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I

(Acts whose publication is obligatory)

**COMMISSION REGULATION (EC) No 1755/2001
of 5 September 2001
establishing the standard import values for determining the entry price of certain fruit and
vegetables**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 3223/94 of 21 December 1994 on detailed rules for the application of the import arrangements for fruit and vegetables ⁽¹⁾, as last amended by Regulation (EC) No 1498/98 ⁽²⁾, and in particular Article 4(1) thereof,

Whereas:

- (1) Regulation (EC) No 3223/94 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in the Annex thereto.

- (2) In compliance with the above criteria, the standard import values must be fixed at the levels set out in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 4 of Regulation (EC) No 3223/94 shall be fixed as indicated in the Annex hereto.

Article 2

This Regulation shall enter into force on 6 September 2001.

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

Done at Brussels, 5 September 2001.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 337, 24.12.1994, p. 66.

⁽²⁾ OJ L 198, 15.7.1998, p. 4.

ANNEX

to the Commission Regulation of 5 September 2001 establishing the standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code ⁽¹⁾	Standard import value
0709 90 70	052	76,1
	999	76,1
0805 30 10	388	78,8
	524	70,1
	528	65,7
	999	71,5
0806 10 10	052	69,2
	999	69,2
0808 10 20, 0808 10 50, 0808 10 90	388	91,5
	400	77,8
	512	66,4
	528	64,0
	804	108,5
	999	81,6
	052	106,0
0808 20 50	999	106,0
0809 30 10, 0809 30 90	052	115,2
	999	115,2
0809 40 05	052	75,8
	060	60,5
	064	56,5
	066	57,1
	068	48,8
	094	49,0
	999	57,9

⁽¹⁾ Country nomenclature as fixed by Commission Regulation (EC) No 2032/2000 (OJ L 243, 28.9.2000, p. 14). Code '999' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 1756/2001**of 5 September 2001****derogating, with regard to set-aside in Austria, from Regulation (EC) No 2316/1999 laying down detailed rules for the application of Council Regulation (EC) No 1251/1999 establishing a support system for producers of certain arable crops**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1251/1999 of 17 May 1999 establishing a support system for producers of certain arable crops ⁽¹⁾, as last amended by Regulation (EC) No 1038/2001 ⁽²⁾, and in particular Article 9 thereof,

Whereas:

- (1) Commission Regulation (EC) No 2316/1999 ⁽³⁾, as last amended by Regulation (EC) No 1157/2001 ⁽⁴⁾, lays down detailed rules for the application of Regulation (EC) No 1251/1999 as regards the conditions governing area payments for certain arable crops. Article 19(2) and (3) lays down that areas set aside must so remain for a period commencing on 15 January at the latest and ending on 31 August at the earliest and must not, except where otherwise provided for, be used for agricultural production or for any lucrative purpose.
- (2) Weather conditions in recent months have been characterised by an extreme drought in certain regions of Austria which has considerably affected the supply of feed and exposed producers to serious income losses from having to sell their livestock in situations where their usual feed cannot be ensured.
- (3) It is therefore desirable to find additional local feed alternatives for the month of August to feed livestock until the autumn.

(4) The situation described above justifies derogations from Regulation (EC) No 2316/1999 by authorising, in the regions concerned, the use of set-aside land for arable crops to feed livestock before the end of the set-aside period (on 31 August at the earliest), while providing for measures to ensure that use of the land concerned is not lucrative.

(5) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

1. For the 2001/02 marketing year and notwithstanding Article 19(2) and (3) of Regulation (EC) No 2316/1999, land declared as set-aside in the regions of Austria laid down in the Annex hereto may be used for producing animal feed.

2. Austria shall take all necessary measures to ensure that the set-aside land is not used for lucrative purposes and, in particular, that the products harvested from the areas concerned are excluded from the aid scheme for dried fodder laid down in Council Regulation (EC) No 603/95 ⁽⁵⁾.

Article 2

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

It shall apply from 23 August 2001.

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

Done at Brussels, 5 September 2001.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 160, 26.6.1999, p. 1.

⁽²⁾ OJ L 145, 31.5.2001, p. 16.

⁽³⁾ OJ L 280, 30.10.1999, p. 43.

⁽⁴⁾ OJ L 157, 14.6.2001, p. 8.

⁽⁵⁾ OJ L 63, 21.3.1995, p. 1.

ANNEX

AUSTRIA

Kärnten (gesamtes Landesgebiet)

Burgenland (gesamtes Landesgebiet)

Steiermark (gesamtes Landesgebiet)

Niederösterreich (politische Bezirke: Baden, Bruck/Leitha, Mödling, Neunkirchen, Schwechat, Wien-Umgebung, Wiener Neustadt)

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 10 August 2001

on a reporting format for completion by Member States in accordance with Article 9 of Directive 1999/94/EC

(notified under document number C(2001) 1883)

(Text with EEA relevance)

(2001/677/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Directive 1999/94/EC of the European Parliament and of the Council of 13 December 1999 relating to the availability of consumer information of fuel economy and CO₂ emissions in respect of the marketing of new passenger cars ⁽¹⁾, and in particular Article 9 thereof,

Whereas:

- (1) Member States shall transmit to the Commission by 31 December 2003 a report on the effectiveness of the provisions of Directive 1999/94/EC, covering the period from 18 January 2001 until 31 December 2002.
- (2) The format of this report shall be established not later than 18 January 2001.
- (3) The measures provided for in this Decision are in accordance with the opinion of the Committee established under Article 10 of Directive 1999/94/EC.
- (4) The answers to the questions in the reporting format shall be based on national data and information

collected, using appropriate national methodologies, and shall be as comprehensive as possible,

HAS ADOPTED THIS DECISION:

Article 1

Member States shall transmit to the Commission their reports required by Article 9 of Directive 1999/94/EC in accordance with the format given in the Annex.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 10 August 2001.

