EEA countries	17
1 + 2 + 3 Total activity in the country	396
Branches in EU/EEA countries	26
Branches in third (non-EU/EEA) countries	18
<b>Total</b>	
1 National enterprises	3,042
2 Branches of third (non-EU/EEA) countries	48
1 + 2 Total under national supervision	3,090
3 Branches of EU/EEA countries	696
1 + 2 + 3 Total activity in the country	3,786
Branches in EU/EEA countries	523
Branches in third (non-EU/EEA) countries	73

Note: Data for Luxembourg is for 2014.

Source: Information provided by the European Commission based on EIOPA.

#### 4.3.3.1.3 Securities

**Table 4.24 EU security market capitalization**

(€)

	Quoted shares issued			
	Total	MFIs	Non-MFI corporations	
			Financial corporations other than MFIs	Non-financial corporations
Euro area	6,665,784	912,921	479,192	5,273,671
Non-euro area	3,056,578	-	-	-
<b>Total</b>	<b>9,722,362</b>	<b>-</b>	<b>-</b>	<b>-</b>

Source: Information provided by the European Commission based on the ECB's SDW. Data are for October 2016 for euro-area member States and for end-2015 for non-euro-area member States.

	Securities other than shares issued				
	Total	MFIs (including euro system)	Non-MFI corporations		General government
			Financial corporations other than MFIs	Non-financial corporations	
Euro area	16,500,074	4,200,134	3,311,356	1,176,910	7,811,6733
Non-euro area	6,919,757	2,069,887	1,402,855	587,356	2,859,660
<b>Total (EU-28 fixed composition)</b>	<b>23,419,831</b>	<b>6,270,021</b>	<b>4,714,211</b>	<b>1,764,266</b>	<b>10,671,333</b>

Note: MFI: monetary financial institution.

Source: Information provided by the European Commission based on the ECB's SDW. Data are for October 2016 for euro-area member States and for end-2015 for non-euro-area member States.

**Table 4.25 Total assets under management by pension funds, 2015-2016**

(€ million)

	2016 (Q2)	2016 (Q1)	2015 (Q2)
Euro area	2,376,018	2,310,126	2,219,622
EU <sup>a</sup>	-	-	3,622,720

a Figures for the EU for 2016 were not yet available. The figure for 2015 refers to end of year.

Source: Information provided by the European Commission based on the ECB's SDW and EIOPA.

#### 4.3.3.2 Regulatory developments

4.123. The financial reform undertaken in the aftermath of the 2008-2009 financial crisis is about to reach the final stages of its completion. Most of the regulatory packages proposed by the Commission had already been adopted by the time of the last report in May 2015. Still, some additional pieces of legislation have been adopted during the period under review while others continue to be discussed. The Commission still groups this legislation or draft legislation into three "pillars": those aimed at building new rules for the global financial system; those aimed at establishing a safe, responsible and growth-enhancing financial sector in Europe; and those aimed at completing the banking union to strengthen the euro. However, the two legislative packages composing the third pillar (respectively the single supervision mechanism and the single resolution mechanism) were both adopted before the period under review and dealt with in the previous report. The third pillar is therefore completed.

4.124. Regarding the first pillar, only one new regulation was adopted during the period under review, namely Regulation (EU) 2015/2365 of the EU parliament and of the Council on Transparency of Securities Financing Transactions (SFTR).<sup>97</sup> This new regulation, proposed by the European Commission in January 2014, improves the transparency of securities financing transactions in the shadow banking sector. These new rules also help identify the risks associated with these financial transactions, as well as their magnitude. The Regulation enhances transparency in three ways: first, it introduces the reporting of all securities financing transactions (SFT), except those concluded with central banks, to central databases known as trade repositories. Depending on their category, firms should start reporting at different stages from 12 to 21 months after the entry into force of the relevant regulatory technical standards. Second, investment funds will be required to start disclosing information on the use of SFTs and total return swaps to investors in their regular reports and in their pre-contractual documents from the entry into force of the regulation, while the existing funds will have 18 months to amend them; and finally, the regulation introduces some minimum transparency conditions that should be met on the reuse of collateral, such as disclosure of the risks and the need to grant prior consent. These will apply 6 months after the entry into force of the regulation.

4.125. Second, a Regulation on Money Market Funds<sup>98</sup> has been agreed by co-legislators and is expected to be published in the Official Journal around April 2017. This regulation covers money market funds (MMFs) that are domiciled or sold in Europe and aims to improve their liquidity profile and stability. As to liquidity, MMFs that offer constant redemption or purchase price (constant net asset value (CNAV) MMFs and a new model of low volatility net asset value (LVNAV) MMF) would be required to have at least 10% of their portfolio in assets that mature within a day and another 30% that mature within a week. MMFs that offer variable price (VNAV MMFs) are required to hold 7.5% of daily maturing assets and 15% of weekly maturing assets. This requirement is there to allow the MMFs to repay investors who want to withdraw funds at short notice. In order to avoid a single issuer bearing undue weight in the net asset value (NAV) of an MMF, exposure to a single issuer would be capped at 5% of the CNAV MMF's portfolio (in value terms). For VNAV MMFs, a single issuer could account for 10% of the portfolio. It establishes common rules to ensure that the fund manager has a good understanding of investor behaviour, and to provide investors and supervisors with adequate information. The regulation prohibits sponsor support from third parties, including banks.

<sup>97</sup> Viewed at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32015R2365>.

<sup>98</sup> COM/2013/0615 final – 2013/0306 (COD). Viewed at: <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52013PC0615>.

4.126. The second, still un-adopted, proposal of this pillar is a proposal for a regulation on structural measures improving the resilience of EU credit institutions.<sup>99</sup> The goal of this proposal is to stop the biggest and most complex banks from engaging in the risky activity of proprietary trading. The new rules would also give supervisors the power to require those banks to separate certain potentially risky trading activities from their deposit-taking business if the pursuit of such activities compromises financial stability.

4.127. In order to achieve this goal, the draft regulation proposes to first ban proprietary trading in financial instruments and commodities, i.e. trading on own account for the sole purpose of making profit for the bank. This activity entails many risks but no tangible benefits for the bank's clients or the wider economy. Second, the proposal would grant supervisors the power and, in certain instances, the obligation to require the transfer of other high-risk trading activities (such as market-making, complex derivatives and securitization operations) to separate legal trading entities within the group ("subsidiarization"). This aims to avoid the risk that banks would circumvent the ban on the prohibition of certain trading activities by engaging in hidden proprietary trading activities which become too significant or highly leveraged and potentially put the whole bank and wider financial system at risk. Banks will have the possibility of not separating activities if they can show to the satisfaction of their supervisor that the risks generated are mitigated by other means. Third, the new regulation would provide rules on the economic, legal, governance, and operational links between the separated trading entity and the rest of the banking group.

4.128. Regarding the second pillar, seven proposals were adopted by the Commission during the period under review relating to measures aimed at establishing a safe, responsible and growth-enhancing financial sector in Europe.

4.129. The first such adopted proposal is the Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (so-called IDD/IMD). The Directive regulates the way insurance products are sold. It lays down the information that should be given to consumers before they sign an insurance contract, it imposes certain conduct of business and transparency rules on distributors, it clarifies procedures and rules for cross-border business, and it contains rules for the supervision and sanctioning of insurance distributors in case they breach the provisions of the Directive. The rules apply to the sale of all insurance products. However, more prescriptive rules apply to those distributors that sell insurance products that have an investment element such as unit-linked life insurance contracts.

4.130. The second proposal adopted during the period under review is the Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market (so-called PSD2), aimed at enhancing consumer protection, promoting innovation and improving the security of payment services. New rules include:

- Introduction of strict security requirements for the initiation and processing of electronic payments and the protection of consumers' financial data;
- Opening the EU payment market for companies offering consumer or business-oriented payment services based on access to information about the payment account – the so-called "payment initiation services providers" and "account information services providers";
- Enhancing consumers' rights in numerous areas, including reducing the liability for non-authorized payments, introducing an unconditional ("no questions asked") refund right for direct debits in euros; and
- Prohibition of surcharging (additional charges for the right to pay, e.g. with a card) regardless of whether the payment instrument is used in shops or online.

---

<sup>99</sup> COM/2014/043 final – 2014/0020 (COD). Viewed at: <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52014PC0043>.

4.131. The third element of the second pillar adopted during the period under review is Regulation EU 2015/751 of 29 April 2015 on interchange fees for card-based payment transactions.<sup>100</sup> It is aimed at promoting competition in the payment card market by capping interchange fees, increasing transparency for retailers and addressing certain business practices of schemes and banks. This regulation provides that:

- Interchange fees for consumer debit cards are capped at 0.2% and for consumer credit cards at 0.3% of the value of the transaction;
- Territorial restrictions in licence agreements or scheme rules for issuing cards or acquiring transactions are prohibited;
- Payment card schemes and processing entities need to be independent and schemes should not favour their own subsidiaries over competing processing entities;
- Consumers and retailers can steer towards the most efficient payment type; and
- Retailers are offered transparency about the level of fees they need to pay to their payment services provider.

4.132. The fourth adopted proposal of the second pillar is the Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing amending Regulation (EU) No. 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC ("the 4<sup>th</sup> Anti-Money Laundering Directive"). The fourth adopted proposal is Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EC) No. 1781/2006.

4.133. In addition, in July 2016, the Commission made a proposal for a Directive of the European Parliament and of the Council amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing and amending Directive 2009/101/EC.<sup>101</sup> The proposal contains a provision that stipulates that EU member States shall ensure that Union credit institutions and financial institutions acting as acquirers only accept payments carried out with prepaid cards issued in third countries where such cards meet the requirements as provided in the Directive (Article 12(3) of the proposal). The proposal also covers issues on other terrorist financing risks (virtual currencies, financial intelligence units' access to information, centralized bank account registers, enhanced customer due diligence towards high-risk third countries). In addition, the Commission also proposes to further enhance accessibility of information on beneficial ownership for legal entities and legal arrangements.

4.134. The fifth adopted element of the second pillar is regulation on long-term investment funds.<sup>102</sup> It provides for a new investment fund framework designed for investors who wish to put money into companies and projects for the long-term. The creation of clearly defined European long-term investment funds (ELTIFs) will help tackle barriers to long-term investment in, for example, infrastructure projects, thereby stimulating employment and economic growth. ELTIFs only focus on alternative investments that fall within a defined category of long-term asset classes whose successful development requires a long-term commitment from investors.

4.135. The sixth adopted element of the second pillar is regulation on financial benchmarks such as LIBOR and EURIBOR.<sup>103</sup> This regulation is aimed at restoring confidence in the integrity of

<sup>100</sup> Regulation EU 2015/751 of 29 April 2015 on interchange fees for card-based payment transactions – OJ L123/1 of 19.5.2015. Viewed at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015R0751&from=EN>

<sup>101</sup> COM (2016) 450 final of 5 July 2016. Viewed at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016PC0450&qid=1484227555181&from=EN>.

<sup>102</sup> Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds. Viewed at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015R0760>.

<sup>103</sup> Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of

benchmarks. A benchmark is an index (statistical measure), calculated from a representative set of underlying data, that is used as a reference price for a financial instrument or financial contract or to measure the performance of an investment fund.

4.136. Finally, the seventh adopted element of the second pillar is a directive on revised rules for occupational pension funds.<sup>104</sup> The new rules aim to: first, ensure that occupational pensions are sound and better protect pension scheme members and beneficiaries; second, better inform members and beneficiaries about their entitlements; third, remove obstacles faced by occupational pension funds operating across borders; and fourth, encourage occupational pension funds to invest long-term in economic activities that enhance growth, the environment and employment. EU countries must transpose the new rules into their national law by 13 January 2019.

4.137. Negotiations on a Financial Transaction Tax are still ongoing. The 10 participating member States in the enhanced cooperation are continuing discussions to find a compromise on the design of the common Financial Transaction Tax.<sup>105</sup>

#### 4.3.4 Transport services

4.138. The single market for transport services was achieved in the nineties, with the notable exceptions of port services and railways, and its regulatory framework was stabilized and re-casted during the first decade of the millennium. It has remained largely unchanged since. However, in the context of the Commission's Better Regulation policy, the regulatory framework is periodically evaluated in so-called "regulatory fitness checks" or "REFIT" exercises (also entailing public consultations). If it is found that the regulatory framework requires updating or modification, additional legislative proposals will need to be prepared, subject to appropriate impact assessment.

4.139. Since the last TPR report dealing with transport services in 2013<sup>106</sup>, the most notable developments have been the adoption of the fourth railway package liberalizing domestic railways and the regulation establishing the freedom to provide port services and introducing new transparency rules at the end of 2016 by the Parliament and the Council.

##### 4.3.4.1 Maritime transport services and port services

4.140. The very liberal market access rules for maritime transport services, *stricto sensu*, as well as the relevant external policy instruments, date back to the late eighties and have not significantly changed since. There are no significant trade-relevant regulatory changes to report since the last TPR report dealing with transport services in 2013.

4.141. The main development since 2013 regarding maritime transport, *lato sensu*, is the adoption on 3 March 2017 of the regulation establishing a framework for the provision of port services and common rules on the financial transparency of ports (Regulation 2017/352). This regulation will apply as of 2019.<sup>107</sup>

4.142. Over 1,200 commercial seaports operate along some 70,000 kilometres of the Union's coasts. In 2014, around 3.5 billion tonnes of cargo transited through the main European ports (ports handling more than 1 million tonnes per year). Intra-EU shipping represents 44% of the tonnes handled in EU ports. Seaports are key nodal points of the EU intermodal transport chains using short sea shipping as an alternative to saturated land transport routes and as a way to

---

investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No. 596/2014. Viewed at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R1011&from=en>.

<sup>104</sup> Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs). Viewed at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016L2341&from=EN>.

<sup>105</sup> For more details on these ongoing discussions see the note of the General Secretariat of the Council of the European Union to the COREPER and the Council on the state of play of the proposal (document 13608/16 FISC164/ECOFIN 948 of 28 October 2016) and notably its annex on the "core engine" (i.e. the basic principles) of the financial transaction task, viewed at: <http://data.consilium.europa.eu/doc/document/ST-13608-2016-INIT/en/pdf>.

<sup>106</sup> WT/TPR/S/284 dated 28 May 2013, pp. 154-171.

<sup>107</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1488981754157&uri=CELEX:32017R0352>.

connect peripheral or island areas. In terms of passenger transport, EU ports handled 402 million maritime passengers in 2014.

4.143. 2,200 port operators currently employ around 110,000 port dockers. In total, ports represent up to 3 million (direct and indirect) jobs in the 22 maritime member States. 96% of all freight and 93% of all passengers through the EU ports transit through the 319 seaports identified in the Commission's proposal for Guidelines on the trans-European transport network (TEN-T).

4.144. The new regulation is applicable only to these 319 ports and has two aims: establishing the rules under which port services are provided and setting new reinforced rules on financial transparency.

4.145. The freedom to provide services will be applicable to port services. However, managing bodies of a port may impose minimum requirements on the providers of specific port services. When imposed, these requirements shall only relate to professional qualifications, financial capacity, good repute, availability of services, necessary equipment or maritime safety, general safety and security in the port, and relevant environmental and labour requirements. These requirements should not be used as a way of implicitly introducing market barriers and therefore the criteria should be objective and proportionate ensuring the fair treatment of all operators, both existing and potential. Potential operators should have access to training to acquire relevant specific local knowledge.

4.146. These provisions will not be imposed on cargo handling services and passenger terminals as these services are often organized by means of concession contracts falling within the scope of the Directive (EU) 2014/25 of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors. This directive has been described in detail in the section on government procurement of the last TPR report.<sup>108</sup> The port regulation covers, therefore, the following port services either inside the port area or on the waterway access to and from the ports: bunkering, cargo handling, mooring, passenger services, port reception facilities, pilotage and towage. Cargo handling, passenger services and pilotage are excluded from Chapter II (provision of port services); member States may decide to include pilotage under this chapter. Member States are encouraged to introduce Pilot Exemption Certificates (PECs) in order to improve efficiency in ports.

4.147. Where there are objective and properly justified cases, the stated freedom to provide services could be subjected to a limitation of the number of service providers. If a limitation is applied, an open, non-discriminatory and transparent selection procedure needs to be followed.

4.148. A member State will have the possibility to designate authorities competent to impose a public service obligation, in line with the applicable state aid rules. The obligations of public services must be clearly defined, transparent, non-discriminatory and verifiable and must relate among others to the availability (no interruption), accessibility (to all users), affordability (for certain categories of users), and the safety, security and environmental sustainability of the port service. In the case of public service obligations imposed by a competent authority in a port or in several ports, the authority will have the opportunity to organize and commercially exploit specific port services itself, under the condition that its activity remains confined to the port or ports in which it imposes public service obligations. If a member State decides to impose public service obligations, for the same service, in all its maritime ports, it shall notify those obligations to the Commission.

4.149. Employees' rights will be safeguarded and the member States will have the option to further strengthen these rights in the event of a transfer of undertakings and the relevant staff working for the old undertaking.

4.150. Regarding the second objective of the port regulation, increased financial transparency, the provisions of the regulation apply also to cargo handling, passenger services, pilotage and dredging. Where managing bodies of the port benefit from public funds, there shall be transparent accounting in order to show the effective and appropriate use of these public funds. Where designated port service providers have not been subject to an open public tendering procedure

---

<sup>108</sup> Document WT/TPR/S/317 dated 18 May 2015, p. 88; the full text of the directive was viewed at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0025&from=EN>.



and in the case of internal operators, it should be ensured that the price for the service is transparent and non-discriminatory and that it is set proportionately to the cost of the service provided.

4.151. Managing bodies of the port shall define the port infrastructure charges in an autonomous way and according to their own commercial and investment strategy. The port infrastructure charges may be varied in accordance with commercial practices in relation to the frequent use of the port or in order to promote a more efficient use of the port infrastructure, short sea shipping, or the high environmental performance, energy efficiency or carbon efficiency of transport operations.

4.152. The regulation also contains a series of provisions related to the training of staff, the handling of complaints, user consultation and transitional arrangements.

4.153. In addition to the port regulation, the Commission is considering further clarification of the state aid rules to ports notably by including certain port investments in the block exemption regulation (Commission Regulation (EU) No. 651/2014 of 17 June 2014<sup>109</sup> declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, "GBER"). The GBER enables member States to implement state aid measures without prior Commission approval because they are unlikely to distort competition. The Commission is now proposing to further widen the scope of the GBER to facilitate unproblematic state support to ports (and airports). The proposal provides for the exemption from the notification obligation of projects if the aid amount does not exceed a certain threshold. The aid shall be granted to transport-related investments and shall not go beyond what is necessary to make the investment happen, taking into account future revenues from the investment. The proposal limits the percentage of the investment costs that can be subsidized depending in particular on the size of the investment and the type of infrastructure. Finally, the aided port infrastructure shall be made available to interested users on an equal and non-discriminatory basis on market terms.

