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

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II

(Non-legislative acts)

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) 2018/787**of 25 May 2018****concerning the classification of certain goods in the Combined Nomenclature**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code ⁽¹⁾, and in particular Article 57(4) and Article 58(2) thereof,

Whereas:

- (1) In order to ensure uniform application of the Combined Nomenclature annexed to Council Regulation (EEC) No 2658/87 ⁽²⁾, it is necessary to adopt measures concerning the classification of the goods referred to in the Annex to this Regulation.
- (2) Regulation (EEC) No 2658/87 has laid down the general rules for the interpretation of the Combined Nomenclature. Those rules apply also to any other nomenclature which is wholly or partly based on it or which adds any additional subdivision to it and which is established by specific provisions of the Union, with a view to the application of tariff and other measures relating to trade in goods.
- (3) Pursuant to those general rules, the goods described in column (1) of the table set out in the Annex should be classified under the CN code indicated in column (2), by virtue of the reasons set out in column (3) of that table.
- (4) It is appropriate to provide that binding tariff information issued in respect of the goods concerned by this Regulation which does not conform to this Regulation may, for a certain period, continue to be invoked by the holder in accordance with Article 34(9) of Regulation (EU) No 952/2013. That period should be set at three months.
- (5) The measures provided for in this Regulation are in accordance with the opinion of the Customs Code Committee,

HAS ADOPTED THIS REGULATION:

Article 1

The goods described in column (1) of the table set out in the Annex shall be classified within the Combined Nomenclature under the CN code indicated in column (2) of that table.

Article 2

Binding tariff information which does not conform to this Regulation may continue to be invoked in accordance with Article 34(9) of Regulation (EU) No 952/2013 for a period of three months from the date of entry into force of this Regulation.

⁽¹⁾ OJ L 269, 10.10.2013, p. 1.

⁽²⁾ Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256, 7.9.1987, p. 1).

Article 3

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

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

Done at Brussels, 25 May 2018.

*For the Commission,
On behalf of the President,
Stephen QUEST
Director-General
Directorate-General for Taxation and Customs Union*

ANNEX

Description of the goods	Classification (CN-code)	Reasons
(1)	(2)	(3)
An article (so-called 'lace-orthosis') made of several pieces of textile material sewn together, with an opening for the heel and the toes, hemmed around the openings and on the edges of the article. The vamp area is closed by a tongue made of crocheted textile material. The other textile parts consist of several layers of elastically crocheted textile materials. A plate of elastic plastic is fixed to the textile and only partly visible on the outside of the article. The plastic plate reaches around the sole and has eyelets along the vamp of the article and lace hooks along the shaft to allow for tightening the article around the foot and calf with textile laces. The plastic plate gives some stability to the article. Nevertheless it is flexible and, when tightened with the laces, it applies pressure against the foot and calf. This article is presented to be worn inside a shoe and used as an ankle bandage in the case of sprained ankles and contusions of the ankle, ligament tears and lesions, and for the prevention of these injuries, as well as in the case of ligament instability. However, it cannot completely prevent a specific movement of the defective part of the body. In postoperative rehabilitation, it facilitates a return to full weight-bearing. See images (*).	6307 90 10	Classification is determined by general rules 1, 3(c) and 6 for the interpretation of the Combined Nomenclature and by the wording of CN codes 6307, 6307 90 and 6307 90 10. The article cannot be adjusted to a specific handicap of a patient but has a multi-functional use. It is similar to a simple textile bandage that is wrapped around a ligament and tightened around certain parts to apply pressure to support healing or to prevent further injuries, ensuring that undesired movements are not carried out subconsciously as reflex movements (see also the Explanatory Notes to the Combined Nomenclature (CNEN) of the European Union to subheading 9021 10 10, second paragraph). Consequently, the article's objective characteristics are such that they do not distinguish it from ordinary supports for general use, in particular, by reason of the materials of which it is made (flexible materials), the method of operation (applying pressure through tightening) or the adjustability to the patient's specific handicaps (see also Note 6 to Chapter 90 and judgment of 7 November 2002, <i>Lohmann and Medi Bayreuth</i>, Joined Cases C-260/00 to C-263/00, ECLI:EU:C:2002:637, paragraphs 39 and 45). Moreover, the article cannot be classified as an 'orthopaedic appliance' under CN code 9021 10 10 as, due to its elasticity, it cannot completely prevent a specific movement of the defective part of the body in order to exclude further injuries (see also the CNEN to subheading 9021 10 10, second paragraph). For example, in case of torn ligaments, the article should make the tilting of the ankle joint impossible even when running or jumping. However, the textile material and the flexible plastic material that the article is made of cannot sustain the weight of the body during running. The desired effect of application of pressure is given by the plastic as well as by the textile materials. Consequently, both materials are equally essential within the meaning of general rule 3 (b) for the interpretation of the Combined Nomenclature and the article is to be classified under the heading which occurs last in numerical order among those which equally merit consideration (headings 3926 and 6307). The article is therefore to be classified under CN code 6307 90 10 as 'other made-up textile articles'.

(*) The images are purely for information.