For the Commission

Margot WALLSTRÖM

Member of the Commission

⁽¹⁾ OJ L 12, 18.1.2000, p. 16.

ANNEX

Reporting format for completion by Member States in accordance with Article 9 of Directive 1999/94/EC

GLOSSARY

The following definitions are included as a guide for interpretation only for the purposes for this report

Classification system for vehicles: a system for classifying cars e.g. according to their type or market class (e.g. family, mini, compact, saloon, sports utility vehicle or other parameters).

Commercial consumer: a commercial entity or a private individual which pays for the lease or purchase of the vehicle, which is to be used mainly for business purposes.

Dealer: a person representing the dealership through which the consumer purchases or leases the vehicle.

Dealership: the commercial entity from which the consumer purchases or leases the vehicle.

Multi-franchise: a dealership which sells more than one franchise (i.e. sell cars from more than one manufacturer).

Point of sale: a location, such as a car showroom or forecourt, where new passenger cars are displayed or offered for sale or lease to potential customers. Trade fairs where new passenger cars are presented to the public are included in this definition.

Private consumer: a private individual which pays for the lease or purchase of the vehicle which is not to be used for business purposes.

Single franchise: a dealership which sells a single franchise (i.e. sell cars from a single manufacturer).

Abbreviations

(M) Mandatory

(O) Optional

A. DETAILS OF INSTITUTION(S) SUBMITTING REPORT (*)

ALL MANDATORY

1. Name of person completing form:
2. Official title of person completing form:
3. Name of organisation and department of organisation:
4. Organisation type:
5. Address:
6. International telephone:
7. International telefax:
8. Email:
9. Has this institution been nominated under Article 8 of the Directive?

B. CONTEXT OF IMPLEMENTATION

1. Provide details of regulation or market arrangements either having a bearing on the choice of new passenger cars or which may otherwise influence the response to the information specified by the Directive. **(M)**
- 1.1. Please briefly specify any passenger car related or fuel related economic policies which are applied in your Member State. Please give details of these policies and how they are applied. Specify clearly if and how any of these economic measures differ in application between commercial organisations and private consumers leasing or purchasing a new passenger car(s) (e.g. company car tax relief) **(M)**
- 1.2. Are any of the economic policies described in response to question 1.1 linked to the label, guide or poster? If so, please give details. **(M)**

(*) If more than one person (or organisation/department) completing the form, please state the above specified details for each case.

- 1.3. Are there any passenger car related governmental regulations or market arrangements, in addition to those above, which may influence the choice of new passenger cars or influence the response to the information specified by the Directive? If so, please give details. **(M)**
- 1.4. Are you aware of any passenger car related non-governmental market arrangements, in addition to those above, which may influence the choice of new passenger cars or influence the response to the information specified by the Directive? If so, please give details. **(M)**
2. Details of overlapping or previous information initiatives to raise awareness of vehicle fuel economy issues. **(M)**
- 2.1. Please give brief details of any initiatives or programmes that were introduced, before the provisions of the Directive were enforced in your Member State, to raise awareness amongst motorists to fuel economy issues (e.g. fuel economy labelling scheme, TV and radio campaign). **(M)**
- 2.1.1. For such programmes introduced, please specify the time period over which these initiatives or programmes were applied. **(M)**
- 2.1.2. For such programmes introduced, please write a brief summary outlining whether or not these initiatives were seen to have an impact and the conclusions that can be drawn as to why these initiatives have or have not had an impact (see above). Alternatively, any evaluation reports which have been produced, which satisfy these aforementioned requests for information, can be submitted. **(M)**
- 2.2. Have any additional information 'tools' been employed to complement the provisions specified by the Directive 1999/94/EC (e.g. TV, radio or newspaper campaigns; awareness raising days, conferences)? For each tool used please specify the type of tool(s) used, the media used, the duration of application, an estimate of the costs and an estimate of the number of people reached. **(M)**
3. Give a brief description of the structure of the passenger car market. **(M)**
- 3.1. The number of dealerships registered in the Member State. **(M)**
- 3.2. The percentage of dealerships that are independent (i.e. not owned by a manufacturer) and not independent (i.e. owned by a manufacturer). **(M)**
- 3.3. The percentage of dealerships that are single franchise and the percentage of dealerships that are multi-franchise. **(M)**
- 3.4. The percentage of new cars that are registered (bought or leased) by private consumers. **(O)**
- 3.5. The percentage of new cars that are registered (bought or leased) by commercial consumers. **(O)**

C. ASSESSMENT OF THE EFFECTIVENESS OF THE DIRECTIVE'S PROVISIONS AND THEIR IMPLEMENTATION

1. Did you carry out studies concerning the effectiveness of the Directive 1999/94/EC with regard to any reduction of total CO₂ emissions or specific CO₂ emissions from passenger cars? Please submit results and details of the studies. **(O)**
2. Did you carry out studies concerning the costs and benefits associated with the implementation of this Directive, (e.g. for dealers, government or for car manufacturers) as regards the production and distribution of the guide, label and posters? **(O)**
- 2.1. Please submit the results of the cost estimates or cost benefit analyses and state clearly the assumptions and methodologies used. Costs estimated must strictly be additional to what would have been spent in the absence of the Directive. **(O)**
- 2.2. Do all bodies consider the costs to be acceptable? If not, please give details. **(O)**
- 2.3. How is it envisaged that costs could be reduced, if at all? **(O)**
3. Evaluation of the effectiveness of the Directive with regard to informing and influencing consumers. **(M)**