4.154. Finally, the Commission has undertaken a series of measures to simplify procedures in ports, in particular by avoiding unnecessary controls by customs for the movement of goods within the internal market ("Blue Belt" project). The main instrument to assess the EU status of goods is the use of the customs goods manifest data introduced with the entry into force of the Union Customs Code on 1 May 2016 (for the moment limited to authorized issuers). Customs authorities may accept the use of commercial, port or transport information systems for submission of the customs goods manifest data.

#### 4.3.4.2 Air transport services

4.155. The EU aviation sector employs directly between 1.4 and 2 million people and supports 4.7 to 5.5 million jobs (including indirect and induced impacts).<sup>110</sup> The EU accounts for 25% of global air traffic.<sup>111</sup> The direct contribution of aviation to EU GDP is €110 billion, while the overall impact, including tourism, is as large as €510 billion through the multiplier effect.<sup>112</sup> There are 32 EU airlines among the top 150 by revenue.<sup>113</sup> Essentially as a result of the establishment of the single aviation market, the number of intra-EU routes increased from 874 in 1992 to 3,522 in 2015 (+6.2% per annum) while the number of extra-EU routes increased too but to a slightly lesser degree (from 988 to 2621, i.e. +4.3 % per annum). The number of intra-EU routes served by more than two carriers increased from 93 in 1992 to 599 in 2015 (+540%), while the number of extra-EU routes served by more than two carriers also increased during the same period though at a slower pace (from 77 to 308, i.e. +300%).<sup>114</sup> Air transport users enjoy an unprecedented choice

<sup>109</sup> Viewed at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2014:187:FULL&from=EN>.

<sup>110</sup> Commission Staff Working Document accompanying the document "An Aviation Strategy for Europe", SWD (2015) 261 final dated 7 December 2015, p. 18. Viewed at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015SC0261&from=en>.

<sup>111</sup> Commission Staff Working Document accompanying the document "An Aviation Strategy for Europe", SWD (2015) 261 final dated 7 December 2015, p. 20.

<sup>112</sup> Document COM(2015) 598 final dated 7 December 2015 "An Aviation Strategy for Europe", p. 2. Viewed at: <https://ec.europa.eu/transparency/regdoc/rep/1/2015/EN/1-2015-598-EN-F1-1.PDF>.

<sup>113</sup> Commission Staff Working Document accompanying the document "An Aviation Strategy for Europe", SWD (2015) 261 final dated 7 December 2015, p. 23.

<sup>114</sup> Commission Staff Working Document accompanying the document "An Aviation Strategy for Europe", SWD (2015) 261 final dated 7 December 2015, p. 18.

of air travel opportunities at competitive prices. The share of low cost carriers in the total number of weekly seats available went up during the same period from 2% to 48%. These carriers made greater use than traditional networks carriers of 5<sup>th</sup> and 7<sup>th</sup> freedoms and of the cabotage rights brought about by intra-EU liberalization.<sup>115</sup>

4.156. The EU aviation regulatory framework was described in detail in the penultimate TPR report in 2013 and has since undergone only incremental changes.<sup>116</sup>

4.157. The regulatory framework of the three auxiliary services to aviation explicitly covered by the GATS – aircraft repair and maintenance, the selling and marketing of aviation services, and computer reservation services – remains so far unchanged. The "Aviation Strategy for Europe" document published by the Commission on 7 December 2015<sup>117</sup> does not plan any regulatory changes for the time being, save for air safety rules.

4.158. As for the selling and marketing of air transport, there are no EU-wide nor member State level restrictive regulations and the selling and marketing of air transport services within the EU is basically devoid of any GATS type restrictions.

4.159. The regulation of the third type of services covered explicitly by the GATS, computer reservation systems (CRS), was included in the regulatory "fitness check" of the single aviation market referred to in the May 2013 TPR report. This "fitness check" involved three regulations: Regulation (EC) 80/2009 on a Code of Conduct for computerized reservation systems; Regulation (EC) 1008/2008 on common rules for the operation of air services in the EU (recast of the third liberalization package); and Regulation (EC) 785/2004 on insurance requirements for air carriers and aircraft operators. The fitness check was concluded in June 2013 and its results published.<sup>118</sup>

4.160. With regard to CRS, the fitness check identified a number of areas where the Code could be marginally improved, albeit not necessarily in the immediate future. As to providers other than CRS providers that continue to develop products providing some, but not necessarily all, the functionalities of a CRS, it is important to consider the correct scope of Regulation 80/2009 and whether its objective should be limited to ensuring an undistorted market for air travel distribution in market segments where only CRS providers might be considered to have a strong market presence, in particular business travel. In addition, future market developments may require ensuring an unbiased choice to the consumer across all available platforms which may provide information on the available air travel services to customers. However, the relevant marketing and technological evolutions are still in progress, which renders adaptations to the legislative framework difficult at present. It was therefore decided not to amend Regulation 80/2009 for the time being, an approach also suggested by the December 2015 aviation strategy document. However, the CRS Regulation will be evaluated, starting under this Commission mandate.

4.161. Regarding airport-related services, the May 2013 TPR report referred to a series of legislative proposals known as the "airport package" and containing proposals for the revision of the regulatory framework for landing slots, noise regulations and curfews, and ground handling services.<sup>119</sup> One of these three proposals, on noise regulation, was adopted by the Parliament and the Council and became regulation(EU) No. 598/2014 of 16 April 2014 "on the establishment of rules and procedures with regard to the introduction of noise-related operating restrictions at Union airports within a Balanced Approach and repealing Directive (EC) 2002/30".<sup>120</sup> This regulation increases the transparency in the process of setting noise-related restrictions at airports, and confers a scrutiny role on the Commission which does not replace a member State's final decision.

<sup>115</sup> Commission Staff Working Document accompanying the document "An Aviation Strategy for Europe", SWD (2015) 261 final dated 7 December 2015, p. 17.

<sup>116</sup> WT/TPR/S/284 rev 1 dated 14 October 2013, pp. 154-157.

<sup>117</sup> Document COM (598)final, viewed at: <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=COM:2015:598:FIN>.

<sup>118</sup> Document SWD (2013) 208 final dated 6 June 2013. Viewed at: [https://ec.europa.eu/transport/sites/transport/files/modes/air/internal\\_market/doc/fitness\\_check\\_internal\\_aviation\\_market\\_en\\_commission\\_staff\\_working\\_document.pdf](https://ec.europa.eu/transport/sites/transport/files/modes/air/internal_market/doc/fitness_check_internal_aviation_market_en_commission_staff_working_document.pdf).

<sup>119</sup> For details on these proposals see WT/TPR/S/284 dated 28 May 2013, pp. 155-156.

<sup>120</sup> Viewed at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0598&from=EN>.

4.162. The proposal on slots, which was essentially aimed at allowing market-based mechanisms for slot exchanges, remains under discussion. The proposal on ground handling was withdrawn by the commission in June 2015. Slots and ground handling services therefore remain regulated respectively by Regulation (EC) 793/2004 and Directive (EC) 96/67.<sup>121</sup> While the December 2015 aviation strategy document from the Commission urges the Parliament and the Council to adopt the slot proposal, it considers that for the time being no regulatory changes are needed for ground handling services.

4.163. Regarding airport services, *stricto sensu*, the December 2015 aviation strategy document indicates that the Commission will assess the necessity to review the Airport Charges Directive (Directive (EC) 2009/12 of 10 March 2009<sup>122</sup>) and will work with the Airport Observatory to monitor trends of both intra-EU and extra-EU connectivity in Europe, and to identify any shortcomings and the appropriate measures to be taken.

4.164. Regarding air navigation services the same document urges the European Parliament and the Council to swiftly adopt the 2013 Single European Sky (SES 2+) proposals.<sup>123</sup> Those proposals are focused on seven points:

- Achieving full organizational and legal separation between the national supervisory authority and air navigation service providers.
- Reinforcing the economic regulation of service provision by creating a fully independent regulatory body.
- Opening the market for support services.
- Focusing the governance of air navigation service providers on customer needs.
- Reviewing the concept of functional airspace blocks to make it more flexible, performance-oriented and driven by industrial partnerships.
- Making the Network Manager a more industry-led organization as a prerequisite to extending its powers and functions.
- Rearranging the institutional landscape of various European bodies operating in the air traffic management field, in particular focusing EASA on technical regulation and Eurocontrol on network functions.

4.165. SES2+ also provided the opportunity to clarify the role of the Single European Sky Air Traffic Management Research (SESAR) project in the Single European Sky (SES) by providing a further legal basis for the necessary regulatory actions.

4.166. The regulatory framework of commercial aviation services in terms of licencing (granting of Airline Operating Certificate), ownership rules, and intra-EU market access rules remains governed by Regulation (EC) 1008/2008 which is a recast of the 1992 third liberalization package. Regulation (EC) 1008/2008 was part of the 2013 regulatory "fitness check" exercise initiated by the Commission. The conclusions of this exercise were that the objectives of Regulation (EC) 1008/2008 on common rules for the operation of air services in the EU to consolidate the existing liberalization legislation and to provide some clarifications have been achieved. Issues that have been identified as problematic either fall outside of the scope of the Regulation (access of non-scheduled services to extra-EU markets), require some technical guidance (leasing and restriction of traffic rights), necessitate better dissemination of best practices among enforcement bodies (public service obligations, price transparency, and passenger protection in case of insolvency), or merely require continuing monitoring and enforcement. The Commission therefore considered that no legislative changes were warranted; a position reconfirmed by the December 2015 aviation strategy paper.

<sup>121</sup> For a detailed description of this legislation see: WTO document S/C/W/270 dated 18 July 2006 pp. 95-98 for ground handling services and WTO document S/C/W/270/Add.2 dated 28 September 2007, pp. 378-382 for slots.

<sup>122</sup> The text of the 2009 directive was viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32009L0012:EN:NOT>.

<sup>123</sup> Document COM(2013)409 final and COM(2013) 410 final of 11/06/2013. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0409:FIN:EN:PDF> and [http://www.europarl.europa.eu/meetdocs/2009\\_2014/documents/com/com\\_com\(2013\)0410/\\_com\\_com\(2013\)0410\\_en.pdf](http://www.europarl.europa.eu/meetdocs/2009_2014/documents/com/com_com(2013)0410/_com_com(2013)0410_en.pdf).

4.167. In accordance with its Aviation Strategy, the Commission will carry out an evaluation in order to assess to which extent Regulation No. 1008/2008 on common rules for the operation of air services in the Community and containing provisions on ownership and control contributed to the creation of an efficient internal aviation market, an improved safety level, and better consumer protection. This evaluation will be completed in early 2018.

4.168. The Commission will, during the first half of 2017, present a legislative proposal to replace Regulation (EC) No. 868/2004 on the protection against subsidization and unfair pricing practices. The new regulation will replace Regulation 868/2004 once the EU decision-making process is completed.

4.169. As of January 2013, 979 bilateral (member State level) air transport agreements have been adapted so as to include the Community clause<sup>124</sup>, 235 of which through a direct amendment of the bilateral agreement and 744 through 46 horizontal agreements, i.e. through an agreement with the EU or through a formal record of consultations with the EU, bringing the total number of third countries having accepted EU designation to 117.

4.170. As described in the previous TPR report dealing with transport services in 2013<sup>125</sup>, in November 2012 the EU suspended the application of its aviation Emission Trading Scheme (Directive (EC) No. 2008/101) to non-EU airlines and to extra-EU flights in order to encourage multilateral discussion at ICAO on market-based measures. In October 2016, an agreement was reached at ICAO: it will oblige airlines to offset the growth of their CO2 emissions post-2020. To do so, airlines will buy "emission units" generated by projects reducing CO2 emissions in other sectors of the economy (e.g. renewable energies). In its first phase (2021-2026), 65 countries will participate on a voluntary basis. All EU member States will join from the start. In its second phase (2027-2035) participation is mandatory; except for those exempted (countries with small aviation activities). In that light, and if appropriate, the Commission may also make a proposal to review the scope of the European Union Emissions Trading System, with due consideration to be given to the necessary consistency with EU 2030 climate objectives and policy.

4.171. Finally, on 23 November 2016, the Commission indicated its intention to develop a specific piece of legislation to allow the development of an EU single drone services market whose potential is estimated by various studies to be between 200 million euros and several billion. Technical work is under way in that respect.

#### 4.3.4.3 Road transport services

##### 4.3.4.3.1 Road passenger transport services

4.172. The only significant development that took place regarding road passenger transport relates to the coach and buses operated on international lines.

4.173. The Commission is currently carrying out an impact assessment exercise on the possible revision of the Regulation (EC) No. 1073/2009 on common rules for access to the international<sup>126</sup> market for coach and bus services. The main objective of this possible revision would be to improve the competitiveness of coach and bus services *vis-à-vis* other modes of transport and to ensure a level playing field for operators. On 14 December 2016, the Commission launched a public consultation on the review of this regulation. This follows two fact-finding studies in 2009 and in 2016<sup>127</sup>, and an ex-post evaluation to be published in April 2017 on the website of DG MOVE. Those studies were not able to provide precise data on the employment and turnover of this segment of road passenger transport. The ex post evaluation of the Regulation has shown that

<sup>124</sup> European Commission document. Viewed at: [https://ec.europa.eu/transport/sites/transport/files/modes/air/international\\_aviation/external\\_aviation\\_policy/doc/table\\_-\\_asa\\_brought\\_into\\_legal\\_conformity\\_since\\_ecj\\_judgments-january\\_2013.pdf](https://ec.europa.eu/transport/sites/transport/files/modes/air/international_aviation/external_aviation_policy/doc/table_-_asa_brought_into_legal_conformity_since_ecj_judgments-january_2013.pdf).

<sup>125</sup> WT/TPR/S/284 REV1 dated October 2013, pp. 156-157.

<sup>126</sup> International means the international carriage of passengers by coach and bus within the territory of the EU. Access to non-EU carriers to the EU market is covered by bilateral agreements between member States and third countries and, for occasional services, by the (multilateral) Interbus Agreement.

<sup>127</sup> The full text of the 2016 study can be viewed at: <https://ec.europa.eu/transport/sites/transport/files/modes/road/studies/doc/2016-04-passenger-transport-by-coach-in-europe.pdf>.

the main problems linked to the regulation are the inability of coach and bus services to gain market shares *vis-à-vis* other modes of transport and restricted competitions among undertakings.

#### 4.3.4.3.2 Road freight transport

4.174. The main development regarding road freight transport is the publication by the Commission of a "REFIT" ex post evaluation<sup>128</sup> of Regulation (EC) No. 1071/2009 on access to the occupation of road transport operator and Regulation (EC) No. 1072/2009 on access to the international road haulage market.

4.175. According to the 2014 report from the Commission to the European Parliament and the Council on the State of the Union Road Transport Market<sup>129</sup>, the road haulage market in the EU comprises around 600,000 predominantly small enterprises, with an average size of four employees per company. This number has been stable over recent years with 80% of companies counting less than 10 employees, whereas 99% have less than 50 employees. The road haulage sector employed around three million people in 2011.

4.176. National transport operations carried out by domestically registered vehicles account for about two thirds of all transport activities. The remaining one third corresponds to international transport activities and national transport operations carried out by vehicles registered in another member State (which are defined as cabotage). Cabotage operations merely account for slightly more than 1% of total transport activity. Cabotage is defined in Regulation (EC) No. 1072/2009 as "national carriage for hire or reward carried out on a temporary basis in a host Member State". It is restricted to three cabotage operations in the seven days following international carriage by the non-resident haulier (registered in another member State) to the host country. Cabotage activities have gone up (by around 50%), but are still at a relatively low level. The strong increase in cabotage activities is partly due to the lifting in 2009 and 2012 of special transitional restrictions on hauliers from most countries that joined the EU in 2004 and 2007, respectively.

4.177. The share of international transport operations (i.e. between two or more member States) has increased during the last decade, from 30% of all road freight transport activities in 2004 to 33% in 2012. This is a sign of the increasingly integrated single market in the EU. Four fifths of all international transport activities between member States are carried out by vehicles which are registered either in the member State of loading or in the member State of unloading. One fifth is carried out by vehicles which are registered in a country other than the one of loading or unloading, including in non-EU countries (i.e. cross-trade), up from around one eighth in 2004. The share of cross-trade in all road freight transport activities has gone up from 4 to 7% between 2004 and 2012.

4.178. Having grown by more than 80% between 2004 and 2012, cross-trade is the most booming segment of the road haulage market. It benefits from the fact that international transport activities are completely liberalized within the EU. Indeed EU hauliers are the most active in international transport within the EU (including cross-trade), while access to the EU international transport market by non-EU hauliers is subject to transport permits regulated by bilateral or multilateral agreements. Traffic between EU member States and third countries remains regulated by bilateral agreements signed at member State level (or at the EU level in the case of Switzerland).

4.179. The conclusions of the REFIT exercise were that the regulations cover most of the key issues which are relevant to the objectives of reducing competitive distortion and establishing more harmonized conditions for access to the profession and to the international road transport market. The remaining problems are mainly due to issues of interpretation and/or enforcement, rather than from the targeting of the rules themselves. The implementation difficulties identified by the REFIT exercise are very different levels of control exercised by member States (e.g. on cabotage), lack of cooperation between (at least some) member States, notably as regards compliance with the stable and effective establishment criterion, different interpretations of the notions of cabotage (scope of operation) and of principal establishment (notably in terms of

<sup>128</sup> Commission staff working document SWD(2016) 350 final dated 28 October 2016. Viewed at: <https://ec.europa.eu/transport/sites/transport/files/swd20160350.pdf>.

<sup>129</sup> Document COM (2014) 222 final dated 14 April 2014.



facilities required), lack of clarity as to which infringements should lead to loss of good repute, and additional conditions on access to the occupation of road haulier imposed by some member States.

4.180. The Commission also published in November 2016 the results of a public consultation on these regulations held between June and September 2016.<sup>130</sup> The Commission is currently carrying out an impact assessment exercise on the possible revision of the regulations. The main objectives of this possible revision would be to: (1) clarify existing provisions, which have raised problems of interpretation and implementation; (2) strengthen enforcement of the Regulations and promote consistent enforcement throughout the EU; and (3) promote a level playing field in the road freight transport market.

#### 4.3.4.4 Rail transport

4.181. The main developments since 2013 regarding rail transport were the adoption in mid-2016 of the "technical pillar" and at end-2016 of the "market pillar" of the 2013 "fourth railway package". The fourth package essentially opens the last closed rail transport segment, domestic passengers services, to competition by 2020 via a system of open access for commercial services on the one hand and the introduction of the principle of competitive awards of rail public services contracts by 2023 on the other hand. Moreover, it reinforces independence requirements for the infrastructure managers so as to avoid distortions of competition; it is also aimed at ensuring the progressive harmonization of technical and safety norms.