COMMISSION IMPLEMENTING REGULATION (EU) 2018/788**of 30 May 2018**

amending Implementing Regulation (EU) 2017/1993 imposing a definitive anti-dumping duty on imports of certain open mesh fabrics of glass fibres originating in the People's Republic of China as extended to imports of certain open mesh fabrics of glass fibres consigned from India, Indonesia, Malaysia, Taiwan and Thailand, whether declared as originating in these countries or not following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union ⁽¹⁾ ('the basic Regulation'), and in particular Articles 11(4) and 13(4) thereof,

Whereas:

1. MEASURES IN FORCE

- (1) By Regulation (EU) No 791/2011 ⁽²⁾ the Council imposed a residual anti-dumping duty of 62,9 % on imports of certain open mesh fabrics of glass fibres, originating in the People's Republic of China. Following an anti-circumvention investigation under Article 13 of the basic Regulation, these measures were later extended to imports consigned from India and Indonesia, whether declared as originating in India and Indonesia or not, by Council Implementing Regulation (EU) No 1371/2013 ⁽³⁾ ('the extended measures'). By the same Regulation, an Indian exporting producer was exempted from these extended measures. Later, by Commission Implementing Regulation (EU) 2015/1507 ⁽⁴⁾ another Indian exporting producer was also exempted from the extended measures.
- (2) Following an anti-circumvention investigation pursuant to Article 13 of the basic Regulation, the anti-dumping measures were extended also to Malaysia ⁽⁵⁾, Taiwan and Thailand ⁽⁶⁾.
- (3) The measures currently in force are anti-dumping duties imposed by Commission Implementing Regulation (EU) 2017/1993 ⁽⁷⁾ following an expiry review that confirmed the continuation of the measures.

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

⁽²⁾ Council Implementing Regulation (EU) No 791/2011 of 3 August 2011 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain open mesh fabrics of glass fibres originating in the People's Republic of China (OJ L 204, 9.8.2011, p. 1).

⁽³⁾ Council Implementing Regulation (EU) No 1371/2013 of 16 December 2013 extending the definitive anti-dumping duty imposed by Implementing Regulation (EU) No 791/2011 on imports of certain open mesh fabrics of glass fibres originating in the People's Republic of China to imports of certain open mesh fabrics of glass fibres consigned from India and Indonesia, whether declared as originating in India and Indonesia or not (OJ L 346, 20.12.2013, p. 20).

⁽⁴⁾ Commission Implementing Regulation (EU) 2015/1507 of 9 September 2015 amending Council Implementing Regulation (EU) No 1371/2013 extending a definitive anti-dumping duty imposed on imports of certain open mesh fabrics of glass fibres originating in the People's Republic of China to imports consigned, inter alia, from India, whether declared as originating in India or not (OJ L 236, 10.9.2015, p. 1).

⁽⁵⁾ Council Implementing Regulation (EU) No 672/2012 of 16 July 2012, extending the definitive anti-dumping duty imposed by Implementing Regulation (EU) No 791/2011 on imports of certain open mesh fabrics of glass fibres originating in the People's Republic of China to imports of certain open mesh fabrics of glass fibres consigned from Malaysia, whether declared as originating in Malaysia or not (OJ L 196, 24.7.2012, p. 1).

⁽⁶⁾ Council Implementing Regulation (EU) No 21/2013 of 10 January 2013 extending the definitive anti-dumping duty imposed by Implementing Regulation (EU) No 791/2011 on imports of certain open mesh fabrics of glass fibres originating in the People's Republic of China to imports of certain open mesh fabrics of glass fibres consigned from Taiwan and Thailand, whether declared as originating in Taiwan and Thailand or not (OJ L 11, 16.1.2013, p. 1).

⁽⁷⁾ Commission Implementing Regulation (EU) 2017/1993 of 6 November 2017 imposing a definitive anti-dumping duty on imports of certain open mesh fabrics of glass fibres originating in the People's Republic of China as extended to imports of certain open mesh fabrics of glass fibres consigned from India, Indonesia, Malaysia, Taiwan and Thailand, whether declared as originating in these countries or not, following an expiry review pursuant to Article 11(2) of the Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ L 288, 7.11.2017, p. 4).

2. REQUEST FOR A REVIEW

- (4) The European Commission ('the Commission') subsequently received a request for an exemption from the anti-dumping measures applicable to imports of the product under review originating in the People's Republic of China, as extended to imports consigned from India, whether declared as originating in India or not, under Articles 11(4) and 13(4) of the basic Regulation.
- (5) The request was lodged on 26 January 2017 by SPG Glass Fibre PVT. LTD ('the applicant'), an exporting producer of the product under review in India ('the country concerned'). This request was limited in scope to the possibility of obtaining an exemption from the extended measures as far as the applicant is concerned.
- (6) The Commission examined the evidence submitted by the applicant and considered it sufficient to justify the initiation of an investigation pursuant to Articles 11(4) and 13(4) of the basic Regulation. The Commission thus initiated an investigation on 1 September 2017 by publishing Commission Implementing Regulation (EU) 2017/1514 ⁽¹⁾ in the *Official Journal of the European Union*.
- (7) Furthermore, pursuant to Article 3 of Implementing Regulation (EU) 2017/1514, the Commission directed customs authorities to take the appropriate steps to register imports of the product under review consigned from India and produced and sold for export to the Union by the applicant, in accordance with Article 14(5) of the basic Regulation.