Assessment methods

- 3.1. Did your Member State assess consumer awareness of fuel economy issues before enforcement of the Directive's provisions? If so, please submit the results, conclusions drawn, details of assessment methods used and the estimated levels of accuracy. If surveys have been carried out, please give details including numbers surveyed, estimates of accuracy and estimates of representation. Please also state the time period over which assessments have been carried out. **(M)**

- 3.2. Did you test different forms of the guide, label or poster under field conditions? If so please report the details of the test methods and conditions as well as the test results. **(M)**
- 3.3. Has your Member State assessed the effectiveness of the Directive's provisions (i.e. the label, guide, poster and promotional material) with regard to enabling the consumer to make an informed choice? Has your Member State assessed consumer perception of and response to the fuel economy information provided by the Directive? If so, please give details of any assessments carried out, the methods used and the estimated levels of accuracy. If surveys have been carried out, please give details including numbers surveyed, estimates of accuracy and estimates of representation. Please also state the time period over which assessments have been carried out. **(M)**

Consumer awareness and understanding of fuel economy issues

- 3.4. How developed are consumers' awareness and understanding of fuel economy issues? **(O)**
- 3.4.1. How do private and commercial consumers rate the various factors that can be considered, including fuel economy, when choosing a new car to lease or purchase? **(O)**
- 3.4.2. How significant do private and commercial consumers believe the differences in fuel consumption between cars of the same size can be? **(O)**
- 3.4.3. How does the importance that commercial consumers attach to fuel economy vary according to the intended use of the car, the driver, economic factors other than fuel costs, the environmental policy of the organisation or any other important factors? **(O)**
- 3.4.4. How aware are private and commercial consumers of global warming and climate change issues and their link to the use of fuel (fossil fuels)? **(O)**
- 3.4.5. How does the consumer's awareness and understanding of fuel economy issues vary with the consumer's socioeconomic class, consumer's age, consumer's gender, the importance the consumer attaches to fuel costs and vehicle taxes and any other factors which are thought to be of interest? **(O)**
- 3.4.6. According to dealers, how much of a priority is fuel economy for private and commercial consumers? **(O)**
- 3.4.7. According to dealers, how often do private and commercial consumers ask about fuel economy? **(O)**

Consumer attitude to fuel economy information sources

- 3.5. How do private and commercial consumers regard fuel economy information sources? **(O)**
- 3.5.1. Which information sources do private and commercial consumers believe to be important when choosing a new passenger car for purchase or lease, including the sources of fuel economy information as provided by the Directive? **(O)**
- 3.5.2. How easy was it for private and commercial consumers to obtain fuel economy data and to compare the fuel economy of different cars? **(O)**
- 3.5.3. How easy was it for private and commercial consumers to obtain environmental impact data and to compare the environmental impact data of different cars? **(O)**

Effectiveness of the Directive provisions in general

- 3.6. How effective are the provisions of the Directive (i.e. labels, guides, posters, promotional material), taken as a whole, in enabling the consumer to make an informed choice? **(M)**

- 3.6.1. How informative do private and commercial consumers (and dealers) believe the fuel economy information scheme is (i.e. labels, guides, posters, promotional material) when considered as a whole? How does this vary with consumer's awareness of fuel economy issues, consumer's socioeconomic class, consumer's age, consumer's gender, the importance the consumer attaches to fuel costs and vehicle taxes and any other factors which are thought to be of interest? (O)
- 3.7. What degree of influence do the provisions of the Directive, taken as a whole, have on consumer behaviour? (M)
- 3.7.1. How influential do private and commercial consumers (and dealers) believe the fuel economy information scheme is as a whole (i.e. labels, guides, posters, promotional literature)? How does the response of consumers vary with the consumer's awareness of fuel economy issues, consumer's socioeconomic class, consumer's age, consumer's gender, the importance the consumer attaches to fuel costs and vehicle taxes and any other factors which are thought to be of interest? (O)
- 3.7.2. How do private consumers adjust their behaviour when choosing a car, as a result of the information gained from the fuel economy information scheme, as specified by the provisions of the Directive? How does the response of the consumer vary with the consumer's awareness of fuel economy issues, consumer's opinion of how influential the Directive's provisions are, consumer's socioeconomic class, consumer's age, consumer's gender, the importance the consumer attaches to fuel costs and vehicle taxes and any other factors which are thought to be of interest? (O)

Effectiveness of the guide

- 3.8. How effective is the guide in enabling the consumer to make an informed choice? (M)
- 3.8.1. What percentage of private and commercial consumers are aware of the guide and how are they being made aware of the guide? (O)
- 3.8.2. How are private and commercial consumers obtaining their guide? Why do private and commercial consumers that are aware of the guide not obtain a guide? What percentage of private and commercial consumers say they did not receive a guide on request at the point of sale? (O)
- 3.8.3. What percentage of private and commercial consumers observe information in the guide? (O)
- 3.8.4. How clear and understandable do private and commercial consumers (and dealers) believe the guide to be? (O)
- 3.8.5. Do private and commercial consumers (and dealers) find the guide useful? (O)
- 3.8.6. Do private and commercial consumers (and dealers) believe the guide could be improved? What improvements do they recommend? (O)
- 3.9. How influential is the guide? (M)
- 3.9.1. How influential do private and commercial consumers (and dealers) believe the guide is as regards promoting fuel efficient cars? (O)