4.182. The technical pillar of the first package is composed of two directives and one regulation: Directive (EU) 2016/797 of 11 May 2016 on the interoperability of the rail system within the European Union (recast)<sup>131</sup>, Directive (EU) 2016/798 of 11 May 2016 on railway safety (recast)<sup>132</sup>, and Regulation (EU) 2016/796 of 11 May 2016 on the European Union Agency for Railways and repealing Regulation (EC) No. 881/2004.<sup>133</sup> Member States have until June 2019 to transpose the directives into domestic legislation but may delay implementation by one year if they provide justification to the European Commission and the European Union Agency for Railways (formerly the European Railway Agency). The ERA Regulation is directly applicable, and does not require transposition.

4.183. The technical pillar is aimed at saving firms from having to submit multiple applications for operations extending beyond one single member State. The European Railways Agency (ERA) will issue authorizations for placing vehicles on the market and safety certificates for railway undertakings that are valid throughout the EU. Until now, railway undertakings and manufacturers have been required to be certified separately by all national safety authorities (NSA) in those member States with rail systems, depending on where the trains would operate.

4.184. The new legislation makes ERA a "one-stop-shop" which will act as a single entry point for all such applications. This information and communication system will make the procedure easy and transparent. It will also ensure consistency in the case of different applications for similar authorizations. ERA will ensure a uniform application of EU rules, for example by supervising the streamlining of national rules and monitoring the national safety authorities.

4.185. ERA will also act as "system authority" for the pan-European ERMTS (European Rail Traffic Management System), in particular delivering ERTMS trackside pre-authorizations, and telematics applications. Greater harmonization at the EU level will lead to significant reductions in costs and the administrative burden for railway undertakings wishing to operate across Europe.

4.186. Another aim of the technical pillar is to reduce the large number of national rules that still exist. The Agency is already working on an action plan to reduce them. These rules create a risk of insufficient transparency and disguised discrimination against new operators, especially the smaller ones, and this is a serious risk for new investors. Reduction and simplification of the current rules will contribute to achieving the Single European Railway Area, increasing cross-border traffic, and boosting the competitiveness of the railway sector.

<sup>130</sup> The results of the consultation can be viewed at: <http://ec.europa.eu/transport/sites/transport/files/2016-review-road-regulations-summary.pdf>.

<sup>131</sup> Viewed at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016L0797&from=EN>.

<sup>132</sup> Viewed at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016L0798&from=EN>.

<sup>133</sup> Viewed at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0796&from=EN>.



4.187. Regarding safety, the recast of the Railway Safety Directive revises the role of the national safety authorities (NSAs) and reallocates the responsibilities between them and ERA. ERA will play a major role as it will be granting the single safety certificate. National Safety Authorities' activities will be more focused on the supervision of the rail companies operating in their respective countries and on activities requiring either presence on the territory or local linguistic skills (such as inspections/audits). Moreover, to ensure that NSAs perform these activities effectively, the Agency will monitor their performance and decision-making. In addition, ERA will coordinate information sharing on safety. In that respect it has already started preparing the new tool for occurrence reporting that is widely used in the aviation sector. This tool will facilitate the exchange of information among the actors who identify or are informed about a safety risk, and in particular will allow information to be shared quickly after an accident.

4.188. ERA will start delivering vehicle authorizations, ERTMS trackside pre-authorizations, and safety certificates three years after the entry into force of the package. However, as regards other tasks, such as the monitoring of national safety authorities and national rules, ERA will start performing its duties immediately after adoption of the relevant dispositions.

4.189. The market pillar of the fourth railway package is composed of one directive and two regulations: Directive (EU) 2016/2370 on the opening of the market for domestic passenger transport services by rail and the governance of the railway infrastructure and amending Directive 2012/34/EU<sup>134</sup>; Regulation (EU) 2016/2338 on the opening of the market for domestic passenger transport services by rail and amending Regulation (EC) No. 1370/2007<sup>135</sup>; and Regulation (EU) 2016/2337 on common rules for the normalization of the accounts of railway undertakings and repealing Regulation (EEC) No. 1192/69.<sup>136</sup>

4.190. The directive, which is also called the "governance directive", deals essentially with the relationship between the infrastructure manager and the railway operators with access to networks for the purpose of operating domestic passenger services, transparency of financial flows of infrastructure managers (in particular when they are part of a vertically integrated undertaking), and coordination between the infrastructure manager and its users as well as between infrastructure managers.

4.191. Regarding the relationship between the infrastructure manager and the railways operators, the directive establishes the principle that member States shall be free to choose between different organizational models, ranging from full structural separation to vertical integration, subject to appropriate safeguards to ensure the impartiality of the infrastructure manager as regards the essential functions (capacity allocation and infrastructure charging), traffic management, and maintenance planning.

4.192. Infrastructure managers have to be legally distinct from any railway undertaking (company) and, in vertically integrated undertakings, from any other legal entities within the undertaking. There is a prohibition against holding certain double mandates (such as being, at the same time, a member of a management board of the infrastructure manager and of a railway undertaking) and, for vertically integrated undertakings, a prohibition against certain performance-based elements of remuneration (e.g. from other legal entities of the vertically integrated undertaking). These prohibitions contribute to ensuring the independence of infrastructure managers from railway undertakings.

4.193. Moreover, given that decision-making by infrastructure managers with respect to train path allocation and decision-making with respect to infrastructure charging are essential functions that are vital for ensuring equitable and non-discriminatory access to rail infrastructure, stringent safeguards are put in place to avoid any undue influence being brought to bear on decisions taken by the infrastructure manager relating to such functions. No railway undertaking or other legal entity may exercise a decisive influence on decisions of the infrastructure manager concerning the essential functions. Additional safeguards apply in vertically integrated undertakings, where other legal entities may not have a decisive influence on decisions concerning appointments and dismissals of persons in charge of taking decisions on the essential functions and where it needs to be ensured that the mobility of staff in charge of essential functions does not create conflicts of

<sup>134</sup> Viewed at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016L2370&from=EN>.

<sup>135</sup> Viewed at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R2338&from=EN>.

<sup>136</sup> Viewed at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R2337&from=EN>.

interest. Moreover, access to sensitive information concerning essential functions must be restricted to authorized staff of the infrastructure manager.

4.194. Appropriate measures shall also be taken to ensure that the functions of traffic management and maintenance planning are exercised in an impartial manner to avoid any distortion of competition. Persons in charge of taking decisions in respect of those functions should not be affected by any conflict of interest. Moreover, infrastructure managers should ensure that railway undertakings have access to relevant information in cases of disruptions.

4.195. Regulatory bodies shall have the power to monitor traffic management, renewal planning, as well as scheduled and unscheduled maintenance works, in order to ensure that they do not lead to discrimination. In this respect, they are also entitled to decide on appropriate measures to correct discrimination, market distortion and other undesirable developments in the market.

4.196. While, in principle, the infrastructure manager should be responsible for development, operation, maintenance and renewal of the network, these functions may be shared between various infrastructure managers, provided that all of them meet the independence requirements set out in the Directive.

4.197. Moreover, infrastructure managers may also outsource certain functions or tasks to other entities, provided that no conflicts of interest arise and that confidentiality of commercially sensitive information is guaranteed and the infrastructure manager retains supervisory power and ultimate responsibility. Such other entities may, as a general rule, not be railway undertakings, or entities controlling railway undertakings or being controlled by railway undertakings. If essential functions are outsourced, the entity in charge of performing the essential functions must comply with all independence requirements defined in the Directive. For vertically integrated undertakings, the Directive also clarifies that essential functions can only be outsourced to another entity within the vertically integrated undertaking, if such entity exclusively performs the essential functions.

4.198. As an exemption from the general prohibition against outsourcing tasks to railway undertakings, the execution of works and related tasks on development, maintenance and renewal of infrastructure may also be outsourced to entities controlling railway undertakings or being controlled by railway undertakings. This is, however, only permitted if such outsourcing would not create any conflicts of interest, the confidentiality of commercially sensitive information is guaranteed, and the infrastructure manager retains supervisory power and ultimate responsibility.

4.199. Regarding financial transparency, financial transfers between the infrastructure manager and railway undertakings, and in vertically integrated undertakings between the infrastructure manager and any other legal entity of the integrated undertaking, shall be prevented, where they could lead to a distortion of competition on the market, in particular as a result of cross-subsidization. Infrastructure managers may use income from infrastructure network management activities that involve the use of public funds solely to finance their own business or to pay dividends to their investors, which may include the State and private shareholders, but not undertakings that are part of a vertically integrated undertaking and exercise control over both a railway undertaking and that infrastructure manager (e.g. holding companies). Loans between legal entities of a vertically integrated undertaking shall only be granted, disbursed and serviced at market rates. The accounts of the infrastructure manager and other legal entities within a vertically integrated undertaking shall be kept in a way that allows for separate accounting and transparent financial circuits.

4.200. With a view to facilitating the provision of efficient and effective rail services within the Union, a European Network of Infrastructure Managers shall be established. Tasks of the network will include development of the Union railway infrastructure, monitoring and benchmarking performance, tackling cross-border bottlenecks, and cooperation on questions concerning charging and capacity allocation for international services. Regarding access to infrastructure, member States may decide to limit access if the new open access services would compromise the economic equilibrium of an existing public service contract. While some member States already grant unlimited access to the infrastructure for domestic passenger services, other member States will make use of the possibility of access limitations. In such cases, when an operator that intends to order capacity to run a new open access domestic passenger service requests capacity, the regulatory body is informed and must give the competent authorities and PSO operators the

possibility to request an analysis of the expected economic impact of the new service on existing public service contracts covering the same route. The regulatory body is required to carry out an objective economic analysis on the basis of criteria determined in an implementing act to be adopted by the Commission in order to determine whether the economic equilibrium of a public service contract would be compromised. If the regulatory body concludes that the economic equilibrium of the PSO contract would not be compromised, the member State cannot limit the access. If the regulatory body concludes that the economic equilibrium of the PSO contract would be compromised, the member State may deny access, limit access rights, or impose conditions.

4.201. Finally, the Directive sets the principle that through-ticketing systems should be interoperable and non-discriminatory. The provisions concerning independence of infrastructure managers, corresponding regulatory oversight, and cooperation within the European network of infrastructure managers, must be transposed into national law by 25 December 2018, while the provisions on access to the infrastructure for the purpose of operating domestic passenger services will apply as from 1 January 2019 in order to allow open access services to start operations in December 2020.

4.202. Regulation (EU) 2016/2338 on the opening of the market for domestic passenger transport services by rail is also called the Public Services Obligations (PSO) regulation, since the opening of domestic markets will essentially take the form of tendering for public services contracts. It stipulates that domestic passenger markets will be opened up for competition and that the principle of mandatory tendering for public service contracts in rail will be established at the latest by 2023. The aim of the regulation is to encourage railway operators to become more responsive to customer needs, improve the quality of their services and improve their cost-effectiveness.

4.203. The regulation amends the previous regulation on public services contract awards in the area of transport by setting clearer rules on the specification of public services obligations and their scope of application as well as a new framework guaranteeing that railway operators will encounter non-discriminatory access conditions to rail rolling stock that will incentivize them to participate in tender procedures for a rail public service contract. Public service contracts for public passenger transport services by rail should be awarded on the basis of a competitive tendering procedure, except for those cases set out in this regulation. Procedures for competitive tendering of public service contracts should be open to all operators, should be fair, and should respect the principles of transparency and non-discrimination. In exceptional circumstances, where public service contracts for public passenger transport services by rail are awarded on the basis of a competitive tendering procedure, the competent authority may decide to temporarily award new contracts directly with a duration not exceeding 5 years in order to ensure that services are delivered in the most cost-effective way. Follow-up contracts that concern the same public service contracts must not be awarded on the basis of this same provision. To increase competition, competent authorities may decide to award public service contracts covering parts of the same network or package of routes to different railway undertakings. They may do this by announcing, prior to launching the tender procedure, that they will limit the number of contracts that they intend to award to the same railway undertaking.

4.204. Where certain conditions related to the nature and structure of the railway market or the railway network are fulfilled, competent authorities may decide to award public service contracts for public passenger transport services by rail directly where such a contract would result in an improvement in the quality of services or cost-efficiency, or both.

4.205. When preparing competitive tendering procedures, competent authorities should assess whether measures are necessary to ensure effective and non-discriminatory access to suitable rail rolling stock. Competent authorities should make the assessment report publicly available.

4.206. The new regulation clarifies that in the performance of public service contracts, public service operators should comply with obligations applicable in the field of social and labour law established by Union law, national law or collective agreements. It also reiterates that Directive

2001/23/EC<sup>137</sup> shall apply to a change of public service operator where such a change constitutes a transfer of undertaking within the meaning of that Directive.

4.207. Where competent authorities, in accordance with national law, require public service operators to comply with certain quality and social standards, or establish social and qualitative criteria, those standards and criteria should be included in the tender documents and in the public service contracts. While respecting Directive 2001/23/EC, such tender documents and public service contracts shall, where applicable, also contain information on the rights and obligations relating to the transfer of staff taken on by the previous operator.

4.208. Finally, the third element of the market pillar of the fourth railway package, Regulation (EU) 2016/2337 on common rules for the normalization of the accounts of railway undertakings repeals a 1969 regulation with the same object (regulation EEC) No. 1192/69 but which dealt with the only railways undertakings then operating – state-owned monopolies – and has therefore become outdated.

---

<sup>137</sup> Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, OJ L 82, 22.3.2001, pp.16–20.

## 5 APPENDIX TABLES

Table A1.1 Selected indicators, 2013-16

	Inflation rate (HICP-annual average rate of change), %				Unemployment rate (% of labour force)				General government gross debt (% of GDP)			General government surplus/deficit (% of GDP)			Current account balance (% of GDP) <sup>a</sup>		
	2013	2014	2015	2016	2013	2014	2015	2016	2013	2014	2015	2013	2014	2015	2013	2014	2015
EU-28	1.5	0.5	0.0	0.3	10.9	10.2	9.4	8.5	85.7	86.7	85	-3.3	-3	-2.4	1.1	0.9	1.1
Austria	2.1	1.5	0.8	1.0	5.4	5.6	5.7	6.0	81.3	84.4	85.5	-1.4	-2.7	-1	1.6	2.6	2.5
Belgium	1.2	0.5	0.6	1.8	8.4	8.5	8.5	8.0	105.4	106.5	105.8	-3	-3.1	-2.5	1.1	-0.1	0.2
Bulgaria	0.4	-1.6	-1.1	-1.3	13.0	11.4	9.2	7.7	17	27	26	-0.4	-5.5	-1.7	1.2	0.0	0.4
Croatia	2.3	0.2	-0.3	-0.6	17.3	17.3	16.3	12.8	82.2	86.6	86.7	-5.3	-5.4	-3.3	1.6	1.1	5.0
Cyprus	0.4	-0.3	-1.5	-1.2	15.9	16.1	15.0	13.3	102.2	107.1	107.5	-4.9	-8.8	-1.1	-4.9	-4.4	-3.0
Czech Republic	1.4	0.4	0.3	0.6	7.0	6.1	5.1	4.0	44.9	42.2	40.3	-1.2	-1.9	-0.6	-1.1	-1.2	-1.2
Denmark	0.5	0.4	0.2	0.0	7.0	6.6	6.2	6.2	44.7	44.8	40.4	-1.1	1.5	-1.7	7.8	8.9	9.2
Estonia	3.2	0.5	0.1	0.8	8.6	7.4	6.2	..	10.2	10.7	10.1	-0.2	0.7	0.1	-0.2	1.0	2.1
Finland	2.2	1.2	-0.2	0.4	8.2	8.7	9.4	8.8	56.5	60.2	63.6	-2.6	-3.2	-2.8	-1.9	-1.3	-0.7
France	1.0	0.6	0.1	0.3	10.3	10.3	10.4	9.9	92.3	95.3	96.2	-4	-4	-3.5	-2.9	-3.2	-2.0
Germany	1.6	0.8	0.1	0.4	5.2	5.0	4.6	4.1	77.5	74.9	71.2	-0.2	0.3	0.7	6.9	7.5	8.5
Greece	-0.9	-1.4	-1.1	0.0	27.5	26.5	24.9	..	177.4	179.7	177.4	-13.2	-3.6	-7.5	-2.2	-2.6	0.0
Hungary	1.7	0.0	0.1	0.4	10.2	7.7	6.8	..	76.6	75.7	74.7	-2.6	-2.1	-1.6	3.8	2.0	3.1
Ireland	0.5	0.3	0.0	-0.2	13.1	11.3	9.4	7.9	119.5	105.2	78.6	-5.7	-3.7	-1.9	2.1	1.7	10.2
Italy	1.2	0.2	0.1	-0.1	12.1	12.7	11.9	..	129	131.9	132.3	-2.7	-3	-2.6	1.0	1.9	1.6
Latvia	0.0	0.7	0.2	0.1	11.9	10.8	9.9	9.7	39	40.7	36.3	-0.9	-1.6	-1.3	-2.1	-2.0	-0.8
Lithuania	1.2	0.2	-0.7	0.7	11.8	10.7	9.1	8.0	38.7	40.5	42.7	-2.6	-0.7	-0.2	1.4	3.8	-2.2
Luxembourg	1.7	0.7	0.1	0.0	5.9	6.0	6.5	6.3	23.5	22.7	22.1	1	1.5	1.6	5.6	5.1	5.2
Malta	1.0	0.8	1.2	0.9	6.4	5.8	5.4	4.8	68.4	67	64	-2.6	-2.1	-1.4	3.1	9.6	5.2
Netherlands	2.6	0.3	0.2	0.1	7.3	7.4	6.9	6.0	67.7	67.9	65.1	-2.4	-2.3	-1.9	10.2	8.5	8.5
Poland	0.8	0.1	-0.7	-0.2	10.3	9.0	7.5	6.3	55.7	50.2	51.1	-4.1	-3.4	-2.6	-0.5	-1.4	0.1
Portugal	0.4	-0.2	0.5	0.6	16.4	14.1	12.6	11.2	129	130.6	129	-4.8	-7.2	-4.4	0.7	-0.3	-0.3
Romania	3.2	1.4	-0.4	-1.1	7.1	6.8	6.8	6.0	37.8	39.4	37.9	-2.1	-0.8	-0.8	-0.6	-0.1	-0.6
Slovakia	1.5	-0.1	-0.3	-0.5	14.2	13.2	11.5	9.7	54.7	53.6	52.5	-2.7	-2.7	-2.7	1.5	0.6	0.1
Slovenia	1.9	0.4	-0.8	-0.2	10.1	9.7	9.0	7.9	71	80.9	83.1	-15	-5	-2.7	3.6	6.2	5.4
Spain	1.5	-0.2	-0.6	-0.3	26.1	24.5	22.1	19.6	95.4	100.4	99.8	-7	-6	-5.1	1.5	1.0	1.3
Sweden	0.4	0.2	0.7	1.1	8.0	7.9	7.4	6.9	40.4	45.2	43.9	-1.4	-1.6	0.2	5.1	4.8	4.7
United Kingdom	2.6	1.5	0.0	0.7	7.6	6.1	5.3	..	86.2	88.1	89.1	-5.7	-5.7	-4.3	-4.4	-4.7	-4.3

.. Not available.

a EU-28 with the extra-EU countries. Each member State with all other countries (including other EU countries). Figures are based on Table 50 from European Commission, *European Economic Forecast Winter 2017*.