3. PRODUCT UNDER REVIEW

- (8) The product subject to the present review is open mesh fabrics of glass fibres, of a cell size of more than 1,8 mm both in length and in width and weighing more than 35 g/m², excluding glass fibre discs, originating in the People's Republic of China or consigned from India, whether declared as originating in India or not ('the product under review'), currently falling within CN codes ex 7019 51 00 and ex 7019 59 00.

4. INVESTIGATION

(a) Investigation period

- (9) The reporting period covered the period from 1 July 2016 to 30 June 2017. Data was collected from the investigation period that led to the extended measures (1 April 2012 to 31 March 2013) until the end of the reporting period ('the review investigation period').
- (10) The Commission officially advised the Union industry, the applicant and the Government of India of the initiation of the review. Interested parties were invited to make their views known and were informed of the possibility to request a hearing. No comments were received, nor did interested parties request a hearing with the Commission.
- (11) The Commission sent a questionnaire to the applicant and received a reply within the given deadline. The Commission sought and verified on the spot all the information necessary for the purposes of the review. A verification visit was carried out at the premises of the applicant in Mumbai and in Umbergaon, India.

(b) The applicant

- (12) The applicant is SPG Glass Fibre PVT. LTD an exporting producer of the product under review in India.

(c) Findings of the investigation

- (13) The Commission examined whether the conditions for granting an exemption under Article 11(4) and 13(4) of the basic Regulation were fulfilled.
- (14) The investigation confirmed that the applicant had not exported the product under review to the Union during the investigation period of the anti-circumvention investigation that led to the extended measures, that is 1 April 2012 to 31 March 2013.
- (15) The investigation confirmed that the applicant was not related to any Chinese exporters or producers subject to the anti-dumping measures.

⁽¹⁾ Commission Implementing Regulation (EU) 2017/1514 of 31 August 2017 initiating a review of Council Implementing Regulation (EU) No 1371/2013 (extending the definitive anti-dumping duty imposed by Implementing Regulation (EU) No 791/2011 on imports of certain open mesh fabrics of glass fibres originating in the People's Republic of China to imports of certain open mesh fabrics of glass fibres consigned from India and Indonesia, whether declared as originating in India and Indonesia or not) for the purposes of determining the possibility of granting an exemption from those measures to one Indian exporting producer, repealing the anti-dumping duty with regard to imports from that exporting producer and making imports from that exporting producer subject to registration (OJ L 226, 1.9.2017, p. 1).

- (16) Furthermore, the investigation confirmed that the applicant is a genuine producer of the product under review not engaged in circumvention practices. The applicant is an integrated producer purchasing domestically produced glass spheres for the production of glass fibres and using the latter as the raw material for open mesh fabrics. The finished product has subsequently been sold on the domestic market in a continuous manner. More recently, as the applicant is aiming to export its goods, some export transactions to countries outside the European Union have taken place.
- (17) The investigation confirmed that the applicant was not purchasing the finished product under review from the People's Republic of China in order to resell or tranship to the Union.
- (18) The applicant was also able to produce written evidence of a contractually binding nature containing an obligation to ship the product under review to a customer in the Union. Actual shipments have not yet taken place, since it has been mutually agreed to await the outcome of this proceeding before proceeding with shipments.
- (19) The findings above were disclosed to the applicant and the Union industry, which were given the opportunity to provide comments. The applicant submitted that it agreed to the Commission's findings.
- (20) Comments on disclosure were made by the Union industry, objecting to the exemption. In particular, it expressed doubts concerning the integrated nature of SPG's production, and the finding that the raw materials were not of Chinese origin. It also contested that SPG would endeavour to produce glass fibre itself as this would entail an outdated melting process with prohibitively high energy costs. It complained that the public file did not allow it to address these concerns, especially in relation to earlier data on the record.
- (21) The Commission added an explanatory note to the public file which confirms that SPG's sourcing of C-type glass fibre yarn and roving from China was replaced by SPG's own production of glass fibres from glass spheres, sourced in India, as from 2016 when the appropriate machinery was purchased, and thus made SPG an integrated producer of the product concerned. These facts and the accompanying increase in energy costs were confirmed during the on-spot verification. However, the findings do not allow for judging the appropriateness of the production process. The Union industry's claims were therefore rejected.

(d) Conclusions

- (22) In accordance with the findings described in recitals (13) to (18), the Commission concludes that the applicant fulfils the conditions for an exemption under Articles 11(4) and 13(4) of the basic Regulation and should be added to the list of companies that are exempted from the anti-dumping duty imposed by Implementing Regulation (EU) 2017/1993.
- (23) The exemption from the extended measures granted to imports of the product under review produced by the applicant, in accordance with Article 13(4) of the basic Regulation, remains valid on condition that the facts as finally ascertained justify the exemption. Should new prima facie evidence indicate otherwise, an investigation may be initiated by the Commission to establish whether withdrawal of the exemption is warranted.
- (24) The exemption from the extended measures granted to imports of the product under review produced by the applicant is made on the basis of the findings of the present review. This exemption is thus exclusively applicable to imports of the product under review consigned from India and produced by the abovementioned specific legal entity. Imported product under review produced by any company not specifically mentioned in Article 1(3) of Implementing Regulation (EU) 2017/1993 with its name, including entities related to those specifically mentioned, should not benefit from the exemption and should be subject to the residual duty rate as imposed by that Regulation.
- (25) Implementing Regulation (EU) 2017/1993 should be amended to include SPG Glass Fibre PVT. LTD in its Article 1(3).
- (26) In order to benefit from the exemption an invoice conforming to certain requirements should be produced to the customs authorities. It is noted that this same requirement is applicable to Montex Glass Fibre Industries Pvt.Ltd and to Pyrotek India Pvt. Ltd These companies have already received an exemption from the measures in force. As that condition was not reproduced in Implementing Regulation (EU) 2017/1993, the omission is corrected through this Regulation.