Effectiveness of the label

- 3.10. How effective is the label in enabling the consumer to make an informed choice? (M)
- 3.10.1. What percentage of private and commercial consumers see the label on or near the car? (O)
- 3.10.2. What percentage of private and commercial consumers say the salesperson pointed out the label? What percentage of private and commercial consumers say the salesperson explained the label to them? What percentage of these consumers had asked the salesperson to explain the label to them? (O)
- 3.10.3. What percentage of private and commercial consumers read the label? (O)
- 3.10.4. How clear and understandable do private and commercial consumers (and dealers) believe the label to be? (O)
- 3.10.5. How useful do private and commercial consumers (and dealers) believe the label to be? (O)
- 3.10.6. Would private and commercial consumers prefer the label to compare the fuel economy of cars to other cars? What method of comparison would consumers prefer? (O)

- 3.10.7. Are private consumers aware of the European energy label for appliances? Do private consumers have a preference between the format of the European energy label for appliances over the format used for the fuel economy label? Would private consumers prefer labels for all products that use energy to be of a similar format? (O)
- 3.10.8. Do private and commercial consumers (and dealers) believe the label could be improved? What improvements do they recommend? (O)
- 3.11. How influential is the label? (M)
- 3.11.1. How influential do private and commercial consumers (and dealers) believe the label is as regards promoting fuel efficient cars? (O)

Effectiveness of the poster (display)

- 3.12. How effective is the poster (display) in enabling the consumer to make an informed choice? (M)
- 3.12.1. What percentage of private and commercial consumers see the posters (displays)? (O)
- 3.12.2. What are private and commercial consumers learning from the poster (display)? (O)
- 3.12.3. How clear and understandable do private and commercial consumers (and dealers) believe the poster (display) to be? (O)
- 3.12.4. How useful do private and commercial consumers (and dealers) believe the poster (display) to be? (O)
- 3.12.5. Do private and commercial consumers (and dealers) believe the poster (display) can be improved? What improvements do they recommend? (O)
- 3.13. How influential is the poster (display)? (M)
- 3.13.1. How influential do private and commercial consumers (and dealers) believe the poster (display) is as regards promoting fuel efficient cars? (O)

Effectiveness of other promotional literature

- 3.14. How effective are the Directive's provisions for other promotional literature as regards enabling the consumer to make an informed choice? (M)
- 3.14.1. How much are private and commercial consumers noticing fuel economy information in other promotional literature? (O)
- 3.14.2. How useful do private and commercial consumers believe it is to have fuel economy data stated clearly on all promotional literature? (O)
- 3.15. How influential are the Directive's provisions for other promotional literature? (M)
- 3.15.1. How influential do private and commercial consumers (and dealers) believe the Directive's provisions for other promotional literature are for promoting fuel efficient cars? (O)
- 3.16. Please submit the conclusions drawn regarding the effectiveness of the Directive's provisions with regard to informing and influencing consumers. (M)

D. FORMAT AND APPLICATION OF THE INFORMATION TOOLS

Label format

1. What is the format of the label used in your Member State? Please submit examples. (M)
- 1.1. Does the label compare the fuel economy of the car to which it refers, to that of other cars? If so, please explain how the comparison is made (e.g. cars are compared by normalising the fuel economy; cars are classified according to a classification system so that the car can be compared to other cars within the same class). (M)
- 1.2. If cars are ranked according to their fuel economy, explain how the ranking system is applied to the range of models on the market. How often are rankings updated? What is the ranking of the entire fleet's average fuel economy? (M)

- 1.3. If fuel costs are included on the label, specify the basis for their calculation (i.e. distance used and fuel cost per litre or gallon for each fuel type and number of years etc). **(M)**
- 1.4. If an 'environmental index or class' is included on the label to compare the environmental impact of the vehicle to other vehicles, please specify how the data are derived and expressed. **(M)**
- 1.5. If noise data are included on the label, please state how the data are derived and expressed. If noise data are compared to other cars, please specify how this is done. **(M)**
- 1.6. If toxic emissions and data are stated on the label, please state how the data are derived and expressed. If these data are compared to other cars, please specify how this is done. **(M)**
- 1.7. Has a classification system for allocating passenger cars to particular classes been devised for use on the label? If so, please give details as to how this system works. **(M)**
- 1.8. Are references to vehicle related economic advantages or disadvantages, such as taxes — which may influence the type of car chosen and thus link to fuel economy — included on the label? Please explain how the information is presented. **(M)**
- 1.9. In addition to the above, are there any other ways in which your fuel economy label goes beyond the minimum specifications of Annex 1 of the Directive 1999/94/EC? Please explain how the data are derived. Also give reasoning as to why the label has been designed in this way(s). **(M)**
- 1.10. Are there plans to adjust the format of the label in the future? If so, please give details, including the date(s) envisaged, how any data to be added are derived and the reasoning for the planned changes. **(M)**