Source: Eurostat online database (prc\_hicp\_aind), (tipsun20), (tsdde410), and (tec00127). Viewed at: <http://ec.europa.eu/eurostat/web/main/home> (database accessed in February 2017); and European Commission, *European Economic Forecast Winter 2017*, February 2017.

Table A1.2 Merchandise exports by destination, 2013-15

	2013	2014	2015
<b>Total (€ billion)</b>	<b>1,736.4</b>	<b>1,702.9</b>	<b>1,789.2</b>
	<b>(% of total)</b>		
<b>Americas</b>	<b>25.4</b>	<b>26.8</b>	<b>29.5</b>
United States	16.7	18.3	20.8
Other America	8.7	8.5	8.7
Canada	1.8	1.9	2.0
Brazil	2.3	2.2	1.9
Mexico	1.6	1.7	1.9
<b>Europe</b>	<b>19.2</b>	<b>17.7</b>	<b>17.5</b>
EFTA	12.8	11.4	11.4
Switzerland	9.8	8.3	8.5
Norway	2.9	2.9	2.7
Other Europe	6.4	6.3	6.2
Turkey	4.5	4.4	4.4
<b>Commonwealth of Independent States (CIS)</b>	<b>9.9</b>	<b>8.6</b>	<b>6.2</b>
Russian Federation	6.9	6.1	4.1
<b>Africa</b>	<b>8.9</b>	<b>9.1</b>	<b>8.6</b>
South Africa	1.4	1.4	1.4
Algeria	1.3	1.4	1.2
Egypt	0.9	1.0	1.1
<b>Middle East</b>	<b>7.8</b>	<b>8.1</b>	<b>8.6</b>
United Arab Emirates	2.6	2.5	2.7
Saudi Arabia, Kingdom of	1.9	2.1	2.2
Israel	1.0	1.0	1.1
<b>Asia</b>	<b>26.5</b>	<b>27.8</b>	<b>27.9</b>
China	8.5	9.7	9.5
Japan	3.1	3.1	3.2
Other Asia	14.8	15.0	15.3
Korea, Republic of	2.3	2.5	2.7
India	2.1	2.1	2.1
Hong Kong, China	2.1	2.0	2.0
Australia	1.8	1.7	1.8
Singapore	1.7	1.7	1.7
Chinese Taipei	0.9	1.0	1.0
<b>Other</b>	<b>2.4</b>	<b>2.0</b>	<b>1.6</b>

Source: Eurostat. Viewed at: <http://ec.europa.eu/eurostat/web/international-trade/data/database> (database accessed in February 2017).



**Table A1.3 Merchandise imports by origin, 2013-15**

	2013	2014	2015
<b>Total (€ billion)</b>	<b>1,687.4</b>	<b>1,692.2</b>	<b>1,729.2</b>
	<b>(% of total)</b>		
<b>Americas</b>	<b>19.5</b>	<b>19.9</b>	<b>21.7</b>
United States	11.8	12.4	14.4
Other America	7.7	7.5	7.3
Brazil	2.0	1.8	1.8
Canada	1.6	1.6	1.6
Mexico	1.0	1.1	1.1
<b>Europe</b>	<b>15.0</b>	<b>15.2</b>	<b>15.0</b>
EFTA	11.1	11.0	10.5
Switzerland	5.7	5.8	6.0
Norway	5.3	5.0	4.3
Other Europe	3.9	4.2	4.6
Turkey	3.0	3.2	3.6
<b>Commonwealth of Independent States (CIS)</b>	<b>15.7</b>	<b>14.2</b>	<b>10.6</b>
Russian Federation	12.3	10.8	7.9
Kazakhstan	1.4	1.4	0.9
<b>Africa</b>	<b>10.0</b>	<b>9.2</b>	<b>7.7</b>
Algeria	1.9	1.7	1.2
South Africa	0.9	1.1	1.1
Nigeria	1.7	1.7	1.1
<b>Middle East</b>	<b>4.9</b>	<b>4.6</b>	<b>4.1</b>
Saudi Arabia, Kingdom of	1.8	1.7	1.2
<b>Asia</b>	<b>33.9</b>	<b>35.7</b>	<b>39.9</b>
China	16.6	17.9	20.3
Japan	3.4	3.3	3.5
Other Asia	13.9	14.5	16.1
Korea, Republic of	2.1	2.3	2.4
India	2.2	2.2	2.3
Viet Nam	1.3	1.3	1.7
Chinese Taipei	1.3	1.4	1.5
Malaysia	1.1	1.2	1.3
Thailand	1.0	1.1	1.1
Singapore	1.0	1.0	1.1
<b>Other</b>	<b>1.0</b>	<b>1.2</b>	<b>1.0</b>

Source: Eurostat. Viewed at: <http://ec.europa.eu/eurostat/web/international-trade/data/database> (database accessed in February 2017).

Table A1.4 Merchandise exports by product group, 2013-15

	2013	2014	2015
<b>Total (€ billion)</b>	<b>1,736.4</b>	<b>1,702.9</b>	<b>1,789.2</b>
	<b>(% of total)</b>		
<b>Primary products</b>	<b>17.0</b>	<b>16.6</b>	<b>14.8</b>
Agriculture	7.7	7.9	7.9
Food	6.3	6.6	6.6
Agricultural raw material	1.3	1.3	1.3
Mining	9.3	8.7	6.9
Fuels	7.0	6.4	4.8
Non-ferrous metals	1.4	1.3	1.3
Ores and other minerals	1.0	0.9	0.8
<b>Manufactures</b>	<b>77.1</b>	<b>79.3</b>	<b>80.7</b>
Iron and steel	2.2	2.2	1.9
Chemicals	15.7	16.4	17.6
Organic chemicals	2.6	2.6	2.8
Pharmaceuticals	6.5	6.9	8.0
Plastics	2.2	2.3	2.2
Essential oils and resinoids and perfume materials	1.5	1.6	1.6
Fertilizers	0.2	0.2	0.2
Other chemicals	2.8	2.8	2.9
Other semi-manufactures	7.0	7.1	6.9
Machinery and transport equipment	40.8	41.7	42.1
Office machines & telecommunications equipment	4.3	4.2	4.3
Electronic data processing and office equipment	1.4	1.4	1.3
Integrated circuits and electronic components	0.9	0.9	1.0
Telecommunication equipment	2.0	1.9	2.0
Transport equipment	16.5	17.1	18.0
Automotive products	10.9	11.3	11.6
Other transport equipment	5.6	5.8	6.4
Other machinery	20.0	20.3	19.8
Power generating machines	3.0	3.1	3.1
Non-electrical machinery	12.5	12.7	12.1
Electrical machines	4.5	4.6	4.6
Textiles	1.0	1.0	1.0
Clothing	1.3	1.4	1.4
Other manufactures	9.0	9.5	9.8
<b>Other</b>	<b>5.9</b>	<b>4.1</b>	<b>4.5</b>

Source: Eurostat. Viewed at: <http://ec.europa.eu/eurostat/web/international-trade/data/database> (database accessed in February 2017).

**Table A1.5 Merchandise imports by product group, 2013-15**

	2013	2014	2015
<b>Total (€ billion)</b>	<b>1,687.4</b>	<b>1,692.2</b>	<b>1,729.2</b>
	<b>(% of total)</b>		
<b>Primary products</b>	<b>41.8</b>	<b>38.4</b>	<b>31.5</b>
Agriculture	8.0	8.1	8.7
Food	6.6	6.8	7.3
Agricultural raw material	1.4	1.3	1.4
Mining	33.8	30.3	22.8
Fuels	29.6	26.3	19.0
Non-ferrous metals	2.1	2.0	2.1
Ores and other minerals	2.1	2.0	1.8
<b>Manufactures</b>	<b>55.8</b>	<b>59.0</b>	<b>65.8</b>
Iron and steel	1.5	1.6	1.7
Chemicals	9.4	9.8	10.7
Organic chemicals	2.3	2.4	2.6
Pharmaceuticals	3.4	3.7	4.2
Plastics	1.2	1.3	1.3
Essential oils and resinoids and perfume materials	0.4	0.4	0.5
Fertilizers	0.2	0.2	0.3
Other chemicals	1.7	1.7	1.8
Other semi-manufactures	4.8	5.1	5.4
Machinery and transport equipment	25.9	27.2	31.0
Office machines & telecommunications equipment	10.0	10.0	11.6
Electronic data processing and office equipment	4.1	4.1	4.4
Integrated circuits and electronic components	1.3	1.3	1.5
Telecommunication equipment	4.6	4.5	5.8
Transport equipment	6.2	6.7	7.7
Automotive products	2.9	3.1	3.7
Other transport equipment	3.3	3.6	4.0
Other machinery	9.7	10.5	11.7
Power generating machines	2.0	2.1	2.4
Non-electrical machinery	3.9	4.3	4.7
Electrical machines	3.9	4.1	4.7
Textiles	1.3	1.4	1.5
Clothing	4.2	4.6	5.0
Other manufactures	8.6	9.2	10.4
<b>Other</b>	<b>2.4</b>	<b>2.6</b>	<b>2.7</b>

Source: Eurostat. Viewed at: <http://ec.europa.eu/eurostat/web/international-trade/data/database> (database accessed in February 2017).

Table A1.6 Intra- and extra-EU trade by member State, 2013-15

	Trade in € billion									Intra- and extra-EU trade (%)					
	2013			2014			2015			2013		2014		2015	
	Intra-EU-28	Extra-EU-28	Total	Intra-EU-28	Extra-EU-28	Total	Intra-EU-28	Extra-EU-28	Total	Intra-EU-28	Extra-EU-28	Intra-EU-28	Extra-EU-28	Intra-EU-28	Extra-EU-28
<b>Exports</b>															
<b>EU-28</b>	<b>2,839</b>	<b>1,736</b>	<b>4,575</b>	<b>2,933</b>	<b>1,703</b>	<b>4,636</b>	<b>3,068</b>	<b>1,789</b>	<b>4,857</b>	<b>62.1</b>	<b>37.9</b>	<b>63.3</b>	<b>36.7</b>	<b>63.2</b>	<b>36.8</b>
Austria	92	39	132	94	40	134	97	41	138	70.1	29.9	69.9	30.1	70.1	29.9
Belgium	248	105	353	251	104	356	257	101	358	70.1	29.9	70.7	29.3	71.9	28.1
Bulgaria	13	9	22	14	8	22	15	8	23	59.9	40.1	62.4	37.6	64.9	35.1
Croatia	6	4	10	7	4	10	8	4	12	61.9	38.1	63.4	36.6	65.9	34.1
Cyprus	1	1	2	1	1	1	1	1	2	57.9	42.1	56.6	43.4	52.1	47.9
Czech Republic	99	23	122	108	23	132	119	24	142	81.1	18.9	82.2	17.8	83.3	16.7
Denmark	53	30	83	53	30	84	53	33	86	63.6	36.4	63.7	36.3	61.3	38.7
Estonia	9	4	12	9	3	12	9	3	12	71.0	29.0	72.3	27.7	75.1	24.9
Finland	31	25	56	32	24	56	32	22	54	55.3	44.7	57.3	42.7	58.9	41.1
France	260	178	437	263	174	437	268	188	456	59.4	40.6	60.1	39.9	58.8	41.2
Germany	619	469	1,088	649	476	1,125	693	503	1,196	56.9	43.1	57.7	42.3	57.9	42.1
Greece	13	14	27	13	14	27	14	12	26	47.1	52.9	48.3	51.7	54.2	45.8
Hungary	63	18	81	67	17	83	72	17	89	77.8	22.2	80.0	20.0	81.3	18.7
Ireland	50	37	88	50	41	92	59	52	112	57.3	42.7	55.0	45.0	53.1	46.9
Italy	210	180	390	219	180	399	226	186	412	53.8	46.2	54.9	45.1	54.8	45.2
Latvia	7	4	11	8	3	11	8	3	11	66.4	33.6	68.5	31.5	69.2	30.8
Lithuania	14	11	25	13	11	24	14	9	23	55.5	44.5	54.8	45.2	61.3	38.7
Luxembourg	11	3	14	12	3	14	13	2	16	81.1	18.9	82.6	17.4	84.1	15.9
Malta	1	2	3	1	1	2	1	1	2	44.9	55.1	50.1	49.9	45.1	54.9
Netherlands	383	123	506	384	122	506	389	125	513	75.7	24.3	75.9	24.1	75.7	24.3
Poland	116	39	154	128	37	166	142	37	180	75.0	25.0	77.4	22.6	79.3	20.7
Portugal	33	14	47	34	14	48	36	14	50	70.3	29.7	70.8	29.2	72.8	27.2
Romania	35	15	50	37	15	53	40	14	55	69.6	30.4	71.1	28.9	73.7	26.3
Slovakia	54	11	65	55	10	65	58	10	68	82.9	17.1	84.4	15.6	85.5	14.5
Slovenia	19	6	26	20	7	27	22	7	29	74.8	25.2	75.3	24.7	76.0	24.0
Spain	151	89	239	156	88	244	166	89	255	62.9	37.1	63.8	36.2	65.1	34.9
Sweden	73	53	126	72	51	124	74	52	126	57.7	42.3	58.5	41.5	58.5	41.5
United Kingdom	177	230	407	182	198	380	184	230	415	43.5	56.5	47.9	52.1	44.4	55.6

	Trade in € billion									Intra- and extra-EU trade (%)					
	2013			2014			2015			2013		2014		2015	
	Intra-EU-28	Extra-EU-28	Total	Intra-EU-28	Extra-EU-28	Total	Intra-EU-28	Extra-EU-28	Total	Intra-EU-28	Extra-EU-28	Intra-EU-28	Extra-EU-28	Intra-EU-28	Extra-EU-28
<b>Imports</b>															
<b>EU-28</b>	<b>2,770</b>	<b>1,687</b>	<b>4,457</b>	<b>2,854</b>	<b>1,692</b>	<b>4,546</b>	<b>2,994</b>	<b>1,729</b>	<b>4,723</b>	<b>62.1</b>	<b>37.9</b>	<b>62.8</b>	<b>37.2</b>	<b>63.4</b>	<b>36.6</b>
Austria	106	32	138	105	32	137	108	33	141	76.6	23.4	76.8	23.2	76.8	23.2
Belgium	226	114	340	222	120	342	212	126	338	66.4	33.6	65.0	35.0	62.8	37.2
Bulgaria	15	10	26	16	10	26	17	9	26	59.7	40.3	61.7	38.3	64.3	35.7
Croatia	11	5	17	13	4	17	14	4	19	66.9	33.1	76.2	23.8	77.7	22.3
Cyprus	3	1	5	4	1	5	4	1	5	70.5	29.5	71.4	28.6	73.6	26.4
Czech Republic	83	25	109	90	26	116	99	29	127	76.8	23.2	77.4	22.6	77.3	22.7
Denmark	51	22	73	52	23	75	54	24	77	70.1	29.9	69.5	30.5	69.5	30.5
Estonia	11	2	14	11	3	14	11	2	13	82.1	17.9	81.7	18.3	81.7	18.3
Finland	39	20	58	39	18	58	40	15	54	66.3	33.7	68.1	31.9	73.0	27.0
France	348	165	513	345	165	509	354	163	517	67.8	32.2	67.7	32.3	68.5	31.5
Germany	575	314	889	595	314	909	622	326	948	64.7	35.3	65.5	34.5	65.6	34.4
Greece	22	25	47	23	25	48	23	21	44	47.2	52.8	48.2	51.8	52.9	47.1
Hungary	54	21	75	59	20	79	64	19	83	71.7	28.3	75.2	24.8	76.6	23.4
Ireland	37	18	54	40	20	61	46	23	69	67.3	32.7	66.5	33.5	66.1	33.9
Italy	200	161	361	204	153	357	217	153	370	55.4	44.6	57.1	42.9	58.7	41.3
Latvia	11	3	13	11	3	13	10	3	13	80.0	20.0	80.5	19.5	79.4	20.6
Lithuania	16	10	26	17	9	26	17	8	25	60.3	39.7	65.6	34.4	67.7	32.3
Luxembourg	16	4	20	16	4	20	15	6	21	79.0	21.0	80.0	20.0	72.3	27.7
Malta	3	1	5	3	2	5	3	2	5	71.0	29.0	62.7	37.3	65.3	34.7
Netherlands	206	238	444	203	240	444	212	250	463	46.3	53.7	45.8	54.2	45.9	54.1
Poland	108	48	156	117	51	168	125	52	177	69.0	31.0	69.6	30.4	70.7	29.3
Portugal	41	16	57	44	15	59	46	14	60	72.0	28.0	74.8	25.2	76.5	23.5
Romania	42	13	55	44	14	59	49	14	63	75.8	24.2	75.4	24.6	77.1	22.9
Slovakia	46	16	62	47	15	62	52	14	66	74.3	25.7	76.1	23.9	78.7	21.3
Slovenia	18	8	25	18	8	26	19	8	27	70.1	29.9	69.1	30.9	70.0	30.0
Spain	142	115	256	155	115	270	171	110	281	55.3	44.7	57.3	42.7	60.7	39.3
Sweden	83	38	121	84	38	122	87	37	125	68.9	31.1	68.8	31.2	70.0	30.0
United Kingdom	258	239	497	275	244	520	303	262	565	51.8	48.2	53.0	47.0	53.6	46.4

Source: Eurostat database. Viewed at: <http://ec.europa.eu/eurostat/web/international-trade-in-goods/data/database> (database accessed in February 2017).