5. COMITOLGY REQUIREMENTS

- (27) This Regulation is in accordance with the opinion of the Committee established by Article 15(1) of Regulation (EU) 2016/1036.

HAS ADOPTED THIS REGULATION:

Article 1

Implementing Regulation (EU) 2017/1993 is modified as follows:

- (1) Article 1(3) is replaced by the following:

‘3. The definitive anti-dumping duty applicable to imports originating in the People’s Republic of China, as set out in paragraph 2, is hereby extended to imports of the same open mesh fabrics consigned from India and Indonesia, whether declared as originating in India and Indonesia or not (TARIC codes 7019 51 00 14, 7019 51 00 15, 7019 59 00 14 and 7019 59 00 15) with the exception of those produced by Montex Glass Fibre Industries Pvt. Ltd (TARIC additional code B942), Pyrotek India Pvt. Ltd (TARIC additional code C051), and SPG Glass Fibre Pvt. Ltd (TARIC additional code C205), to imports of the same open mesh fabrics consigned from Malaysia, whether declared as originating in Malaysia or not (TARIC codes 7019 51 00 11 and 7019 59 00 11) and to imports of the same open mesh fabrics consigned from Taiwan and Thailand, whether declared as originating in Taiwan and Thailand or not (TARIC codes 7019 51 00 12, 7019 51 00 13, 7019 59 00 12 and 7019 59 00 13).

The application of the exemption granted to Montex Glass Fibre Industries Pvt. Ltd, Pyrotek India Pvt. Ltd and SPG Glass Fibre PVT. Ltd shall be conditional upon presentation to the customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in Annex II to this Regulation. If no such invoice is presented, the anti-dumping duty as imposed by paragraph 1 shall apply.’

- (2) The text in Annex to this regulation shall be added as Annex II.

Article 2

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

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

Done at Brussels, 30 May 2018.

For the Commission

The President

Jean-Claude JUNCKER

ANNEX

'ANNEX II

A declaration signed by an official of the entity issuing the commercial invoice, in the following format, must appear on the valid commercial invoice referred to in Article 1:

1. The name and function of the official of the entity issuing the commercial invoice;
2. The following declaration:

'I, the undersigned, certify that the (volume) of (product concerned) sold for export to the European Union covered by this invoice was manufactured by (company name and address) (TARIC additional code) in (country concerned). I declare that the information provided in this invoice is complete and correct';

3. Date and signature.'
-

DECISIONS

COUNCIL IMPLEMENTING DECISION (EU) 2018/789

of 25 May 2018

authorising Hungary to introduce a special measure derogating from Article 193 of Directive 2006/112/EC on the common system of value added tax

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ⁽¹⁾, and in particular Article 395(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) In accordance with Article 193 of Directive 2006/112/EC, any taxable person carrying out a taxable supply of goods or services, as a general rule, is liable for the payment of value added tax (VAT) to the tax authorities.
- (2) By letter registered with the Commission on 13 July 2017, Hungary requested an authorisation to introduce a measure derogating from Article 193 of Directive 2006/112/EC ('the special measure') regarding the person liable for payment of VAT in case of certain supplies carried out by a taxable person subject to liquidation or any other proceedings legally establishing its insolvency.
- (3) In accordance with the second subparagraph of Article 395(2) of Directive 2006/112/EC, by letters dated 15 January 2018 the Commission transmitted the request submitted by Hungary to the other Member States. By letter dated 16 January 2018, the Commission notified Hungary that it had all the information necessary to consider the request.
- (4) Hungary claims that taxable persons in liquidation or under insolvency procedure frequently do not pay the VAT due to the tax authorities. At the same time the purchaser, being a taxable person with the right of deduction, can still deduct the VAT incurred, thus negatively impacting the budget and financing the liquidation. Hungary also registered cases of fraud whereby companies in liquidation would issue fictitious invoices to active companies and greatly reduce their payable tax without the guarantee that the issuer would pay the VAT due.
- (5) In accordance with point (g) of Article 199(1) of Directive 2006/112/EC, Member States may provide that the person liable for the payment of VAT is the taxable person to whom the supply of immovable property sold by a judgement debtor in a compulsory sale procedure is made ('the reverse charge mechanism'). To remedy the losses to public revenues, Hungary has requested a derogation from Article 193 of Directive 2006/112/EC to be authorised in order to introduce the reverse charge mechanism to other supplies by taxable persons under insolvency procedure, namely the supply of capital goods and the supply of other goods or services with an open market value exceeding HUF 100 000.
- (6) On the basis of information provided by Hungary, designating the recipient being a taxable person as the person liable for the payment of VAT in those particular cases will simplify the procedure for collecting VAT and prevent tax evasion and avoidance. Hungary considers that the special measure will also limit losses to public revenues and will result in generating additional revenues.
- (7) Hungary should therefore be authorised to apply the reverse charge mechanism to the supply of capital goods and the supply of other goods or services with an open market value exceeding HUF 100 000 by a taxable person subject to liquidation or any other proceedings legally establishing its insolvency.
- (8) The special measure should be limited in time.