Guide format

2. What is the format of the guide used in your Member State? Please submit an example(s). **(M)**
- 2.1. Is just one version of the fuel economy guide used throughout your Member State (discounting different language versions)? **(M)**
- 2.2. If fuel costs are included in the guide, please specify the basis for their calculation (i.e. distance used and fuel cost per litre or gallon for each fuel type and number of years etc.) (please state if same as for label). **(M)**
- 2.3. If an 'environmental index or class' is used to compare the environmental impact of the vehicle to other vehicles, please specify how this is derived (please state if same as for label). **(M)**
- 2.4. If noise data are included in the guide, please specify how the data are derived and expressed. If these data are compared to other cars, please specify how this is done (please state if same as for label). **(M)**
- 2.5. If toxic emissions data are stated in the guide, please state how these data are expressed? If these data are compared to other cars, please specify how this is done. **(M)**
- 2.6. Has a classification system for allocating passenger cars to particular classes been devised for use in the guide? If so, please give details as to how this system works (please state if same as for label). **(M)**
- 2.7. Are vehicle related economic advantages or disadvantages, such as taxes — which may influence the type of car chosen and thus link to fuel economy — included in the guide. Please explain how the information is presented. **(M)**
- 2.8. Are fuel economy ratings included in the guide? Please explain how the information is presented. **(M)**
- 2.9. Are there any other ways, in addition to those covered above, that your guide(s) goes beyond the minimum specifications given in Annex II of the Directive 1999/94/EC? If so, please describe how the guide goes beyond the Directive's specifications and give reasoning for the extra provisions. **(M)**
- 2.10. Does an electronic version of the guide exist? Please state the website address, the length of time the site has been operating and the number of hits to date. Are sort and search tools available? How often is the electronic guide updated? Please briefly describe its content and format. **(M)**

- 2.11. Are there plans to adjust the format of the paper-based or web-based guide in the future? If so, please give details, including the date(s) envisaged, how any data to be added are derived and reasoning for the planned changes. **(M)**

Poster (display) format

3. What is the format of the poster (display) used in your Member State? Please submit examples. **(M)**
- 3.1. Has your Member State specified any provisions in addition to that of Directive 1999/94/EC for the fuel economy posters (display)? If so, please inform us of the extra provisions as specified by your legislation or policies and give reasoning for these extra provisions. **(M)**
- 3.2. Are there plans to adjust the format of the poster (display) in the future? If so, please give details, including the date(s) envisaged, how any data to be added are derived and reasoning for the planned changes. **(M)**

Promotional literature format

4. What is the format used for promotional literature? **(M)**
- 4.1. Has your Member State specified any provisions in addition to those of Directive 1999/94/EC for 'other promotional literature'? If so, please inform us of the extra provisions as specified by your legislation or policies and give reasoning for these extra provisions. **(M)**
- 4.2. Does your Member State have any provisions for promotional non-literature material (e.g. internet, television, radio)? If so, please give details. **(M)**
- 4.3. Are there plans to adjust existing provisions for promotional literature or non-literature material in the future? If so, please give details, including the date(s) envisaged, how any data to be added are derived and reasoning for the planned changes. **(M)**

Format adjustments since Directive implementation

5. Have any of the Directive's provisions implemented in your Member State (e.g. the poster, guide, label) been modified during the assessment period (i.e. since the provisions of the Directive were originally implemented in your country)? **(M)**
- 5.1. Specify which provisions of Directive 1999/94/EC that were implemented since 18 January 2001, have since been modified. Submit examples if possible (e.g. label, guide). **(M)**
- 5.2. Please give reasoning for the various modifications. **(M)**

E. IMPLEMENTATION ISSUES

General

1. How are responsibilities distributed between the government, dealers, manufacturers and importers? **(M)**
- 1.1. Who is responsible for overseeing the design, production and distribution of the guide? **(M)**
- 1.2. Who is responsible for overseeing the design, production and distribution of the labels? **(M)**
- 1.3. Who pays for the production and distribution of the guide, label and poster? **(M)**
2. What systems have been established to produce, administer and distribute the information? **(M)**
- 2.1. How many guides are printed each year. How and to whom are the guides distributed? **(M)**
- 2.2. How do dealers obtain labels? **(M)**
- 2.3. How do dealers obtain posters? **(M)**
- 2.4. What do dealers think is a more efficient way to obtain labels, guides and posters (displays) and what do they believe are the barriers that prevent the adoption of such preferable systems? **(O)**
3. Do you intend to continue using your current production and distribution systems for the guide, label and poster? If not, please give details and reasoning for intentions to make adjustments and state when modifications are envisaged to come into force. **(M)**

4. By which date had your Member State enforced the provisions of Directive 1999/94/EC? Please specify if various provisions were enforced at different times. **(M)**
5. Has the degree of compliance with the provisions of the Directive been assessed? If so, give details of any assessment methods used and the estimated levels of accuracy. Please indicate clearly if aspects of the assessment vary for the label, poster, guide and promotional literature. If surveys have been carried out, give details including numbers surveyed, estimates of accuracy and estimates of representation. State also the time period over which assessments have been carried out. **(M)**
6. What is the degree of compliance with the provisions of the Directive? **(M)**

Label compliance

- 6.1. Are the contents and format of the label compliant with the provisions of the Directive and is the label also displayed in accordance with the provisions of the Directive? **(M)**
 - 6.1.1. Do labels comply to a standardised format in order to allow greater recognition by consumers? **(M)**
 - 6.1.2. Are all labels of A4 size (i.e. 297 mm by 210 mm)? **(M)**
 - 6.1.3. Do labels contain fuel consumption and CO₂ emissions information in accordance with Annex I of the Directive? **(M)**
 - 6.1.4. Do labels contain text as specified in Annex I of the Directive, regarding the guide's availability and CO₂ emissions? **(M)**
 - 6.1.5. What percentage of cars have a corresponding label that is compliant with all provisions of the Directive? **(O)**
 - 6.1.6. What percentage of cars have a label that is attached to the car? **(O)**
 - 6.1.7. What percentage of cars have a label that is adequately near to the car? **(O)**
 - 6.1.8. What percentage of cars have no label attached or label displayed nearby? According to dealers, what are the reasons why labels are not displayed on or near cars? **(O)**
 - 6.1.9. What percentage of cars have a label which is obscured? **(O)**
 - 6.1.10. What percentage of cars have a label which is damaged? **(O)**
 - 6.1.11. What percentage of cars have labels which do not correctly correspond to the car? **(O)**
 - 6.1.12. What percentage of cars have labels whose contents do not comply with the Directive? For cases where the contents of the label do not comply with the Directive, what are the reasons that the contents are not compliant? **(O)**
 - 6.1.13. What percentage of cars have labels whose format does not comply with the Directive? For cases where the format of the label does not comply with the Directive, what are the reasons that the format is not compliant? **(O)**
 - 6.1.14. Please submit details of any cases of labels with confusing marks, symbols or inscriptions on the labels relating to fuel consumption or CO₂ emissions, which do not comply with the requirements of the Directive. **(M)**
 - 6.1.15. Are there any cases of competing labels being displayed on cars which contain information relating to fuel economy and which conflict with information on the official label? If so, please give details of the cases. **(O)**
- 6.2. Please submit the conclusions drawn regarding the label and compliance with the provisions of the Directive. **(M)**