Table A2.1 Selected notifications to the WTO, April 2015–February 2017

Legal provision	Description of requirement	Frequency	WTO document
<b>General Agreement on Tariffs and Trade 1994</b>			
Article XVII:4(a)	State trading enterprises and products traded by them	Annual (triennial full notification and annual changes)	G/STR/N/16/EU, 30 September 2016
<b>Agreement on Agriculture</b>			
Articles 10 and 18.2	Export subsidies (Tables ES:1 and ES:2)	Annual	G/AG/N/EU/29, 20 May 2016 (covers the marketing year 2014/2015) G/AG/N/EU/25, 17 June 2015 (covers the marketing year 2013/2014)
Article 16.2	Possible negative effects of the reform programme on least developed and net food-importing developing countries (Table NF:1)	Annual (items 1 to 3) and ad hoc (item 4)	G/AG/N/EU/32, 4 November 2016 (covers the calendar year 2015) G/AG/N/EU/27, 4 March 2016 (covers the calendar year 2014)
Article 18.2	Administration of tariff quotas (Table MA:1)	One-off then changes ad hoc	G/AG/N/EU/31, 2 September 2016 (covers calendar year 2016 and marketing year 2015/2016)
	Domestic support commitments (Table DS:1)	Annual	G/AG/N/EU/34, 8 February 2017 (covers marketing year 2013/2014) G/AG/N/EU/26, 2 November 2015 (covers marketing year 2012/2013)
	Imports under tariff quotas (Table MA:2)	Annual	G/AG/N/EU/33, 13 January 2017 (covers marketing years 2014/2015 and 2015/2016 and calendar year 2015) G/AG/N/EU/30, 2 September 2016 (covers marketing year 2013/2014 and calendar year 2014) G/AG/N/EU/24, 28 May 2015 (covers marketing year 2012/2013 and calendar year 2013)
Articles 5.7 and 18.2	Use of special safeguard provisions (Table MA:5)	Annual	G/AG/N/EU/28, 17 May 2016 (covers marketing year 2014/2015) G/AG/N/EU/23, 21 May 2015 (covers marketing year 2013/2014)
Article 18.3	New or modified domestic support measures exempt from reduction (Table DS:2)		G/AG/N/EU/35, 8 February 2017
<b>General Agreement on Trade in Services</b>			
Article III:3	Measures that significantly affect trade in services	Ad hoc	S/C/N/867, 19 September 2016 S/C/N/866, 19 September 2016 S/C/N/865, 19 September 2016
Article III:4 and/or IV:2	Contact and enquiry points	Once, then changes	S/ENQ/78/Rev.16, 22 April 2016
Article V:7(a)	Regional trade agreement	Ad hoc	S/C/N/856, 13 January 2016
<b>Agreement on Implementation of Article VI of the GATT 1994 (Anti-Dumping Agreement)</b>			
Article 16.4	Anti-dumping actions	Ad hoc	G/ADP/N/291, 18 October 2016 G/ADP/N/284, 19 April 2016 G/ADP/N/277, 15 October 2015 G/ADP/N/270, 16 April 2015
Article 16.4	Anti-dumping actions	Semi-annual	G/ADP/N/286/EU, 7 October 2016 G/ADP/N/280/EU, 8 April 2016 G/ADP/N/272/EU, 21 October 2015



Legal provision	Description of requirement	Frequency	WTO document
Article 18.5	New or changes to laws or regulations relevant to the Agreement and the administration of such laws and regulations	Ad hoc	G/ADP/N/1/EU/3, 1 November 2016
<b>Agreement on Government Procurement</b>			
Article XXII:8	Statistical data	Annual	GPA/WPS/STAT/7, 24 July 2015
	Work programme on SMEs	Ad hoc	GPA/WPS/SME/33, 26 September 2016 GPA/WPS/SME/32, 26 September 2016 GPA/WPS/SME/18, 10 June 2016 GPA/WPS/SME/7, 7 August 2015
<b>Agreement on Import Licensing Procedures</b>			
Articles 1.4(a), 5, 7.3 and/or 8.2(b)	Import licensing procedures	Ad hoc	G/LIC/N/1/EU/9, 20 October 2016 G/LIC/N/1/EU/8, 31 May 2016 G/LIC/N/1/EU/7, 18 September 2015 G/LIC/N/1/EU/6, 18 September 2015
	Questionnaire	Annual	G/LIC/N/3/EU/5, 21 October 2016 G/LIC/N/3/EU/4, 12 October 2015
<b>Decision on Notification Procedures for Quantitative Restrictions</b>			
	Decision on notification procedures for quantitative restrictions		G/MA/QR/N/EU/3, 31 January 2017
<b>Agreement on Subsidies and Countervailing Measures</b>			
Article 25.1	Subsidies	Annual (triennial full notification and annual changes)	G/SCM/N/284/EU, 7 August 2015
Article 25.11	Countervailing duty actions	Ad hoc	G/SCM/N/310, 12 October 2016 G/SCM/N/302, 16 March 2016 G/SCM/N/295, 9 October 2015
	Countervailing duty actions	Semi-annual	G/SCM/N/305/EU, 27 September 2016 G/SCM/N/289/EU, 21 October 2015 G/SCM/N/281/EU, 13 April 2015
Article 27.11	Countervailing duty actions	Semi-annual	G/SCM/N/298/EU, 8 April 2016
Article 32.6	Laws and regulations	Ad hoc	G/SCM/N/1/EU/2, 1 November 2016
<b>Agreement on Trade-Related Aspects of Intellectual Property Rights</b>			
Article 63.2	Laws and regulations	Once, then changes	IP/N/1/EU/6 (IP/N/1/EU/U/3), 4 November 2016 IP/N/1/EU/5 (IP/N/1/EU/T/6), 28 April 2016 IP/N/1/EU/4 (IP/N/1/EU/T/5), 28 April 2016
<b>Agreement on Safeguards</b>			
Article 12.6	Legislation	Ad hoc	G/SG/N/1/EU/2, 12 June 2015
<b>Agreement on the Application of Sanitary and Phytosanitary Measures</b>			
Article 7 and Annex B, paragraph 5	Proposed and adopted SPS regulations	Ad hoc	Several notifications (series G/SPS/N/EU)
<b>Agreement on Technical Barriers to Trade</b>			
Articles 2, 3, 5, 7 and 10	Proposed and adopted technical regulations and conformity assessment procedures	Prior to or, for urgent problems, immediately after the measure is taken	Several notifications (series G/TBT/N/EU)
<b>Council for Trade in Services</b>			
	Preferential treatment for LDCs	Ad hoc	S/C/N/840, 18 November 2015

Source: WTO Secretariat.

Table A2.2 Status of dispute-related WTO matters involving the EU, March 2015-February 2017

Subject of dispute	Raised by/against (WTO document)	Request for consultations	Panel established/panel report circulated	AB report circulated <sup>a</sup>	Other developments
<b>As respondent</b>					
Anti-dumping measures on certain cold-rolled flat steel products from Russia	Russia Federation (WT/DS521)	27.02.2017	No	No	
Measures related to price comparison methodologies	China (WT/DS516)	12.12.2016	No	No	
Conditional tax incentives for large civil aircraft	United States (WT/DS487)	19.12.2014	Panel composed on 22 April 2015	No	Panel report submitted for adoption at the DSB meeting on 16 December 2016
Measures affecting tariff concessions on certain poultry meat products	China (WT/DS492)	08.11.2015	Panel composed on 3 December 2015	No	
Cost adjustment methodologies and certain anti-dumping measures on imports from the Russian Federation — (second complaint)	Russian Federation (WT/DS494)	07.05.2015	Panel established on 16 December 2016	No	
Countervailing measures on certain polyethylene terephthalate	Pakistan (WT/DS486)	05.11.2014	Panel composed on 13 May 2015		
Anti-dumping measures on biodiesel from Indonesia	Indonesia (WT/DS480)	10.06.2014	Panel composed on 4 November 2015		
Certain measures relating to the energy sector	Russian Federation (WT/DS476)	30.04.2014	Panel composed on 7 March 2016		
Cost adjustment methodologies and certain anti-dumping measures on imports from the Russian Federation	Russian Federation (WT/DS474)	23.12.2013	Panel established 22 July 2014		
Anti-dumping measures on biodiesel from Argentina	Argentina (WT/DS473)	19.12.2013	Panel report circulated on 29 March 2016	AB report circulated on 6 October 2016	The reports were adopted on 26 October 2016. Argentina and the EU agreed on a reasonable period of time to implement of 9 months and 15 days expiring on 10 August 2017
Measures on Atlanto-Scandian herring	Denmark (WT/DS469)	04.11.2013	n.a.		Withdrawn (mutually agreed solution) on 21 August 2014
Certain measures on the importation and marketing of biodiesel and measures supporting the biodiesel industry	Argentina (WT/DS459)	15.05.2013	No		In consultations

Subject of dispute	Raised by/against (WTO document)	Request for consultations	Panel established/panel report circulated	AB report circulated <sup>a</sup>	Other developments
Certain measures affecting the renewable energy generation sector	China (WT/DS452)	05.11.2012	No		The EU accepted the request of Japan to join the consultations on 19 November 2012. Australia and Argentina requested to join the consultations on 19 November 2012
Certain measures concerning the importation of biodiesels	Argentina (WT/DS443)	17.08.2012	No		
Anti-dumping measures on imports of certain fatty alcohols from Indonesia	Indonesia (WT/DS442)	30.07.2012	Panel composed on 18 December 2014		
Seizure of generic drugs in transit	Brazil (WT/DS409)	12.05.2010	No	n.a.	None
Seizure of generic drugs in transit	India (WT/DS408)	11.05.2010	No	n.a.	None
Anti-dumping measures on certain footwear	China (WT/DS405)	04.02.2010	18 May 2010/ 28 October 2011	No	Implementation notified by respondent on 17 December 2012
Measures prohibiting the importation and marketing of seal products	Norway (WT/DS401)	05.11.2009	21 April 2011	22 May 2014	Reasonable period of time expires on 18 October 2015
Measures prohibiting the importation and marketing of seal products	Canada (WT/DS400)	02.11.2009	25 March 2011	22 May 2014	Reasonable period of time expires on 18 October 2015
Definitive anti-dumping measures on certain iron or steel fasteners	China (WT/DS397)	31.07.2009	23 October 2009/ 3 December 2010	15 July 2011	Implementation notified by respondent on 23 October 2012
Certain measures affecting poultry meat and poultry meat products	United States (WT/DS389)	16.01.2009	19 November 2009	n.a.	None
Expiry reviews of anti-dumping and countervailing duties imposed on imports of PET	India (WT/DS385)	04.12.2008	No	n.a.	None
Tariff treatment of certain information technology products	Chinese Taipei (WT/DS377)	12.06.2008	23 September 2008/ 16 August 2010	No	Implementation notified by respondent on 20 July 2011
Tariff treatment of certain information technology products	Japan (WT/DS376)	28.05.2008	23 September 2008/ 16 August 2010	No	Implementation notified by respondent on 20 July 2011
Tariff treatment of certain information technology products	United States (WT/DS375)	28.05.2008	23 September 2008/ 16 August 2010	No	Implementation notified by respondent on 20 July 2011
Certain measures prohibiting the importation and marketing of seal products	Canada (WT/DS369)	25.09.2007	25 March 2011		Panel established, but not yet composed on 25 March 2011
Regime for the importation of bananas	Panama (WT/DS364)	22.06.2007	No		Settled or terminated (withdrawn, mutually agreed solution) on 8 November 2012

Subject of dispute	Raised by/against (WTO document)	Request for consultations	Panel established/panel report circulated	AB report circulated <sup>a</sup>	Other developments
Regime for the importation of bananas	Colombia (WT/DS361)	21.03.2007	No		Settled or terminated (withdrawn, mutually agreed solution) on 8 November 2012
Measures affecting the tariff quota for fresh or chilled garlic	Argentina (WT/DS349)	06.09.2006			In consultations on 6 September 2006
Definitive safeguard measure on salmon	Norway (WT/DS328)	01.03.2005			In consultations on 1 March 2005
Measures affecting trade in large civil aircraft	United States (WT/DS316)	06.10.2004	20 July 2005/30 June 2010	18 May 2011	Compliance proceeding on-going on 13 April 2012
Aid for commercial vessels	Korea, Republic of (WT/DS307)	13.02.2004			In consultations on 13 February 2004
Measures affecting imports of wine	Argentina (WT/DS263)	04.09.2002			In consultations on 4 September 2002
Provisional safeguard measures on imports of certain steel products	United States (WT/DS260)	30.05.2002	16 September 2002		Panel established, but not yet composed on 16 September 2002
Generalized System of Preferences	Thailand (WT/DS242)	07.12.2001			In consultations on 7 December 2001
Tariff-rate quota on corn gluten feed from the United States	United States (WT/DS223)	25.01.2001			In consultations on 25 January 2001
Measures affecting soluble coffee	Brazil (WT/DS209)	12.10.2000			In consultations on 12 October 2000
<b>As complainant</b>					
Tariff treatment of certain agricultural and manufacturing products	Russian Federation (WT/DS485)	31.10.2014	Panel report circulated on 12 August 2016		
Recourse to Article 22.2 of the DSU in the U.S. — clove cigarettes dispute	Indonesia (WT/DS481)	13.06.2014	No		Settled
Anti-dumping duties on light commercial vehicles from Germany and Italy	Russian Federation (WT/DS479)	21.05.2014	Panel composed on 18 December 2014; panel report to be circulated in the second half of January 2017		
Measures on the importation of live pigs, pork and other pig products from the European Union	Russian Federation (WT/DS475)	08.04.2014	23 October 2014; panel report circulated on 19 August 2016		Appealed by Russia Federation on 23 September 2016; cross-appeal by the EU on 28 September 2016
Certain measures concerning taxation and charges	Brazil (WT/DS472)	19.12.2013	Panel established on 17 December 2014; panel report circulated on 14 December 2016		
Recycling fee on motor vehicles	Russian Federation (WT/DS462)	09.07.2013	Panel established, but not yet composed		

Subject of dispute	Raised by/against (WTO document)	Request for consultations	Panel established/panel report circulated	AB report circulated <sup>a</sup>	Other developments
Measures imposing anti-dumping duties on high-performance stainless steel seamless tubes ("HP-SSST") from the European Union	China (WT/DS460)	13.06.2013	11 September 2013; panel report circulated on 13 February 2015	AB report circulated on 14 October 2015	China removed the measure by the end of the reasonable period of time on 22 August 2016
Measures affecting the importation of goods	Argentina (WT/DS438)	25.05.2012	Panel established on 28 January 2013; panel report circulated on 22 August 2014	AB report circulated on 15 January 2015	Implementation notified on 14 January 2016
Measures related to the exportation of rare earths, tungsten and molybdenum	China (WT/DS432)	13.03.2012	23 July 2012	AB report circulated on 7 August 2014	The People's Republic of China removed the measure by the end of the reasonable period of time on 2 May 2015
Measures relating to the feed-in tariff program	Canada (WT/DS426)	11.08.2011	20 January 2012/ 19 December 2012	n.a.	Panel report under appeal on 5 February 2013
Anti-dumping measures on imports of stainless steel sheet and strip in coils from Italy	United States (WT/DS424)	01.04.2011	n.a.		
Provisional anti-dumping duties on certain iron and steel fasteners	China (WT/DS407)	07.05.2010	No	n.a.	In consultation
Taxes on distilled spirits	Philippines (WT/DS396)	29.07.2009	19 January 2010	21 December 2011	Implementation notified by respondent on 28 January 2013
Measures related to the exportation of various raw materials	China (WT/DS395)	23.06.2009	21 December 2009	30 January 2012	Implementation notified by respondent on 28 January 2013
Certain taxes and other measures on imported wines and spirits	India (WT/DS380)	22.09.2008	No	n.a.	None
Customs valuation of certain products from the European Communities	Thailand (WT/DS370)	25.01.2008	No	n.a.	
Measures affecting trade in large civil aircraft — second complaint	United States (WT/DS353)	27.06.2005	17 February 2006/ 31 March 2011	12 March 2012	Compliance proceedings ongoing on 23 October 2012
Countervailing duties on olive oil, wheat gluten and peaches	Argentina (WT/DS330)	29.04.2005			In consultations
Section 776 of the Tariff Act of 1930	United States (WT/DS319)	05.11.2004			In consultations on 5 November 2004
Measures affecting trade in large civil aircraft	United States (WT/DS317)	06.10.2004	20 July 2005		Panel composed on 20 July 2005
Anti-dumping measures on imports of certain products from the European Communities	India (WT/DS304)	08.12.2003			In consultations on 8 December 2003
Laws, regulations and methodology for calculating dumping margins (zeroing)	United States (WT/DS294)	12.06.2003	19 March 2004/ 31 October 2005; then Article 21.5 circulated on 17 December 2008	18 April 2006 then Article 21.5 circulated on 14 May 2009	On 2 July 2012 the EU withdrew its request under Article 22.2 of the DSU

Subject of dispute	Raised by/against (WTO document)	Request for consultations	Panel established/panel report circulated	AB report circulated <sup>a</sup>	Other developments
Measures concerning imported spirits	Colombia (WT/DS502)	13.01.2016	Panel established on 26 September 2016		

n.a. Not applicable.

a AB refers to Appellate Body.

Source: WTO Secretariat.