⁽¹⁾ OJ L 347, 11.12.2006, p. 1.

- (9) Given the scope and novelty of the special measure, it is important to evaluate its impact. Therefore, if Hungary would consider an extension of the special measure beyond 2021, it should submit to the Commission a report including a review of the special measure together with the extension request by 31 December 2020 at the latest.
- (10) The special measure will have only a negligible effect on the overall amount of tax revenue collected at the stage of final consumption and will have no adverse impact on the Union's own resources accruing from VAT,

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from Article 193 of Directive 2006/112/EC, Hungary is authorised to provide that the person liable for payment of VAT is the taxable person to whom any of the following supplies are made:

- (a) the supply of capital goods by a taxable person subject to liquidation or any other proceedings legally establishing its insolvency;
- (b) the supply of other goods and services with an open market value exceeding HUF 100 000 at the time of supply by a taxable person subject to liquidation or any other proceedings legally establishing its insolvency.

Article 2

This Decision shall take effect on the date of its notification.

This Decision shall expire on 31 December 2021.

Article 3

This Decision is addressed to Hungary.

Done at Brussels, 25 May 2018.

For the Council
The President
V. GORANOV

RECOMMENDATIONS

COMMISSION RECOMMENDATION (EU) 2018/790

of 25 April 2018

on access to and preservation of scientific information

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 292 thereof,

Whereas:

- (1) The European Commission adopted in July 2012 a scientific information package, consisting of the communication 'Towards better access to scientific information: Boosting the benefits of public investments in research' ⁽¹⁾, and of Commission Recommendation 2012/417/EU ⁽²⁾. Recommendation 2012/417/EU states that the Commission will review the progress made across the Union to assess whether further action is needed to achieve the objectives laid down.
- (2) The communication 'A Digital Single Market Strategy for Europe' ⁽³⁾ highlights the importance of data dissemination as a catalyst for economic growth, innovation and digitisation across all economic sectors, particularly for small and medium-sized enterprises (and start-ups) and for society as a whole. It recognises that big data and high-performance computing are changing the way research is performed and knowledge is shared, as part of a transition towards a more efficient and responsive open science ⁽⁴⁾. It announces that the Commission would encourage access to public data to help drive innovation and work towards a research open science cloud as part of the European Cloud Initiative. In its mid-term review of the Digital Single Market Strategy ⁽⁵⁾, the Commission announces its intention to further improve the 'accessibility and re-use of public and publicly funded data'.
- (3) The communication on the European Cloud Initiative 'Building a competitive data knowledge and economy in Europe' ⁽⁶⁾ presents the rational and broad plan for developing the European Open Science Cloud (EOSC) as a trusted, open environment for the scientific community for storing, sharing and re-using scientific data and results. It also announces the Commission would review Recommendation 2012/417/EU on access to and preservation of scientific information to encourage scientific data sharing and the creation of incentive schemes, rewards systems and education and training programmes for researchers and businesses to share data. The Staff Working Document 'Implementation Roadmap for the EOSC' ⁽⁷⁾ presents the results of the exploration with Member States and stakeholders of possible governance and financing mechanisms for the EOSC and further details the action lines for developing the EOSC as a federation of research data infrastructures.
- (4) Directive 2003/98/EC of the European Parliament and of the Council ⁽⁸⁾ establishes the principle that all accessible data held by a public sector body need to also be re-useable for commercial and non-commercial purposes by all interested parties under non-discriminatory conditions for comparable categories of re-use and at the marginal cost linked to the distribution of the data, at maximum.

⁽¹⁾ COM(2012) 401 final of 17 July 2012

⁽²⁾ Commission Recommendation 2012/417/EU of 17 July 2012 on access to and preservation of scientific information (OJ L 194, 21.7.2012, p. 39).

⁽³⁾ COM(2015) 192 final of 6 May 2015.

⁽⁴⁾ Open science refers to a new approach to the scientific process based on cooperative work and new ways of disseminating knowledge, improving accessibility to and re-usability of research outputs by using digital technologies and new collaborative tools.

⁽⁵⁾ COM(2017) 228 final of 10 May 2017.

⁽⁶⁾ COM(2016) 178 final of 19 April 2016.

⁽⁷⁾ SWD(2018) 83 final of 14 March 2018.

⁽⁸⁾ Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information (OJ L 345, 31.12.2003, p. 90).