Guide compliance

- 6.3. Are the contents and format of the guide compliant with the provisions of the Directive and is the guide also distributed in accordance with the provisions of the Directive? **(M)**
 - 6.3.1. What size is the guide and how many pages does it have? **(M)**
 - 6.3.2. Are car models grouped by make and in alphabetical order? **(M)**
 - 6.3.3. In addition to being grouped in alphabetical order, are the car models grouped by other means? Please describe how the models are grouped. **(M)**
 - 6.3.4. How often is the guide updated? **(M)**
 - 6.3.5. When updated does the guide contain a listing of all new passenger car models available at the date of publication of this update? **(M)**

- 6.3.6. For each model listed, is the fuel type, the numerical value of the official fuel consumption and the official specific emissions of CO₂ stated correctly in accordance with the provisions of the Directive? **(M)**
- 6.3.7. Are any other data, in addition to that specified by the Directive, given for each model listed? If so, please specify and give reasoning for its inclusion in the guide. **(M)**
- 6.3.8. Have other confusing marks, symbols or inscriptions relating to fuel consumption or CO₂ emissions, which do not comply with the provisions of the Directive been used in the guide? If so, please give details. **(M)**
- 6.3.9. Are there any cases of competing guides being displayed in showrooms which contain information relating to fuel economy and which conflict with information in the official guide? If so, please give details of the cases. **(O)**
- 6.3.10. What percentage of dealerships have free guides available at the point of sale and what percentage have none available? What are the reasons that free guides are not available at the point of sale? **(O)**
- 6.3.11. Are dealerships experiencing problems with the delivery of the guides? **(O)**
- 6.3.12. Are guides displayed at the point of sale? Why do dealers not display the guide? **(O)**
- 6.4. Please submit conclusions drawn regarding the guide and compliance with the provisions of the Directive. **(M)**

Poster (display) compliance

- 6.5. Are the contents and format of the poster (display) compliant with the provisions of the Directive and is it also displayed in accordance with the provisions of the Directive? **(M)**
- 6.5.1. What percentage of dealers do not display a poster (display) at the point of sale? **(O)**
- 6.5.2. What percentage of dealers do not display the poster (display) in a prominent position at the point of sale? **(O)**
- 6.5.3. How are posters (displays) which are displayed at the point of sale failing to comply with the Directive? **(O)**
- 6.5.4. What reasons do dealers give for not displaying a fuel consumption poster (display)? **(O)**
- 6.5.5. What reasons do dealers give for not displaying the fuel consumption poster (display) in a prominent position? **(O)**
- 6.5.6. What reasons do dealers give for cases where the format or contents of the poster (display) do not comply with the Directive? **(O)**
- 6.6. Please submit conclusions drawn regarding the poster (display) and compliance with the provisions of the Directive. **(M)**

Other promotional literature compliance

- 6.7. Does promotional literature comply with the provisions of the Directive? **(M)**
- 6.8. Please submit examples of cases where promotional literature was found to be non-compliant with the provisions of the Directive? **(M)**
- 6.9. Please submit conclusions drawn regarding the compliance of promotional literature with the provisions of the Directive. **(M)**

Assessment of compliance trends

- 6.10. How does compliance of the dealership (as regards displaying the label and poster and distributing the guide according to the provisions of the Directive) vary by region and dealership type (i.e. independent or non-independent; single franchise or multi-franchise; by manufacturer)? **(O)**
- 6.11. How does compliance of the dealership (as regards displaying the label and poster and distributing the guide according to the provisions of the Directive) vary with the bonus (commission) systems used to reward the salespeople? **(O)**
- 6.12. How does the degree of compliance in your Member State vary with consumer awareness of fuel economy issues and the estimated influence of the Directive provisions on consumer behaviour. **(O)**

Penalty system

- 6.13. What penalty system has your Member State devised to apply to breaches of the national provisions adopted pursuant to this Directive? **(M)**
- 6.13.1. Has your Member State determined penalties applicable to breaches of the national provisions adopted pursuant to this Directive? **(M)**

- 6.13.2. Please give details of the penalty system. (M)
- 6.13.3. Have any penalties been issued? If so, to whom were the penalties awarded and what was the form of penalty applied? (M)

Grouping system

7. Article 2(5) and (6) of the Directive specifies that versions and variants of the vehicle type may be grouped under one model. Has such a grouping system been developed? Please specify the basis upon which the grouping system has been developed. Please specify how the grouping system has been applied to the provisions of the Directive. (O)

F. EXTENSION TO OTHER MEDIA

1. Have you already and/or do you intend to develop the information system further e.g. to other media? If so, how and for what purpose? (O)
2. Did you test any alternative media forms under field conditions? If so please report the details of the test methods and conditions as well as the test results. (O)
3. Have you identified legal and institutional barriers to extending the requirements on promotional material to other media? If so, please give details. (O)