Table A3.1 Tariffs under preferential agreements, 2016

	Simple average tariff rate (%)			Duty-free rates (including MFN duty-free) as a percentage of total tariff lines in each category (%)		
	Overall	WTO Agr.	WTO non-Agr.	Overall	WTO Agr.	WTO non-Agr.
MFN	6.3	14.1	4.3	26.1	19.1	28.1
Albania	0.3	1.1	0.1	97.4	92.2	98.8
Algeria <sup>a</sup>	2.5	12.0	0.0	84.4	29.5	99.9
Andorra	0.0	0.2	0	99.0	95.3	100
Bosnia and Herzegovina	0.4	1.3	0.1	97.1	90.9	98.8
Cameroon <sup>a</sup>	0.1	0.3	0.0	98.9	96.0	99.8
CARIFORUM <sup>a, b</sup>	0.0	0.1	0.0	99.0	96.5	99.8
Central America <sup>a</sup>	1.3	6.4	0.0	90.8	58.7	99.8
Ceuta-Melilla	2.5	12.2	0.0	84.7	31.2	99.9
Chile	1.9	8.9	0.0	89.9	55.0	99.7
Colombia <sup>a</sup>	1.0	4.7	0.0	93.6	71.3	99.9
Eastern and Southern Africa (ESA) <sup>a, b</sup>	0.0	0.1	0.0	99.0	96.5	99.8
Economic Partnerships <sup>a, b</sup>	0.0	0.1	0.0	99.0	96.5	99.8
Ecuador	1.8	8.7	0.0	89.2	54.6	99.0
Egypt <sup>a</sup>	0.2	0.7	0.0	98.9	95.7	99.8
Faroe Islands	3.3	13.7	0.6	79.4	21.8	95.7
Fiji <sup>a</sup>	0.0	0.1	0.0	99.0	96.5	99.8
Georgia <sup>a</sup>	0.0	0.1	0	98.9	95.2	100
Iceland <sup>c</sup>	1.6	7.1	0.2	87.6	60.9	95.1
Israel	0.6	2.4	0.1	95.8	82.0	99.6
Jordan	0.7	0.2	0.8	94.2	95.8	93.8
Korea, Rep. of <sup>a</sup>	0.2	0.5	0.1	96.5	92.6	97.6
Kosovo	0.7	1.1	0.6	94.8	92.2	95.5
Lebanon	0.2	1.1	0.0	97.5	88.5	100.0
Liechtenstein <sup>c</sup>	2.5	10.9	0.3	82.0	38.2	94.4
Mexico	1.7	8.2	0.0	90.6	57.9	99.8
Moldova <sup>a</sup>	0.0	0.2	0	98.9	95.0	100
Montenegro	0.3	1.1	0.1	97.4	92.3	98.8
Morocco	0.1	0.4	0	99.5	97.7	100
Norway <sup>c</sup>	2.6	11.3	0.3	81.6	37.6	94.0
Overseas countries & territories	0.1	0.6	0	98.8	94.4	100
Palestine	0.0	0.1	0	99.0	95.3	100
Papua New Guinea <sup>a</sup>	0.1	0.3	0.0	98.9	96.0	99.8
Peru <sup>a</sup>	0.8	4.0	0.0	94.0	73.2	99.9
San Marino	0.0	0.0	0.0	99.9	99.9	99.9
Serbia	0.3	1.1	0.1	97.5	92.2	99.0
South Africa	1.3	4.2	0.5	89.4	73.8	93.8
Switzerland	2.8	10.3	0.8	82.1	39.8	94.1
Syria	3.4	13.2	0.8	78.4	24.2	93.7
The former Yugoslav Republic of Macedonia	0.3	1.1	0.0	97.9	92.2	99.6
Tunisia	2.4	11.8	0.0	84.4	29.8	99.8
Turkey	1.6	7.8	0.0	90.4	56.5	100.0
Ukraine <sup>a</sup>	1.4	4.2	0.7	88.2	77.5	91.2



	Simple average tariff rate (%)			Duty-free rates (including MFN duty-free) as a percentage of total tariff lines in each category (%)		
	Overall	WTO Agr.	WTO non-Agr.	Overall	WTO Agr.	WTO non-Agr.
GSP	4.1	12.3	1.9	57.2	25.0	66.3
India <sup>d</sup>	4.7	12.4	2.7	48.8	23.6	55.9
Indonesia <sup>d</sup>	4.3	12.6	2.1	54.1	22.4	63.1
Nigeria <sup>d</sup>	4.1	12.3	2.0	57.1	25.0	66.1
Ukraine <sup>d</sup>	4.1	12.3	1.9	56.9	25.0	65.9
GSP+	1.8	8.7	0.0	89.2	54.6	99.0
LDCs (EBA) <sup>b</sup>	0.0	0.1	0.0	99.0	96.5	99.8

a Implementation (goods) is not completed yet.

b According to Commission Implementing Regulation (EU) 2015/1550, a beneficiary country is required to obtain a licence in order to benefit from duty-free and quota-free access for sugar (HS-1701). Duty-free and quota-free access status is applied to countries listed in Annex I of the regulation. For Table A3.1, tariff codes under HS 1701 were treated as duty-free rates in calculations.

c The lowest rates taken between EEA and each bilateral agreement for Iceland, Liechtenstein, and Norway for calculations.

d Sector graduations from Standard GSP are taken into account.

Note: All tariff calculations exclude in-quota lines. If no preferential rate is applied, the corresponding MFN rate is used for the calculations. *Ad valorem* equivalents (AVEs) were estimated based on 2015 import data at the 8-digit tariff from the Eurostat database. In case of unavailability, the *ad valorem* part is used for compound and mixed rates.

0.0 refers to >0 and <0.05; 100.0 refers to >99.55 and <100.

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

**Table A3.2 Official export credit agencies in EU member States**

Country	Agency	Internet link
Austria	Oesterreichische Kontrollbank AG (OeKB)	<a href="http://www.oekb.at">http://www.oekb.at</a>
Belgium	Delcredere - Ducreire	<a href="http://www.delcredere-ducroire.be/en/">http://www.delcredere-ducroire.be/en/</a>
Bulgaria	Bulgarian Export Insurance Agency (BAEZ)	<a href="http://www.baez-bg.com">www.baez-bg.com</a>
Czech Republic	Export Guarantee and Insurance Corporation (EGAP)	<a href="http://www.egap.cz">http://www.egap.cz</a>
	Czech Export Bank	<a href="http://www.ceb.cz">http://www.ceb.cz</a>
Denmark	Eksport Kredit Fonden (EKF)	<a href="http://www.ekf.dk">http://www.ekf.dk</a>
Estonia	KredEx	<a href="http://www.kredex.ee/en/">http://www.kredex.ee/en/</a>
Finland	Finnvera OyJ	<a href="http://www.finnvera.fi">http://www.finnvera.fi</a>
	Finnish Export Credit Ltd (FEC)	<a href="http://www.fec.fi">http://www.fec.fi</a>
France	Banque Publique d'Investissement Assurance Export	<a href="http://www.bpifrance.fr">http://www.bpifrance.fr</a>
Germany	AuslandsGeschäftsAbsicherung der Bundesrepublik Deutschland	<a href="http://www.agaportal.de/en/index.html">http://www.agaportal.de/en/index.html</a>
	Euler Hermes	<a href="http://www.hermes-kredit.com">http://www.hermes-kredit.com</a>
Greece	Export Credit Insurance Organization (ECIO)	<a href="http://www.ecio.gr">http://www.ecio.gr</a>
Hungary	Hungarian Export Credit Insurance Ltd	<a href="http://www.exim.hu/en/">http://www.exim.hu/en/</a>
	Hungarian Export-Import Bank Plc (EXIM)	
Italy	SACE S.p.A. Servizi Assicurativi del Commercio Estero	<a href="http://www.sace.it/GruppoSACE/content/it/index.html">http://www.sace.it/GruppoSACE/content/it/index.html</a>
Luxembourg	Office du Ducreire (ODD)	<a href="http://www.ducroire.lu">http://www.ducroire.lu</a>
Netherlands	Atradius	<a href="http://www.atradius.com/nl/en/dutchstatebusiness/index.jsp">http://www.atradius.com/nl/en/dutchstatebusiness/index.jsp</a>
Poland	Korporacja Ubezpieczeń Kredytów Eksportowych (KUKE)	<a href="http://www.kuke.com.pl">http://www.kuke.com.pl</a>
Portugal	Companhia de Seguro de Créditos	<a href="http://www.cosec.pt">http://www.cosec.pt</a>
Romania	Banca de export-import a României	<a href="http://www.eximbank.ro">www.eximbank.ro</a>
Slovak Republic	Export-Import Bank of the Slovak Republic (Eximbank SR)	<a href="http://www.eximbanka.sk">http://www.eximbanka.sk</a>
Slovenia	Slovenska Izvozna in razvonjna banka, d.d. (SID)	<a href="http://www.sid.si/home">http://www.sid.si/home</a>
Spain	Compañía Española de Seguros de Crédito a la Exportación (CESCE)	<a href="http://www.cesce.es">http://www.cesce.es</a>
	Secretaría de Estado de Comercio (Ministerio de Economía)	<a href="http://www.mcx.es">http://www.mcx.es</a>
Sweden	Exportkreditnämnden (EKN)	<a href="http://www.ekn.se">http://www.ekn.se</a>
	AB Svensk Exportkredit (SEK)	<a href="http://www.sek.se/en">http://www.sek.se/en</a>
United Kingdom	U.K. Export Finance	<a href="http://www.ukexportfinance.gov.uk">http://www.ukexportfinance.gov.uk</a>

Source: OECD online information, "Official Export Credits Agencies". Viewed at:  
<http://www.oecd.org/trade/xcred/eca.htm>.

Table A3.3 Summary of the European Union's main legislative measures on intellectual property rights, 2017

Intellectual property right	Legislative measure	Notification to Council for TRIPS pursuant to Article 63.2 TRIPS
<b>Copyright and related rights</b>	<ul style="list-style-type: none"> <li>• Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission</li> <li>• Directive 96/9/EC of 11 March 1996 on the legal protection of databases</li> <li>• Council Decision 2000/278/EC of 16 March 2000 on the approval, on behalf of the European Community, of the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty</li> <li>• Directive 2001/29/EC of 22 May 2001 on the harmonization of certain aspects of copyright and related rights in the information society (Information Society Directive)</li> <li>• Directive 2001/84/EC of 27 September 2001 on the resale right for the benefit of the author of an original work of art</li> <li>• Directive 2006/115/EC of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property</li> <li>• Directive 2006/116/EC of 12 December 2006 on the term of protection of copyright and certain related rights</li> <li>• Directive 2009/24/EC of 23 April 2009 on the legal protection of computer programs</li> <li>• Directive 2011/77/EU of 27 September 2011 amending Directive 2006/116/EC of 12 December 2006 on the term of protection of copyright and certain related rights</li> <li>• Directive 2012/28/EU of 25 October 2012 on certain permitted uses of orphan works</li> <li>• Directive 2014/26/EU of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market</li> </ul>	<p>IP/N/1/EU/C/5</p> <p>IP/N/1/EEC/C/2</p> <p>IP/N/1/EU/C/8</p> <p>IP/N/1/EU/C/1</p> <p>IP/N/1/EU/C/6</p> <p>IP/N/1/EU/C/3</p> <p>IP/N/1/EU/C/10</p> <p>IP/N/1/EU/C/7</p> <p>IP/N/1/EU/C/4</p> <p>IP/N/1/EU/C/2</p> <p>IP/N/1/EU/C/9</p>
<b>Trade marks</b>	<ul style="list-style-type: none"> <li>• Council Regulation (EC) No. 207/2009 of 26 February 2009 on the Community trade mark</li> <li>• Regulation (EU) 2015/2424 of 16 December 2015 amending Council Regulation (EC) No. 207/2009 on the Community trade mark and Commission Regulation (EC) No. 2868/95 implementing Council Regulation (EC) No. 40/94 on the Community trade mark, and repealing Commission Regulation (EC) No. 2869/95 on the fees payable to the Office for Harmonization in the Internal Market (Trade Marks and Designs)</li> <li>• Directive 2008/95/EC of 22 October 2008 to approximate the laws of the member States relating to trade marks</li> <li>• Directive (EU) 2015/2436 of the European Parliament and of the Council of 16 December 2015 to approximate the laws of the member States relating to trade marks</li> <li>• Commission Regulation (EC) No. 2868/95 of 13 December 1995 implementing Council Regulation (EC) No. 40/94 on the Community trade mark, as amended by Commission Regulation (EC) No. 782/2004 of 26 April 2004, Commission Regulation (EC) No. 1041/2005 of 29 June 2005, and Commission Regulation (EC) No. 355/2009 of 31 March 2009</li> <li>• Commission Regulation (EC) No. 216/96 of 5 February 1996 laying down the procedures of the Boards of Appeal of the Office for Harmonization in the Internal Market (Trade marks and Designs)</li> <li>• Commission Regulation (EC) No. 2082/2004 of 6 December 2004, amending Regulation (EC) No. 216/96 laying down the rules of procedure of the Boards of Appeal of the Office for Harmonization in the Internal Market (Trade marks and Designs)</li> </ul>	<p>IP/N/1/EU/T/2</p> <p>IP/N/1/EU/T/6</p> <p>IP/N/1/EU/T/1</p> <p>IP/N/1/EU/T/5</p> <p>IP/N/1/EU/T/7, IP/N/1/EU/T/8 and IP/N/1/EU/T/4</p> <p>IP/N/1/EU/T/9</p> <p>IP/N/1/EU/T/3</p>

Intellectual property right	Legislative measure	Notification to Council for TRIPS pursuant to Article 63.2 TRIPS
<b>Geographical indications</b>	<ul style="list-style-type: none"> <li>• <u>Wines</u>: Regulation (EU) No. 1308/2013 of 17 December 2013 establishing a common organization of the markets in agricultural products</li> <li>• Commission Regulation (EC) No. 607/2009 of 14 July 2009, laying down certain detailed rules regarding protected designations of origin and geographical indications, traditional terms, labelling and presentation of certain wine sector products</li> <li>• <u>Aromatised Wines</u>: Regulation (EU) No. 251/2014 of 26 February 2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products and repealing Council Regulation (EEC) No. 1601/91</li> <li>• <u>Spirit Drinks</u>: Regulation (EC) No. 110/2008 of 15 January 2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks</li> <li>• Commission Implementing Regulation (EU) No. 716/2013 of 25 July 2013 laying down rules for the application of Regulation (EC) No. 110/2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks</li> <li>• <u>Agricultural products and foodstuffs</u>: Council Regulation (EU) No. 1151/2012 of 21 November 2012 on quality schemes for agricultural products and foodstuffs</li> <li>• Commission Delegated Regulation (EU) No. 664/2014 of 18 December 2013 supplementing Regulation (EU) No. 1151/2012 with regard to the establishment of the Union symbols for protected designations of origin, protected geographical indications and traditional specialities guaranteed and with regard to certain rules on sourcing, certain procedural rules and certain additional transitional rules</li> <li>• Commission Implementing Regulation (EU) No. 668/2014 of 13 June 2014 laying down rules for the application of Regulation (EU) No. 1151/2012 on quality schemes for agricultural products and foodstuffs</li> </ul>	<p>IP/N/1/EU/G/4</p> <p>IP/N/1/EEC/4 and IP/N/1/EEC/G/5</p> <p>IP/N/1/EU/G/5</p> <p>IP/N/1/EEC/4 and IP/N/1/EEC/G/6</p> <p>IP/N/1/EU/G/6</p> <p>IP/N/1/EU/G/3</p> <p>IP/N/1/EU/G/7</p> <p>IP/N/1/EU/G/8</p>
<b>Industrial designs</b>	<ul style="list-style-type: none"> <li>• Directive 98/71/EC of 13 October 1998 on the legal protection of designs</li> <li>• Council Regulation (EC) No. 6/2002 of 12 December 2001 on Community designs, as amended by Council Regulation (EC) No. 1891/2006 of 18 December 2006</li> <li>• Commission Regulation (EC) No. 2245/2002 of 21 October 2002 implementing Council Regulation (EC) No. 6/2002, as amended by Commission Regulation (EC) No. 876/2007 of 24 July 2007</li> <li>• Commission Regulation (EC) No. 2246/2002 of 16 December 2002 on the fees payable to the Office for Harmonization in the Internal Market (Trademarks and Designs) in respect of the registration of Community designs, as amended by Commission Regulation (EC) No. 877/2007 of 24 July 2007</li> <li>• Council Decision 2006/954/EC of 18 December 2006 approving the accession of the EC to the Geneva Act of the Hague Agreement concerning the international registration of industrial designs, adopted in Geneva on 2 July 1999</li> </ul>	<p>IP/N/1/EU/D/1</p> <p>IP/N/1/EU/D/2</p> <p>IP/N/1/EU/D/3</p> <p>IP/N/1/EU/D/4</p> <p>IP/N/1/EU/D/5</p>
<b>Patents</b>	<ul style="list-style-type: none"> <li>• Directive 98/44/EC of 6 July 1998 on the legal protection of biotechnological inventions</li> <li>• Regulation (EC) No. 1901/2006 of 12 December 2006 on medicinal products for paediatric use and amending Regulation (EEC) No. 1768/92, Directive 2001/20/EC, Directive 2001/83/EC and Regulation (EC) No. 726/2004</li> <li>• Regulation (EC) No. 816/2006 of 17 May 2006 on compulsory licensing of patents relating to the manufacture of pharmaceutical products for export to countries with public health problems</li> <li>• Regulation (EU) No. 1257/2012 of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection</li> <li>• Regulation (EU) No. 1260/2012 of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable translation arrangements</li> </ul>	<p>IP/N/1/EEC/P/4</p> <p>IP/N/1/EU/P/2</p> <p>IP/N/1/EEC/P/5</p> <p>IP/N/1/EU/P/1</p> <p>IP/N/1/EU/P/8</p>
<b>Supplementary protection certificates</b>	<ul style="list-style-type: none"> <li>• Regulation (EC) No. 1610/96 of 23 July 1996 concerning the creation of a supplementary protection certificate for plant protection products</li> <li>• Regulation (EC) No. 469/2009 of 6 May 2009 concerning the supplementary protection certificate for medicinal products</li> </ul>	<p>IP/N/1/EU/P/4</p> <p>IP/N/1/EU/P/3</p>

Intellectual property right	Legislative measure	Notification to Council for TRIPS pursuant to Article 63.2 TRIPS
<b>Plant varieties</b>	<ul style="list-style-type: none"> <li>• Council Regulation (EC) No. 2100/94 of 27 July 1994 on Community plant variety rights, as amended by Council Regulation (EC) No. 2506/95 of 25 October 1995, Council Regulation (EC) No. 807/2003 of 14 April 2003, Council Regulation (EC) No. 1650/2003 of 18 June 2003, Council Regulation (EC) No. 873/2004 of 29 April 2004 and Council Regulation (EC) No. 15/2008 of 20 December 2007</li> <li>• Council Regulation (EC) No. 2470/96 of 17 December 1996 providing for an extension of the terms of a Community plant variety right in respect of potatoes</li> <li>• Commission Regulation (EC) No. 874/2009 of 17 September 2009, establishing implementing rules for the application of Council Regulation (EC) No. 2100/94 as regards proceedings before the Community Plant Variety Office, as amended by Commission Implementing Regulation (EU) 2016/1448 of 1 September 2016</li> <li>• Commission Regulation (EC) No. 1238/95 of 31 May 1995 establishing implementing rules for the application of Council Regulation (EC) No. 2100/94 as regards the fees payable to the Community Plant Variety Office, as amended by Commission Regulation (EC) No. 329/2000 of 11 February 2000, Commission Regulation (EC) No. 569/2003 of 28 March 2003, Commission Regulation (EC) No. 1177/2005 of 20 July 2005, Commission Regulation (EC) No. 2039/2005 of 14 December 2005, Commission Regulation (EC) No. 572/2008 of 19 June 2008, Commission Implementing Regulation (EU) No. 510/2012 of 15 June 2012, Commission Implementing Regulation (EU) No. 623/2013 of 27 June 2013, Commission Implementing Regulation (EU) No. 1294/2014 of 4 December 2014, Commission Implementing Regulation (EU) No. 2015/2206 of 30 November 2015 and Commission Implementing Regulation (EU) 2016/2141 of 6 December 2016</li> <li>• Commission Regulation (EC) No. 1768/95 of 24 July 1995, establishing implementing rules on the agricultural exemption provided for in Article 14(3) of Council Regulation (EC) No. 2100/94, as amended by Commission Regulation (EC) No. 2605/98 of 3 December 1998</li> </ul>	<p>IP/N/1/EEC/P/3</p> <p>IP/N/1/EU/P/9</p> <p>IP/N/1/EU/P/5</p> <p>IP/N/1/EU/P/6</p> <p>IP/N/1/EU/P/7</p>
<b>Protection of layout designs</b>	<ul style="list-style-type: none"> <li>• Council Directive 87/54/EEC of 16 December 1986 on the legal protection of topographies of semiconductor products</li> <li>• Council Decision 94/824/EC of 22 December 1994 on the extension of the legal protection of semiconductor products to persons from a Member of the WTO</li> </ul>	<p>IP/N/1/EEC/L/1</p> <p>IP/N/1/EEC/L/2</p>
<b>Undisclosed information and clinical trial data</b>	<ul style="list-style-type: none"> <li>• Directive 2001/83/EC of 6 November 2001 on the Community code relating to medicinal products for human use, as amended by Directive 2004/27/EC of 31 March 2004</li> <li>• Directive 2004/27/EC of 31 March 2004 amending Directive 2001/83/EC on the Community code relating to medicinal products for human use</li> <li>• Regulation No. 726/2004 of 31 March 2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency</li> <li>• Directive (EU) 2016/943 of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure</li> <li>• Regulation No. 536/2014 of 16 April 2014 on clinical trials on medicinal products for human use, and repealing Directive 2001/20/EC</li> </ul>	<p>IP/N/1/EU/U/1</p> <p>IP/N/1/EU/U/4</p> <p>IP/N/1/EU/U/2</p> <p>IP/N/1/EU/U/3</p> <p>IP/N/1/EU/U/5</p>
<b>Enforcement</b>	<ul style="list-style-type: none"> <li>• Directive 2000/31/EC of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the internal market (E-Commerce Directive)</li> <li>• Directive 2004/48/EC of 29 April 2004 on the enforcement of IPRs</li> <li>• Regulation (EU) No. 386/2012 of 19 April 2012 on entrusting the Office for Harmonization in the Internal Market (Trade Marks and Designs) with tasks related to the enforcement of intellectual property rights, including the assembling of public and private-sector representatives as a European Observatory on Infringements of Intellectual Property Rights</li> <li>• Regulation (EU) No. 608/2013 of 12 June 2013 concerning customs enforcement of IPRs</li> <li>• Commission Implementing Regulation (EU) No. 1352/2013 of 4 December 2013 establishing the form provided for in Regulation (EU) No. 608/2013 of the European Parliament and of the Council concerning customs enforcement of intellectual property rights</li> </ul>	<p>IP/N/1/EU/E/2</p> <p>IP/N/1/EEC/E/4</p> <p>IP/N/1/EU/E/3</p> <p>IP/N/1/EU/E/1</p> <p>IP/N/1/EU/E/4</p>

Source: WTO Secretariat.