- (5) Open access ⁽¹⁾ policies aim to provide researchers and the public at large with access to peer-reviewed scientific publications, research data and other research outputs free of charge in an open and non-discriminatory manner as early as possible in the dissemination process, and enable the use and re-use of scientific research results. Open access helps enhance quality, reduce the need for unnecessary duplication of research, speed up scientific progress, help to combat scientific fraud, and can overall favour economic growth and innovation. Beside open access, data management planning is becoming a standard scientific practice.
- (6) Open access is a means of dissemination for researchers who may decide to publish their work, in particular in the context of publicly-funded research. Licensing solutions should aim at facilitating the dissemination and re-use of scientific publications.
- (7) Preservation of scientific research results is in the public interest. It has traditionally been under the responsibility of libraries or archives, especially national legal deposit libraries. The volume of research results generated is constantly growing. Mechanisms, infrastructures and software solutions should be in place to enable long-term preservation of research results in digital form. Sustainable funding for preservation is crucial as curation costs for digitised content are still relatively high. Given the importance of preservation for the future use of research results, the establishment or reinforcement of policies in this area should be recommended to Member States.
- (8) Technological progress has allowed for the creation of web-based research infrastructures set up by national governments, universities or research organisations. They support the objectives of this Recommendation by helping researchers to manage the results of their research and enabling dissemination. The communication on the European Cloud Initiative announced that 'the European Open Science Cloud will start by federating existing scientific data infrastructures, today scattered across disciplines and Member States.' It is appropriate to identify and recommend the measures at national level that should enable proper functioning and use of the EOSC.
- (9) Technological progress has over time caused a major shift in the world of science towards increasingly collaborative methods, and has steadily contributed to an increasing volume of scientific material. In a scientific approach that is becoming increasingly collaborative and transparent, it should be ensured that researchers at all stages of their education and career have access to professional development, including through higher education programmes. They should also have the possibility to develop the appropriate skills to fully engage with open science, as outlined by the 'Digital Education Action Plan' ⁽²⁾.
- (10) Incentives and rewards are important aspects in a professional career. Although researchers are encouraged to move across borders, disciplines and sectors, and to participate in the culture of sharing their results, this is often not rewarded or reflected in their professional career development. Transparent and responsible indicators are being developed to support the implementation of open science practices in modern universities. Upgraded rewarding mechanisms that take into account new generation metrics could be used to better measure the quality of European research and provide a valuable incentive for researchers to share the result of their research, and for universities to become more entrepreneurial while fostering competition within the internal market.
- (11) Member States should continue to support open science and open access, as stated in the Council Conclusions on 'open, data-intensive and networked research as a driver for faster and wider innovation' ⁽³⁾ and on 'the transition towards an open science system' ⁽⁴⁾.
- (12) The move towards open access is a worldwide endeavour. Member States have been part of this endeavour and should be supported in enhancing an open, collaborative research environment based on reciprocity at a global level. Open science is a key feature of Member States' policies for responsible research and for open innovation. As new digital technologies become available, research and funding policies should adapt to this new environment.

⁽¹⁾ Open access refers to the possibility to access and re-use digital research outputs with as few restrictions as possible.

⁽²⁾ COM(2018) 22 final.

⁽³⁾ Council Conclusions 9360/15 of 29 May 2015.

⁽⁴⁾ Council Conclusions 9526/16 of 27 May 2016.

- (13) The Commission has been leading by example to maximise access to and re-use of research results generated in an open science environment, including in the Framework Programmes, and by applying an open data policy to the research data of the Commission's Joint Research Centre.
- (14) There have been many advances in the areas dealt with in Recommendation 2012/417/EU and in the other documents listed in the preceding recitals, but not all targets have been met and progress has been uneven among Member States. A greater effort by all Member States is needed in order to make the most of Europe's research and innovation potential.
- (15) This Recommendation builds on and replaces Recommendation 2012/417/EU,

HAS ADOPTED THIS RECOMMENDATION:

Open access to scientific publications

1. Member States should set and implement clear policies (as detailed in national action plans) for the dissemination of and open access to scientific publications resulting from publicly funded research. Those policies and action plans should provide for:

- concrete objectives and indicators to measure progress,
- implementation plans, including the allocation of responsibilities and appropriate licensing,
- associated financial planning.

Member States should ensure, in compliance with the EU *acquis* on copyright and related rights, that as a result of these policies or action plans:

- all scientific publications resulting from publicly-funded research are made available in open access as from 2020 at the latest,
- whatever the channel of publication (scientific journal, digital infrastructure, multimedia channels, or any new and experimental methods of scholarly communication), open access to publications resulting from publicly funded research be granted as soon as possible, preferably at the time of publication, and in any case no later than six months after the date of publication (no later than 12 months for social sciences and humanities),
- taking into account technological developments, licensing terms used on the market do not unduly restrict text and data mining of publications resulting from publicly funded research, in accordance with and without prejudice to applicable copyright legislation,
- researchers, when entering into contractual agreements with scientific publishers, retain the necessary intellectual property rights, inter alia, to comply with the open access policy requirements. This concerns in particular self-archiving and re-use (notably through text and data mining),
- information is published about agreements between public institutions or groups of public institutions and publishers on the supply of scientific information, in order to enhance market transparency and fair competition, without prejudice to the protection of know-how and business information (trade secrets). This should include all sorts of agreements covering in particular the so-called 'big deals' (i.e. bundles of print and electronic journal subscriptions offered at discounted prices) and the related 'offsetting deals' aimed at obtaining discounted open access publishing fees for consortia,
- innovative companies, in particular small and medium-sized enterprises, independent researchers (for instance citizen scientists), the public sector, the press and citizens at large have, in a transparent and non-discriminatory manner, the widest possible access to scientific publications of the results of research that receives public funding in view of enabling innovation, empowering the public sector and informing citizens.