G. OVERALL ASSESSMENT

1. Please indicate the main lessons you learned when implementing the Directive (and your additional national provisions). (O)
 2. Please indicate the action which you think is most urgent in order to improve the effectiveness of the Directive in both your own Member State and in the EU. (O)
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EUROPEAN ECONOMIC AREA
EFTA SURVEILLANCE AUTHORITY

EFTA SURVEILLANCE AUTHORITY DECISION

No 152/01/COL

of 23 May 2001

revising the guidelines on the application of the EEA State aid provisions to aid for environmental protection and amending for the twenty-eighth time the Procedural and Substantive Rules in the Field of State Aid

THE EFTA SURVEILLANCE AUTHORITY,

Having regard to the Agreement on the European Economic Area ⁽¹⁾, in particular to Articles 61 to 63 thereof,

Having regard to the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice ⁽²⁾, in particular to Article 24 and Article 1 of Protocol 3 thereof,

Whereas under Article 24 of the Surveillance and Court Agreement the EFTA Surveillance Authority shall give effect to the provisions concerning State aid;

Whereas under Article 5(2)(b) of the Surveillance and Court Agreement the EFTA Surveillance Authority shall issue notices or guidelines on matters dealt with in the EEA Agreement, if that Agreement or the Surveillance and Court Agreement expressly so provides or if the EFTA Surveillance Authority considers it necessary;

Recalling the Procedural and Substantive Rules in the Field of State Aid ⁽³⁾, in particular the provisions contained in Chapter 15 thereof (aid for environmental protection);

Whereas the European Commission adopted on 21 December 2000 Community guidelines on State aid for environmental protection ⁽⁴⁾;

Whereas a uniform application of the EEA State aid rules is to be ensured throughout the European Economic Area;

Whereas according to point II under the heading 'GENERAL' at the end of Annex XV to the EEA Agreement, the EFTA Surveillance Authority is to adopt, after consultation with the Commission, acts corresponding to those adopted by the EC Commission, in order to maintain equal conditions of competition;

Having consulted the European Commission;

Recalling that the EFTA Surveillance Authority has consulted the EFTA States in multilateral meetings of 31 March 2000 and 16 October 2000 and its letter of 11 April 2001 to the EFTA States on the subject,

⁽¹⁾ Hereinafter referred to as the EEA Agreement.

⁽²⁾ Hereinafter referred to as the Surveillance and Court Agreement.

⁽³⁾ Guidelines on the application and interpretation of Articles 61 and 62 of the EEA Agreement and Article 1 of Protocol 3 to the Surveillance and Court Agreement, adopted and issued by the EFTA Surveillance Authority on 19 January 1994, published in OJ L 231 of 3.9.1994, EEA Supplements 3.9.94 No 32, last amended by the Authority's Decision No 78/2000/COL of 12 April 2000, published in OJ L 274 of 26.10.2000, hereinafter referred to as the 'Authority's State Aid Guidelines'.

⁽⁴⁾ OJ C 37, 3.2.2001.

HAS ADOPTED THIS DECISION:

1. The State Aid Guidelines shall be amended by replacing the present Chapter 15 with a new Chapter 15 on aid for environmental protection, as contained in Annex I to this Decision.
2. The Decision, including Annex I, shall be published in the EEA Section of, and the EEA Supplement to the *Official Journal of the European Communities*.
3. The EFTA States shall be informed of this Decision by means of a letter, together with a copy of the Decision, including Annex I. The EFTA States shall be requested to signify their agreement within one month to the proposed appropriate measures as set out in the letter (see points 67 to 69 of the Guidelines).
4. The European Commission shall be informed, in accordance with point (d) of Protocol 27 of the EEA Agreement, by means of a copy of this Decision, including Annex I.
5. The Decision shall be authentic in the English language.

Done at Brussels, 23 May 2001.

For the EFTA Surveillance Authority

The President

Knut ALMESTAD

ANNEX I

15. AID FOR ENVIRONMENTAL PROTECTION ⁽¹⁾A. **Introduction**

1. In 1994 the EFTA Surveillance Authority (the Authority) adopted guidelines on State aid for environmental protection, which expired on 31 December 1999. On 16 February 2000 the Authority decided to extend the application of the guidelines until 31 December 2000.
2. Since the guidelines were adopted in 1994, action in the field of the environment has evolved at an international level, in particular following the adoption of the Kyoto Protocol. Environmental taxes, for example, have gathered more importance in recent years. Aid measures in the form of tax reductions and exemptions have, as a result of this development, come more to the forefront. The Authority ought, therefore, to adopt new guidelines, which will be needed in order to familiarise the EFTA States and firms with the criteria that it will apply in deciding whether or not aid measures in the EFTA States are compatible with the EEA Agreement.
3. Environmental policy objectives should be taken into account when assessing the compatibility of State aid in the environmental sector, in particular with a view to promoting sustainable development, see Articles 73 to 75 and the ninth recital of the Preamble to the EEA Agreement. Accordingly, competition policy and environmental policy are not mutually antagonistic, but the requirements of environmental protection need to be integrated into the definition and implementation of competition policy, in particular so as to promote sustainable development.
4. However, taking long-term environmental requirements into account does not mean that all aid must be authorised. Consideration has to be given to the effects the aid may have in terms of sustainable development and full application of the "polluter pays" principle. Some forms of aid certainly do satisfy these tests, particularly where they make it possible to achieve a high level of environmental protection while avoiding any conflict with the principle of the internalisation of costs. But other forms of aid, as well as having adverse effects on trade between the EEA States and on competition, may run counter to the "polluter pays" principle and may hinder the establishment of a process of sustainable development. This may be the case, for example, where aid is designed merely to facilitate compliance with new standards ⁽²⁾.
5. These guidelines establish principles for assessing whether State aid measures will qualify for exemptions from the general State aid prohibition as laid down in Article 61(1) of the EEA Agreement. Such measures may, *inter alia*, be granted in the form of:
 - aid for achieving environmental protection in relation to various standards,
 - aid as an exemption from environmental taxes.