Table A3.4 Term of protection of major intellectual property rights, 2017

Type of right	Term of protection	Competent agency at the EU level
<b>Copyright</b>		
• Authors' rights	Life of the author plus 70 years irrespective of the date the work was lawfully made available to the public. In the case of joint authorship the term should be calculated after the death of the last surviving author. In the case of anonymous or pseudonymous works, 70 years after the work is lawfully made available to the public. If the pseudonym does not leave any doubt as to the identity of the author, then protection is for the life of the author plus 70 years irrespective of the date the work was lawfully made available to the public	Copyright is protected without registration
• Work published in volumes	Protection runs from the time the work was lawfully made available to the public	
• Cinematographic or audiovisual works <sup>a</sup>	Protection expires 70 years after the death of the last of the following persons to survive, whether or not these persons are designated as co-authors: principal director (who is always considered an author), author of the screenplay, author of the dialogue and composer of the original music	
• Performers	Protection expires 50 years after the date of the performance. However, if a fixation of the performance otherwise than in a phonogram is lawfully published or lawfully communicated to the public within this period, the rights expire 50 years from the date of the first such publication or the first such communication to the public, whichever is the earlier; in the case of a fixation of the performance in a phonogram, the rights shall expire after 70 years	
• Producers of phonograms	Protection expires 50 years after the fixation is made. However, if the phonogram has been lawfully published within this period, the rights expire 70 years from the date of the first lawful publication. If no lawful publication has taken place, and the phonogram has been lawfully communicated to the public within this period, the rights will expire 70 years from the date of the first lawful communication to the public	
• Producers of a film <sup>b</sup>	Protection expires 50 years after the fixation is made. However, if the film is lawfully published or lawfully communicated to the public during this period, the rights will expire 50 years from the date of the first such publication or the first such communication to the public, whichever is the earlier	
• Broadcasting organizations	Protection expires 50 years after the first transmission of a broadcast whether transmitted by wire or over the air, including by cable or satellite	
• Photographs <sup>c</sup>	Life of the author plus 70 years no matter when it was lawfully made available to the public. In the case of joint authorship, the term should be calculated after the death of the last author. In the case of anonymous or pseudonymous works, 70 years after the work is lawfully made available to the public. If the pseudonym does not leave any doubt as to the identity of the author then protection is for the life of the author plus 70 years no matter when the work was lawfully made available to the public	

Type of right	Term of protection	Competent agency at the EU level
<b>Patents</b> Any inventions, in all fields of technology, that are new, involve an inventive step, and are susceptible of industrial application	20 years from the date of filing; under a supplementary protection certificate, an additional period of market exclusivity of up to five years may be granted for medicinal and plant protection products; an extension of another six months is available under paediatric legislation	European Patent Office (EPO) for European patents
<b>Plant varieties</b> Plant varieties which are distinct, uniform, stable, and new	Plant varieties for 25 years. Protection may be extended for 5 years. Varieties of vine, tree and potato species for 30 years	Community Plant Variety Office (CPVO)
<b>Trademarks</b> Any signs represented graphically, particularly words, including personal names, designs, letters, numerals, the shape of goods or their packaging, provided that such signs are capable of distinguishing the goods or services of one undertaking from those of other undertakings	10 years from the date of filling of application, may be renewed for an indefinite number of 10-year periods	European Union Intellectual Property Office (EUIPO) <sup>1</sup> for European Union trademarks
<b>Geographical indications</b> Indications which identify a good as originating in the territory of a Member or a region or locality in that territory, where a given quality, reputation or other characteristics of the good are essentially attributable to its geographical origin	For GIs protected as PDO/PGI, the term of protection is indefinite, unless the geographical indication ceases to be protected	European Commission DG Agriculture
<b>Industrial designs</b> Designs that are new and have individual character. A design is considered new if no identical design (i.e. one whose features differ only in immaterial details) has been made available to the public. It has individual character if the overall impression it produces on the informed user differs from the overall impression produced on such a user by any design which has been made available to the public	Registered design: one or more periods of 5 years, up to a maximum of 25 years from the date of filing. Unregistered design: 3 years after publication	EUIPO for Community designs

<sup>1</sup> The European Union Intellectual Property Office (EUIPO) was known as Office for Harmonization in the Internal Market (OHIM) until 23 March 2016. For more information see Directive (EU) 2015/2436 of the European Parliament and of the Council of 16 December 2015 to approximate the laws of the member States relating to trademarks.



Type of right	Term of protection	Competent agency at the EU level
<b>Undisclosed test or other data</b> Data the origination of which involves considerable effort and which must be submitted to regulatory authorities in order to obtain marketing approval of pharmaceutical or of agricultural chemical products which utilize new chemical entities	8-11 years of data and marketing protection	European Medicines Agency (EMA) grants marketing authorization

- a The principal director of a cinematographic or audiovisual work is considered the author. The author of the screenplay and/or the author of a dialogue are designated as co-authors.
- b The term "film" designates a cinematographic or audiovisual work or moving images, whether or not accompanied by sound.
- c Photographs are protected under Community law only if they are the author's own intellectual creation. Member States may provide protection for other photographs.

Source: WTO Secretariat.

Table A3.5 SOEs in EU member States, 2015

	No. of SOEs	Definition of SOE by the member State in providing statistics	Indicative SOEs and sectors concerned	Main indicators	Main indicator as % GDP	References
Austria <sup>a</sup>	108	All companies in which the federal government has a direct or majority interest (over 50% equity)	Kommunalkredit Austria AG (financial), Österreichische Bundesbahnen-Konzern (rail transport)	-total assets, €190 billion -revenue, €18.7 billion -liabilities, €149 billion -avg. number of employees, 104,952	55.9% (assets)	<a href="https://english.bmf.gv.at/budget-economic-policy/Management-of-State-Owned-Enterprises.html">https://english.bmf.gv.at/budget-economic-policy/Management-of-State-Owned-Enterprises.html</a> <a href="https://www.bmf.gv.at/budget/das-budget/Ausgliederungen_und_Beteiligungen_des_Bundes_Oktober_2015.pdf?5b0v62">https://www.bmf.gv.at/budget/das-budget/Ausgliederungen_und_Beteiligungen_des_Bundes_Oktober_2015.pdf?5b0v62</a>
Belgium	73	Federal government as shareholder, investor, or equity stakeholder	Belgacom (telecom), bpost (post), BNP Paribas (financial)	-total assets, €2.11 billion -operating income, €0.6 million -profit before tax, €84.3 million	0.5% (assets)	<a href="http://www.sfpf-fpim.be/en/key-figures">http://www.sfpf-fpim.be/en/key-figures</a> ; <a href="http://www.sfpf-fpim.be/sites/default/files/attachments/sfpf_rapport_annuel_2015.pdf">http://www.sfpf-fpim.be/sites/default/files/attachments/sfpf_rapport_annuel_2015.pdf</a>
Bulgaria	240	State enterprises and commercial companies with at least 50% participation by the state	Bulgarian Energy Holding (energy), National Electric Company (energy)	-net profit/loss, BGN 85 million	13% (revenue)	<a href="http://www.minfin.bg/bg/page/522">http://www.minfin.bg/bg/page/522</a> ; <a href="http://www.minfin.bg/bg/page/1122">http://www.minfin.bg/bg/page/1122</a> ; <a href="http://ime.bg/en/articles/exploring-the-financial-state-of-bulgarian-soes/">http://ime.bg/en/articles/exploring-the-financial-state-of-bulgarian-soes/</a>
Croatia	Holdings in LLCs, 223; Shares in joint-stock companies, 412; Real estate holdings, 1,016,085	Companies and legal entities of strategic importance to Croatia; companies where Croatia has a majority share; companies where Croatia has a minority share but where Croatia has a special interest	Croatia airlines (air transport), Croatian Motorways (road transport), Croatian Forests (forestry)	Data for companies of strategic importance, and those which the state has majority or minority share: -total revenues, HRK 54.2 billion -total expenditure, HRK 52.0 billion, -operating profit, HRK 2.1 billion -number of employees, 53,519	16.2% (revenues)	<a href="https://imovina.gov.hr/objavljen-registar-drzavne-imovine/1349">https://imovina.gov.hr/objavljen-registar-drzavne-imovine/1349</a> ; <a href="http://registar-imovina.gov.hr/">http://registar-imovina.gov.hr/</a> ; <a href="https://imovina.gov.hr/UserDocsImages/dokumenti/Izvjesca/Izvje%C5%A1%C4%87e%20o%20provedbi%20Plana%20upravljanja%20imovinom%20u%20vlasni%C5%A1tvu%20Republike%20Hrvatske%20za%202015.%20godinu%20-%20sije%C4%8Danj%202016.pdf">https://imovina.gov.hr/UserDocsImages/dokumenti/Izvjesca/Izvje%C5%A1%C4%87e%20o%20provedbi%20Plana%20upravljanja%20imovinom%20u%20vlasni%C5%A1tvu%20Republike%20Hrvatske%20za%202015.%20godinu%20-%20sije%C4%8Danj%202016.pdf</a>
Cyprus	54	..	Cyprus Ports Authority (ports), Cyprus Telecommunications (telecom)	..	..	<a href="http://www.mof.gov.cy/mof/mof.nsf/page51_gr/page51_gr?OpenDocument">http://www.mof.gov.cy/mof/mof.nsf/page51_gr/page51_gr?OpenDocument</a>
Czech Rep.	50	Equity investments of the Ministry of Finance in companies	Skoda (automobiles), Harvardský průmyslový holding (industrial), E.ON S.E (energy)	-holdings, CZK 100 billion and €102 million -registered capital, CZK 170 billion and €2.7 billion	2.2% (holdings in CZK only)	<a href="http://www.mfcr.cz/cs/verejny-sektor/majetek-statu/majetkove-ucasti/2016/majetkove-ucasti-ministerstva-financi-ke-26617">http://www.mfcr.cz/cs/verejny-sektor/majetek-statu/majetkove-ucasti/2016/majetkove-ucasti-ministerstva-financi-ke-26617</a>

	No. of SOEs	Definition of SOE by the member State in providing statistics	Indicative SOEs and sectors concerned	Main indicators	Main indicator as % GDP	References
Denmark	30	Stakeholder in joint stock companies, public companies, and international or investment funds	DONG Energy (energy), TV2 Danmark (communications)	-total assets, Kr. 333 billion -equity, Kr. 91 billion -net sales, Kr. 113 billion -profit/loss, Kr.-2.5 billion -employees, 18,725	16.4% (assets)	<a href="https://www.fm.dk/publikationer/2015/statens-selskaber-15">https://www.fm.dk/publikationer/2015/statens-selskaber-15</a> ; <a href="https://www.fm.dk/publikationer/2016/statens-selskaber">https://www.fm.dk/publikationer/2016/statens-selskaber</a>
Estonia <sup>b</sup>	36 private companies, 75 foundations, 142 non-profits	State as sole owner or having exclusive or majority stake; for non-profits, where government exercises rights as an appointed member	Eesti Energia (Energy), Port of Tallinn	For private companies and foundations: -total assets, €7,124 million -total revenue, €2,545 million -total avg. number of employees, 26,985	35.5% (assets)	<a href="https://www.eesti.ee/eng/contracts/riigi_osalusega_ariuhingud_2">https://www.eesti.ee/eng/contracts/riigi_osalusega_ariuhingud_2</a> ; <a href="http://www.fin.ee/riigi-osalusega-ariuhingute-ja-sihtasutuste-aruanded">http://www.fin.ee/riigi-osalusega-ariuhingute-ja-sihtasutuste-aruanded</a>
Finland	63	A state majority-owned company in which the State holds a majority of the aggregate of votes; a state associated company in which the State holds a minimum of 10 and maximum of 50% of the aggregate votes	Finnair (air transport), Neste (energy)	Data for the 29 portfolio companies: -total assets, €39.4 billion -net sales, €23.1 billion -operating profit, €2 billion -state dividends, €1.5 billion	18.8% (assets)	<a href="http://vnk.fi/en/value-of-state-shareholdings">http://vnk.fi/en/value-of-state-shareholdings</a> ; <a href="http://vnk.fi/documents/10616/1221497/2015_OO+vuosikertomus+Eng.pdf/b3dab59c-f9a4-4340-847b-6e98ef9f4aca">http://vnk.fi/documents/10616/1221497/2015_OO+vuosikertomus+Eng.pdf/b3dab59c-f9a4-4340-847b-6e98ef9f4aca</a>
France	81	List of companies per Decree No. 2004-963 plus shareholdings in companies in which the Government holds less than 1% of the capital	EDF (electricity), La Poste (post), SNCF (rail transport)	-total state shareholdings, €90 billion -total revenues, €147 billion -total dividends received by the state, €3.9 billion -annual average number of employees, 1,666,000	6.7% (revenues)	<a href="http://www.economie.gouv.fr/files/files/directions_services/agence-participations-etat/RAPPORT_D'ACTIVITE_APE_2015-2016_MD.pdf">http://www.economie.gouv.fr/files/files/directions_services/agence-participations-etat/RAPPORT_D'ACTIVITE_APE_2015-2016_MD.pdf</a> ; <a href="http://www.economie.gouv.fr/files/files/directions_services/agence-participations-etat/Rapport_APE(1).pdf">http://www.economie.gouv.fr/files/files/directions_services/agence-participations-etat/Rapport_APE(1).pdf</a>
Germany	673 (Federal) and 15,314 in total (including states and municipalities)	Where the federal government has a direct investment or indirect investment of 25% or €50,000 capital; for others, where government has more than 50% of the capital or voting rights	KfW (financial), Deutsche Bahn (Rail), Deutsche Telekom (Telecom)	Data for all types: -total assets, €1.86 trillion - total revenue, €528.7 billion - total expenditure, €513.8 billion	61% (assets)	<a href="http://www.bundesfinanzministerium.de/Content/DE/Monatsberichte/2016/06/Inhalte/Kapitel-3-Analysen/3-4-Beteiligung-des-Bundes-an-Unternehmen.html#f1">http://www.bundesfinanzministerium.de/Content/DE/Monatsberichte/2016/06/Inhalte/Kapitel-3-Analysen/3-4-Beteiligung-des-Bundes-an-Unternehmen.html#f1</a> ; <a href="https://www.destatis.de/DE/ZahlenFakten/GesellschaftStaat/OeffentlicheFinanzenSteuern/OeffentlicheFinanzen/FondsEinrichtungenUnternehmen/Tabellen/Jahresabschluesse_Wirtschaftsbereiche.html">https://www.destatis.de/DE/ZahlenFakten/GesellschaftStaat/OeffentlicheFinanzenSteuern/OeffentlicheFinanzen/FondsEinrichtungenUnternehmen/Tabellen/Jahresabschluesse_Wirtschaftsbereiche.html</a>