2. Member States should ensure that research funding institutions responsible for managing public research funding and academic institutions receiving public funding implement the policies and national action plans referred to in point 1 at national level in a coordinated way by:

- setting institutional policies for the dissemination of and open access to scientific publications, and establishing implementation plans,

- including requirements for open access as a condition to give out grant agreements or to provide other financial support for research, together with mechanisms for monitoring compliance with these requirements and follow up actions to correct cases of non-compliance,
- making the necessary funding available for dissemination (including open access and re-use) in a transparent and non-discriminatory manner allowing for different channels, including digital infrastructures where appropriate, as well as new and experimental methods of scholarly communication,
- providing guidance to researchers on how to comply with open access policies, and supporting them to do so, especially regarding the management of their intellectual property rights to ensure open access to their publications,
- conducting joint negotiations with publishers to obtain transparent and the best possible terms for access to publications, including use and re-use,
- ensuring that publications resulting from public funding are easily identifiable by appropriate technical means, including through metadata attached to electronic versions of the research output and persistent identifiers.

Management of research data, including open access

3. Member States should set and implement clear policies (as detailed in national action plans) for the management of research data resulting from publicly funded research, including open access. Those policies and action plans should provide for:

- concrete objectives and indicators to measure progress,
- implementation plans, including the allocation of responsibilities and appropriate licensing,
- associated financial planning.

Member States should ensure that, as a result of these policies or action plans:

- data management planning becomes a standard scientific practice early in the research process when data is generated or collected, including through the requirement of data management plans,
- research data that results from publicly funded research becomes and stays findable, accessible, interoperable and re-usable ('FAIR principles') within a secure and trusted environment, through digital infrastructures (including those federated within the European Open Science Cloud (EOSC), where relevant), unless this is not possible or is incompatible with the further exploitation of the research results ('as open as possible, as closed as necessary'). This could be for reasons, in particular, of privacy, trade secrets, national security, legitimate commercial interests and to intellectual property rights of third parties. Any data, know-how and/or information whatever its form or nature which is held by private parties in a joint public/private partnership prior to the research action should not be affected by these policies or national action plans,
- taking into account technological developments (including of dynamic (real-time) data), licensing terms used on the market do not unduly restrict text and data mining of research data resulting from publicly funded research, in accordance with and without prejudice to the applicable copyright legislation,
- innovative companies, in particular small and medium-sized enterprises, independent researchers (for instance citizen scientists), the public sector, the press and citizens at large have, in a transparent and non-discriminatory manner, the widest possible access to the research data of the results of research that receives public funding in view of enabling innovation, empowering the public sector and informing citizens.

4. Member States should ensure that research funding institutions responsible for managing public research funding and academic institutions receiving public funding implement the policies and national action plans referred to in point 3 at national level in a coordinated way by:

- setting institutional policies for research data management, and establishing implementation plans,

- including requirements for data management plans and open access to research data as a principle ('as open as possible, as closed as necessary') for projects producing research data in grant agreements and other financial support for research, together with mechanisms for monitoring compliance with those requirements and follow up actions to correct cases of non-compliance,
- making the necessary funding for data management available,
- providing guidance to researchers on how to comply with research data management policies, and supporting them to do so, especially regarding the development of sound data management planning skills and digital infrastructures that support access to and preservation of research data,
- ensuring that datasets are easily identifiable through persistent identifiers and can be linked to other datasets and publications through appropriate mechanisms, and that additional information is provided to enable their proper evaluation and use.

Preservation and re-use of scientific information

5. Member States should set and implement clear policies (as detailed in national action plans) for reinforcing the preservation and re-use of scientific information (publications, data sets and other research outputs). Those policies and action plans should provide for:

- concrete objectives and indicators to measure progress,
- implementation plans, including the allocation of responsibilities and appropriate licensing,
- associated financial planning.

Member States should ensure that, as a result of those policies or action plans:

- academic institutions receiving public funding develop policies on the preservation of their scientific output,
- an effective system of deposit for electronic scientific information is in place, covering born-digital publications and the related research output,
- scientific information selected for long-term preservation receives appropriate curation, along with hardware and software necessary to allow the re-use of the information,
- unique identification (interlinking of research outputs, researchers, their affiliations and funders, and contributors) is promoted through a wide range of persistent identifiers, in order to enable findability, reproducibility and long-term preservation of the research results,
- machine-readable licensing systems and conditions are in place, compatible with already existing open licences, which allow the re-use of scientific information resulting from publicly-funded research in accordance with and without prejudice to applicable copyright legislation, in order to enable legal re-use and preservation,
- the conditions for stakeholders to offer value-added services based on the re-use of scientific information are fostered.

Infrastructures for open science

6. Member States should set and implement clear policies (as detailed in national action plans) for further developing infrastructures underpinning the system for access to, preservation, sharing and re-use of scientific information and for promoting their federation within the EOSC. Those policies and action plans should provide for:

- concrete objectives and indicators to measure progress,
- implementation plans, including the allocation of responsibilities and appropriate licensing,
- associated financial planning.

Member States should ensure that, as a result of these policies or national action plans:

- resources are earmarked, leveraged and built to be economically efficient and to innovate while fostering competition within the internal market,

- the quality and reliability of the infrastructure are ensured, including through the use of widely recognised certification mechanisms, specifications and standards,
 - researchers have an increased access, in a transparent and non-discriminatory manner, to research resources and services for storing, managing, analysing, sharing, and re-using scientific information, including through the EOSC, when available,
 - through the use of additional indicators and metrics, infrastructures are fit to collect information that underpins the monitoring and assessment of openness and open science as well as of research and career evaluation.
7. Member States should ensure synergies among national infrastructures, with the EOSC and other global initiatives by:
- engaging into the definition of standards for data and services to be accessed through the EOSC, as well as indicators and metrics to measure research impact in the context of the EOSC,
 - guaranteeing the interoperability of newly developed or upgraded infrastructures so that they take account of the development of the EOSC and, thus, prevent the emergence of silos, contributing to the reduction of fragmentation and promotion of scientific discovery and collaboration across disciplines and countries,
 - preparing the ground for the use of services and the sharing of scientific information through the EOSC.

Skills and competences

8. Member States should set and implement clear policies (as detailed in national action plans) for the necessary skills and competences of researchers and personnel of academic institutions regarding scientific information. Those policies and action plans should provide for:
- concrete objectives and indicators to measure progress,
 - implementation plans, including the allocation of responsibilities,
 - associated financial planning.

Member States should ensure that, as a result of those policies or action plans:

- the necessary training and education are provided about open access, data research management, data stewardship, data preservation, data curation and open science, as part of the higher education and training system, at all career stages, and they reach on-the-job best practice in the industry,
- the promotion or implementation, or both, of advanced-degree programmes of new professional profiles in the area of data handling technologies are provided,
- the development and training of data-intensive computational science experts are supported, including for data specialists, technicians and data managers.

Incentives and rewards

9. Member States should set and implement clear policies (as detailed in national action plans) for adjusting, with regards to scientific information, the recruitment and career evaluation system for researchers, the evaluation system for awarding research grants to researchers, and the evaluation systems for research performing institutions. Those policies and action plans should provide for:
- concrete objectives and indicators to measure progress,
 - implementation plans, including the allocation of responsibilities,
 - associated financial planning.

Member States should ensure that, as a result of those policies or action plans:

- the academic career system supports and rewards researchers who participate in a culture of sharing the results of their research, in particular by ensuring early sharing and open access to their publications and other research outputs,

- institutions responsible for managing public research funding and academic institutions that are publicly funded assist in implementing national policy by putting in place mechanisms enabling, measuring and rewarding the sharing of scientific information,
- research and career evaluation systems are enriched through the introduction of additional indicators and metrics that can inform assessment on openness, including but not only on the broader social impact of research and at the individual level of a researcher ('new generation metrics').

Multi-stakeholder dialogue on open science at national, European and international level

10. Member States should participate in multi-stakeholder dialogues on the transition towards open science at national, European and international level on each of the issues addressed in points 1 to 9.

Member States should ensure that:

- those dialogues strengthen a linked open science technological environment that covers all research outputs from all phases of the research life cycle (data, publications, software, methods, protocols, etc.),
- a systemic change towards open science is gradually achieved and includes, beyond the technological change and efficiency, the principle of reciprocity, cultural change among researchers, as well as institutional change in research within academic institutions and funders towards open science, including where applicable issues such as research integrity and ethics.

Structured coordination of Member States at Union level and follow-up to this Recommendation

11. Member States should have a national point of reference the tasks of which would be:

- coordinating the measures listed in this Recommendation,
- acting as an interlocutor with the Commission on questions pertaining to access to and preservation of scientific information, in particular better definitions of common principles and standards, implementation measures and new ways of disseminating and sharing research results in the European Research Area,
- reporting on the follow-up to this Recommendation.

12. Member States should inform the Commission 18 months from the publication of this Recommendation in the *Official Journal of the European Union*, and every two years thereafter, of action taken in response to the elements of this Recommendation. On that basis, the Commission should review the progress made across the Union to assess whether further action is needed to achieve the objectives proposed in this Recommendation.

Done at Brussels, 25 April 2018.

For the Commission

Mariya GABRIEL
Member of the Commission

Carlos MOEDAS
Member of the Commission

CORRIGENDA

Corrigendum to Commission Implementing Regulation (EU) 2017/366 of 1 March 2017 imposing definitive countervailing duties on imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China following an expiry review pursuant to Article 18(2) of Regulation (EU) 2016/1037 of the European Parliament and of the Council and terminating the partial interim review investigation pursuant to Article 19(3) of Regulation (EU) 2016/1037

(Official Journal of the European Union L 56 of 3 March 2017)

On page 126, in Annex 1

for:

Name of the Company	TARIC additional code
"Years Solar Co. Ltd"	B898'

read:

Name of the Company	TARIC additional code
"LERRI Solar Technology (Zhejiang) Co., Ltd"	B898'