	No. of SOEs	Definition of SOE by the member State in providing statistics	Indicative SOEs and sectors concerned	Main indicators	Main indicator as % GDP	References
Greece	13 Chapter A of Law 3429/2005, 48 of the general government with a budget over €10 million, plus others in privatization portfolio	State owned enterprises defined by law	OSE (rail infrastructure), EGNATIA ODOS (highways)	-total state assets, €50 billion For chapter A: -total revenues, €2.62 billion -profit, €573 million For general government <sup>d</sup> -total revenues, €726 million -profit, €287 million	28.4% (assets)	<a href="https://www.oecd.org/policy-briefs/greece-reforming-the-state-owned-enterprises-sector.pdf">https://www.oecd.org/policy-briefs/greece-reforming-the-state-owned-enterprises-sector.pdf</a> ; <a href="http://www.minfin.gr/sites/default/files/financial_files/12month_2015_BULLETIN.pdf">http://www.minfin.gr/sites/default/files/financial_files/12month_2015_BULLETIN.pdf</a> ; <a href="http://www.minfin.gr/sites/default/files/financial_files/DEKO_targets_6month_2016.pdf">http://www.minfin.gr/sites/default/files/financial_files/DEKO_targets_6month_2016.pdf</a>
Hungary	500+	State-owned business enterprises in which it has a majority or minority ownership or exercises ownership rights	MVM Hungarian Electricity (energy), Szerencsejáték Ltd (gaming)	-total assets, Ft 17 trillion HUF	50% (assets)	<a href="http://www.mnv.hu/en/top_menu/company">http://www.mnv.hu/en/top_menu/company</a>
Ireland	241	Financial and non-financial bodies that are directly or indirectly controlled by a government office or lack autonomy	Irish Bank Resolution Corporation (financial), TSB Group (financial), Coillte Teoranta (natural resources)	..	..	<a href="http://www.finance.gov.ie/sites/default/files/FINANCE%20ACCOUNTS%202015%20-%20To%20PrintRoom%2009.08.2016.pdf">http://www.finance.gov.ie/sites/default/files/FINANCE%20ACCOUNTS%202015%20-%20To%20PrintRoom%2009.08.2016.pdf</a> ; <a href="http://www.cso.ie/en/media/csoie/surveysandmethodologies/documents/pdfdocs/nationalaccounts/RegPubSecBodiesOct2016.pdf">http://www.cso.ie/en/media/csoie/surveysandmethodologies/documents/pdfdocs/nationalaccounts/RegPubSecBodiesOct2016.pdf</a>
Italy <sup>c</sup>	34 under the Department of Treasury, including 10,964 in total	For Department of Treasury, listed and non-listed companies where the state has majority or controlling shareholding; total is companies where there is public participation	Eni (energy), Ferrovie dello Stato (rail transport), RAI (communications)	For Department of Treasury: -total assets, €969 billion For all: -employment, 953,100	59% (assets)	<a href="http://www.dt.mef.gov.it/en/attivita_istituzionali/partecipazioni/elenco_partecipazioni/">http://www.dt.mef.gov.it/en/attivita_istituzionali/partecipazioni/elenco_partecipazioni/</a> ; <a href="http://www.istat.it/it/archivio/173587">http://www.istat.it/it/archivio/173587</a> ; <a href="http://www.rqs.mef.gov.it/Documenti/VERSIONE-I/Attivit--i/Rendiconto/Conto_del_bilancio_e_Conto_del_patrimonio/Il-Patrimo/PS-2014.pdf">http://www.rqs.mef.gov.it/Documenti/VERSIONE-I/Attivit--i/Rendiconto/Conto_del_bilancio_e_Conto_del_patrimonio/Il-Patrimo/PS-2014.pdf</a>
Latvia	200	SOEs, state-owned equity shares, equity shares belonging to the SOEs and SOEs effectively controlled by the State	Citadele Banka (Financial), Latvenergo Group (Energy), Latvijas dzelzceļš Group (Railway)	-total assets, €8.17 billion -total turnover, €3.41 billion -profit, €164.4 million -avg. number of employees, 52,239 -investment in fixed assets, €676.5 million	34% (assets)	<a href="http://www.pkc.gov.lv/images/Kapitalsabiedribas/Annual_Report_on_SOEs.pdf">http://www.pkc.gov.lv/images/Kapitalsabiedribas/Annual_Report_on_SOEs.pdf</a> ; <a href="http://www.pkc.gov.lv/images/Kapitalsabiedribas/gada_parskats_web.pdf">http://www.pkc.gov.lv/images/Kapitalsabiedribas/gada_parskats_web.pdf</a>
Lithuania	131	State as full or majority share owner	Lietuvos Geležinkeliai (Lithuanian Railways), Lietuvos Energija (Energy)	-total assets, €5.73 billion -annual turnover, €759 million authorised capital, €6.24 billion	15.5% (assets)	<a href="http://www.turtas.lt/lt/privatizavimasiframe/informaciniai-biuleteniai.html">http://www.turtas.lt/lt/privatizavimasiframe/informaciniai-biuleteniai.html</a> ; <a href="https://www.oecd.org/daf/ca/Lithuania_SOE_Review.pdf">https://www.oecd.org/daf/ca/Lithuania_SOE_Review.pdf</a>

	No. of SOEs	Definition of SOE by the member State in providing statistics	Indicative SOEs and sectors concerned	Main indicators	Main indicator as % GDP	References
Luxembourg	119	Direct state holdings in private companies (both listed and non-listed); institutions, foundations, and economic interest groups; international financial institutions	BNP Paribas (financial), Cargolux (air cargo transport)	Private companies: - value of state participation, €642 million; institutions, foundations, and economic interest groups: €1.77 billion International financial institutions: €4.6 billion	13.7% (state participation value)	<a href="http://www.te.public.lu/fr/participations/societes_droit_priv.html">http://www.te.public.lu/fr/participations/societes_droit_priv.html</a> ; <a href="http://www.mf.public.lu/publications/rapports/rapport_activite_annexes_2015.pdf">http://www.mf.public.lu/publications/rapports/rapport_activite_annexes_2015.pdf</a>
Malta	11 under Malta Investment Management Company Limited, 25 under Malta Government Investments, plus many others under Ministry of Finance portfolio	..	Enemalta (utilities), Malta Freeport Corporation (port), Air Malta (airline)	..	..	<a href="http://mgismalta.com/index.php/portfolio-2/">http://mgismalta.com/index.php/portfolio-2/</a> ; <a href="http://mimcol.com.mt/">http://mimcol.com.mt/</a>
Netherlands <sup>b</sup>	38	Where the Dutch state owns shares	Schipol Airport (airport), NS (rail transport), ABN AMRO (financial)	-total state share of assets, €300 billion -state equity, €26 billion -state dividends received, €863 million	44.3% (assets)	<a href="https://www.government.nl/topics/state-owned-enterprises/contents/portfolio-of-state-owned-enterprises">https://www.government.nl/topics/state-owned-enterprises/contents/portfolio-of-state-owned-enterprises</a> ; <a href="https://www.rijksoverheid.nl/onderwerpen/staatsdeelname/documenten/jaarverslagen/2015/10/15/jaarverslag-beheer-staatsdeelname-2014">https://www.rijksoverheid.nl/onderwerpen/staatsdeelname/documenten/jaarverslagen/2015/10/15/jaarverslag-beheer-staatsdeelname-2014</a>
Poland	398	Where the state treasury held a majority or minority interest	LOT (air transport), ENERGA (energy)	-share value, PLN 39.3 billion	2.2% (share value)	<a href="http://www.msp.gov.pl/pl/polyka-wlascielska/podmioty-nadzorowane-przez-MSP.html?page=1">http://www.msp.gov.pl/pl/polyka-wlascielska/podmioty-nadzorowane-przez-MSP.html?page=1</a> ; <a href="http://www.msp.gov.pl/en/privatisation/statistics/7209,Ownership-transformation-of-state-enterprises-as-of-31-December-2015.html">http://www.msp.gov.pl/en/privatisation/statistics/7209,Ownership-transformation-of-state-enterprises-as-of-31-December-2015.html</a> ; <a href="http://bip.msp.gov.pl/bip/mienie-skarbu-panstwa/sprawozdania-o-stanie/9882,31-grudnia-2014-r.html">http://bip.msp.gov.pl/bip/mienie-skarbu-panstwa/sprawozdania-o-stanie/9882,31-grudnia-2014-r.html</a>
Portugal	86	Companies in which the state can directly or indirectly exercise a dominant influence.	TAP (air transport), Caixa Geral de Depositos (financial)	-total assets, €58.99 billion -total earnings before interest/taxes, €1.16 billion -total turnover, €7.0 billion -net profit/loss, €452 million	32.8% (assets)	<a href="http://www.utam.pt/">http://www.utam.pt/</a> ; <a href="http://www.utam.pt/documentos/Boletim%20Informativo%20QSEE%20-%204%C2%BA%20Trimestre%20de%202015.pdf">http://www.utam.pt/documentos/Boletim%20Informativo%20QSEE%20-%204%C2%BA%20Trimestre%20de%202015.pdf</a>

	No. of SOEs	Definition of SOE by the member State in providing statistics	Indicative SOEs and sectors concerned	Main indicators	Main indicator as % GDP	References
Romania	296 central and 1,261 local/regional	Companies in which the state or administrative territory are sole shareholders or have a participation rate that provides control; where the state has guardianship; or where the state exercises control in terms of voting rights, members of the management, or influence by clause, contract or association	Posta Romana (post), Romgaz (energy), Hidroelectrica (energy)	For central SOEs: -total equity, RON 66.64 billion -assets owned by state, RON 28.04 billion -total fiscal value, RON 37.91 billion -profits, RON 4.76 billion -dividends to state, RON 2,150 billion -employees, 200,563 For local/regional SOEs: -net fiscal value, RON 9.42 billion -assets owned by local authorities, RON 3.39 billion -employees, 102,692	4.4% (assets)	<a href="http://discutii.mfinante.ro/statistic/10/Mfp/quvernanta/RAPORTANUAL2015PRIVINDACTIVITATEAIP_06122016.pdf">http://discutii.mfinante.ro/statistic/10/Mfp/quvernanta/RAPORTANUAL2015PRIVINDACTIVITATEAIP_06122016.pdf</a>
Slovakia <sup>b</sup>	66	Majority or minoring ownership by the state	Národná diaľničná spoločnosť (highways), Železnice Slovenskej republiky (rail transport)	-total equity, €21.4 billion -total profit/loss, €837 million	27.1% (equity)	<a href="https://www.finance.gov.sk/Default.aspx?CatID=10397">https://www.finance.gov.sk/Default.aspx?CatID=10397</a>
Slovenia	114, plus additional under Pension Fund Management	Direct and indirect holdings of the Republic of Slovenia	Gen Energija (energy), Abanka Vipra (banking), Posta Slovenije (post)	-total assets, €61.3 billion -total equity, €19.6 billion -net income, €1.33 billion	157% (assets)	<a href="http://www.sdh.si/en-us/asset-management/the-portfolio-by-sectors">www.sdh.si/en-us/asset-management/the-portfolio-by-sectors</a>
Spain <sup>c</sup>	17 (majority), 10 (minority), plus indirect in over 100. Plus 574 public companies	State majority or minority shareholdings in companies; and indirect shareholdings. Public companies where the public administration has the capacity to control the policy	Agencia EFE (communications), SAECA (financial), Grupo Correos (post)	For majority, minority, and indirect shareholdings: -net worth, €4.95 billion -operating income, €4.45 billion -total turnover, €4.17 billion -employment, 73,239	0.46% (net worth)	<a href="http://www.sepi.es/default.aspx?cmd=0001&amp;IdContainer=234&amp;lang=&amp;idLanguage= EN&amp;idContraste=">http://www.sepi.es/default.aspx?cmd=0001&amp;IdContainer=234&amp;lang=&amp;idLanguage= EN&amp;idContraste=</a> <a href="http://www.sepi.es/default.aspx?cmd=0001&amp;IdContainer=232&amp;anio=2015&amp;lang=&amp;idLanguage= EN&amp;idContraste=">http://www.sepi.es/default.aspx?cmd=0001&amp;IdContainer=232&amp;anio=2015&amp;lang=&amp;idLanguage= EN&amp;idContraste=</a> <a href="http://www.igae.pap.minhap.gob.es/sitios/igae/es-ES/ContabilidadNacional/informPublicas/Paginas/empresaspublicas.aspx">http://www.igae.pap.minhap.gob.es/sitios/igae/es-ES/ContabilidadNacional/informPublicas/Paginas/empresaspublicas.aspx</a>

	No. of SOEs	Definition of SOE by the member State in providing statistics	Indicative SOEs and sectors concerned	Main indicators	Main indicator as % GDP	References
Sweden <sup>a, b</sup>	49 (An additional 119 owned by county councils and 1,756 by municipalities in 2014)	State wholly owned and partly owned companies managed actively by the state	Vattenfall (energy), Systembolaget (alcohol distribution), LKAB (minerals)	-total assets, 1,539 SEK billion -employees, 165,000 -net profit, 16.5 SEK billion -market value, 460 SEK billion	36.8% (assets)	<a href="http://www.government.se/government-policy/state-owned-enterprises/">http://www.government.se/government-policy/state-owned-enterprises/</a> <a href="http://www.government.se/contentassets/0126b664c843479d8696d1be546fe4b6/annual-report-state-owned-companies-2014">http://www.government.se/contentassets/0126b664c843479d8696d1be546fe4b6/annual-report-state-owned-companies-2014</a> <a href="http://www.scb.se/en/Findin-g-statistics/Statistics-by-subject-area/Public-finance/Local-Government-finance/Publicly-owned-enterprises/Aktuell-Pong/11928/220669/">http://www.scb.se/en/Findin-g-statistics/Statistics-by-subject-area/Public-finance/Local-Government-finance/Publicly-owned-enterprises/Aktuell-Pong/11928/220669/</a>
U.K. <sup>e</sup>	3,038 (2,591 academy trusts, 218 parent companies, and 229 subsidiary companies)	Companies in government including private limited, unlimited, community interest companies, royal charter, statutory, trading fund, registered societies, and industrial and provident societies. Public corporations refer to market entities that are controlled by central or local governments and derive more than 50% of production costs from the sale of goods or services at economically significant prices.	Lloyds Bank (financial), Royal Bank of Scotland (financial)	Public corporations: -total assets, £564.9 billion -revenues from sales, £6.6 billion -total liabilities, £910.4 billion -avg. number of employees, 115,433	30.2% (assets)	<a href="https://www.nao.org.uk/wp-content/uploads/2015/12/Companies-in-Government_updated.pdf">https://www.nao.org.uk/wp-content/uploads/2015/12/Companies-in-Government_updated.pdf</a> ; <a href="https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/539465/PE_SA_2016_Publication.pdf">https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/539465/PE_SA_2016_Publication.pdf</a> ; <a href="https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/525617/WEB_whole_of_gov_accounts_2015.pdf">https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/525617/WEB_whole_of_gov_accounts_2015.pdf</a>

.. Not available.

a Data includes only state (centrally) owned SOEs.

b 2014 data.

c 2013 data.

d First 6 months of 2016.

e 2014-15 fiscal year data.

Note: The SOEs may not be wholly or majority state-owned, and the state may not exercise control over the SOEs named in the table.

Source: Compiled by the WTO Secretariat from sources listed in the table. GDP figures from Eurostat.



Table A4.1 Extra-EU-28 trade by major partner in 2010-15

(€ million and %)

	2010	2011	2012	2013	2014	2015	Share in 2015 (%)	Growth p.a. 2010-15 (%)	Major traded products in 2015 (as a share of extra-EU trade with each partner)
<b>EU-28 imports</b>	<b>17,903</b>	<b>19,269</b>	<b>19,520</b>	<b>20,085</b>	<b>21,405</b>	<b>22,739</b>		<b>4.9</b>	<b>Salmon (20.4%); cod (9.7%); tropical shrimp (8.9%)</b>
Norway	3,923	3,960	4,066	4,707	5,112	5,589	24.6	7.3	Salmon (70.9%); cod (14.1%); herring (3%)
China	1,545	1,720	1,622	1,503	1,509	1,611	7.1	0.8	Alaska pollock (22.9%); cod (18.1%); salmon (10.1%)
Iceland	935	994	975	985	938	1,117	4.9	3.6	Cod (50%); redfish (6.9%); fishmeal (6.9%)
Morocco	841	860	878	901	961	1,113	4.9	5.7	Octopus (27.8%); sardine (12.7%); miscellaneous shrimps (12.5%)
United States	802	923	887	815	893	1,035	4.6	5.2	Alaska pollock (23.8%); <i>homarus spp.</i> (11.2%); salmon (10.2%)
Ecuador	685	834	954	1,073	1,067	1,029	4.5	8.5	Tropical shrimp (54.3%); skipjack tuna (28.4%); yellowfin tuna (8.2%)
Viet Nam	862	930	850	794	912	1,015	4.5	3.3	Freshwater catfish (24.7%); tropical shrimp (21.9%); miscellaneous shrimps (20.8%)
India	539	619	627	637	876	918	4.0	11.2	Tropical shrimp (44.3%); miscellaneous shrimps (18.1%); other molluscs and aquatic invertebrates (16.8%)
Argentina	623	587	521	573	573	625	2.7	0.1	Miscellaneous shrimps (69.3%); hake (13.8%); squid (6.2%)
Canada	341	357	366	395	442	548	2.4	10.0	Miscellaneous shrimps (47%); <i>homarus spp.</i> (22.1%); other cold-water shrimps (8%)
Russian Federation	272	327	350	387	432	537	2.4	14.6	Cod (64.7%); Alaska pollock (15.4%); haddock (8.6%)
Faroe Islands	438	473	493	552	546	506	2.2	2.9	Salmon (45.9%); cod (17.5%); saithe (=coalfish) (8.5%)
Thailand	819	903	828	738	646	481	2.1	-10.1	Skipjack tuna (25.8%); squid (17.8%); miscellaneous shrimps (13.7%)
Chile	385	445	410	450	489	477	2.1	4.4	Salmon (32.4%); other mussels (25.1%); hake (9.1%)
<b>EU-28 exports</b>	<b>3,397</b>	<b>3,856</b>	<b>4,423</b>	<b>4,521</b>	<b>4,666</b>	<b>4,829</b>		<b>7.3</b>	<b>Salmon (14.9%); fishmeal (6.5%); mackerel (6.5%)</b>
United States	393	470	452	508	582	603	12.5	9.0	Salmon (59.2%); octopus (7.4%); other marine fish (4.3%)
Norway	356	429	462	499	551	513	10.6	7.6	Fish oil (31.9%); fishmeal (30%); mackerel (9%)
China	231	261	324	343	397	422	8.7	12.9	Salmon (18.2%); cod (15.8%); Greenland halibut (12.9%)
Switzerland	296	319	342	371	360	398	8.2	6.1	Other marine fish (25.6%); salmon (21.8%); other freshwater fish (5.7%)
Japan	257	303	305	307	283	344	7.1	6.0	Bluefin tuna (46.4%); miscellaneous tunas (10.5%); caviar, livers and roes (5.4%)
Nigeria	156	153	256	192	276	272	5.6	11.7	Mackerel (46.5%); herring (23.8%); blue whiting (11.9%)
Viet Nam	48	105	137	161	181	205	4.2	33.9	Greenland halibut (48.6%); salmon (15.9%); toothfish (6.6%)
Egypt	112	100	132	113	130	147	3.0	5.6	Horse mackerel (43%); herring (25.7%); mackerel (23.9%)
Morocco	107	115	107	102	116	143	3.0	6.0	Shrimp <i>crangon spp.</i> (57.2%); anchovy (15.1%); other cold-water shrimps (12.4%)
Hong Kong	82	88	73	74	80	122	2.5	8.2	Other marine fish (13.7%); toothfish (10.8%); rock lobster and sea crawfish (10.4%)
Korea, Republic of	48	45	59	69	75	114	2.4	18.9	Other molluscs and aquatic invertebrates (43.9%); fishmeal (10.9%); squid (8.2%)
Australia	34	40	49	63	82	86	1.8	20.2	Salmon (47.8%); other marine fish (7.2%); anchovy (6%)
Russian Federation	255	224	219	211	161	71	1.5	-22.6	Other cold-water shrimps (43.7%); miscellaneous small pelagics (17.1%); herring (9.8%)
Brazil	64	82	82	79	84	67	1.4	0.9	Cod (74.4%); other sharks (8.1%); other marine fish (7.4%)

Source: WTO Secretariat calculations, based on Eurostat online database. Viewed at: <http://ec.europa.eu/eurostat/data/database> [February 2017].