In the corresponding guidelines issued by the European Commission, aid to assist companies in adapting to mandatory Community standards or tax exemptions leading to lower tax rates than binding minimum rates applicable within the Community, are generally viewed as incompatible with the State aid rules. Aid aimed at achieving higher levels of environmental protection than those required by given standards may, however, on certain conditions be considered compatible. The same applies for tax exemptions that do not conflict with obligatory Community minimum rates and which are temporary in nature.

With a view to ensuring equal conditions of competition throughout the EEA, the Authority will, therefore, use the same points of reference when assessing environmental aid measures in the EFTA States for compatibility with the functioning of the EEA Agreement. This implies that the present guidelines refer to Community standards and Community tax harmonisation measures where such are established.

The Authority emphasises that such references to Community legislation do not imply that the EFTA States are obliged to comply with Community legislation when such legislation has not been implemented in the EEA Agreement. They serve only as a basis for assessing the compatibility of aid measures with the functioning of the EEA Agreement in terms of Article 61(3) of the Agreement ⁽³⁾.

6. The Authority's approach in these guidelines consists in determining whether, and under what conditions, State aid may be regarded as necessary to ensure environmental protection and sustainable development without having disproportionate effects on competition and economic growth. This analysis must be carried out in the light of the lessons that can be drawn from the functioning of the 1994 Guidelines and in the light of the changes in environmental policy that have occurred since then.

⁽¹⁾ This chapter corresponds to the European Community guidelines on State aid for environmental protection (OJ C 37, 3.2.2001, p. 3).

⁽²⁾ See point 5.

⁽³⁾ The Authority recalls the EFTA Court findings in the case between Norway and the Authority on the Norwegian differentiated social security contributions where the Court noted that, as a general rule, a tax system of an EEA/EFTA State is not covered by the EEA Agreement. In certain cases, however, such a system may have consequences that would bring it within the scope of application of Article 61(1) of the EEA Agreement. (EFTA Court, Case E-6/98, *Government of Norway v EFTA Surveillance Authority*, 1999 Report of the EFTA Court, p. 74, point 34.)

B. **Definitions and scope**

7. *The concept of environmental protection:* for the purposes of these guidelines, the Authority takes "environmental protection" to mean any action designed to remedy or prevent damage to our physical surroundings or natural resources, or to encourage the efficient use of these resources.

The Authority regards energy-saving measures and the use of renewable sources of energy as action to protect the environment. Energy-saving measures should be understood as meaning, among other things, action which enables companies to reduce the amount of energy used in their production cycle. The design and manufacture of machines or means of transport which can be operated with fewer natural resources are not covered by these guidelines. Action taken within plants or other production units with a view to improving safety or hygiene is important and may be eligible for certain types of aid, but it is not covered by these guidelines.

The concept of the internalisation of costs: in these guidelines the "internalisation of costs" means the principle that all costs associated with the protection of the environment should be included in firms' production costs.

The polluter pays principle: this is the principle that the costs of measures to deal with pollution should be borne by the polluter who causes the pollution.

Polluter: a polluter is someone who directly or indirectly damages the environment or who creates conditions leading to such damage ⁽⁴⁾.

Prices to reflect costs: this principle states that the prices of goods or services should incorporate the external costs associated with the negative impact on the environment of their production and marketing.

Community standard ⁽⁵⁾: standard mandatory within the European Community setting the levels to be attained in environmental terms and the obligation to use the best available techniques (BAT) ⁽⁶⁾ which do not entail excessive costs.

Renewable energy sources: renewable non-fossil energy sources, namely wind energy, solar energy, geothermal energy, wave energy, tidal energy, hydroelectric installations with a capacity below 10 MW and biomass, where biomass is defined as products from agriculture and forestry, vegetable waste from agriculture, forestry and the food production industry, and untreated wood waste and cork waste ⁽⁷⁾.

Electric power generated from renewable energy sources: electric power generated by plant using only renewable energy sources, and that share electric power generated from renewable energy sources in hybrid plant using traditional energy sources, in particular for contingency purposes ⁽⁸⁾.

Environmental tax: one likely feature for a levy to be considered as environmental would be that the taxable base of the levy has a clear negative effect on the environment. However, a levy could also be regarded as environmental if it has a less clear, but nevertheless discernable, positive environmental effect. In general, it is up to the EFTA State to show the estimated environmental effect of the levy ⁽⁹⁾.

⁽⁴⁾ Council recommendation of 3 March 1975 regarding cost allocation and action by public authorities on environmental matters (OJ L 194, 25.7.1975, p. 1), implemented in the EEA Agreement through Annex XX, point 33 of the final acts of which the Contracting Parties shall take note.

⁽⁵⁾ See point 5 (when such standards are incorporated into the EEA Agreement they become in fact EEA standards).

⁽⁶⁾ The concept of best available techniques was introduced into Community legislation by Council Directive 76/464/EEC of 4 May 1976 on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community (OJ L 129, 18.5.1976, p. 23) and appeared again, in slightly amended form, in Council Directive 84/360/EEC of 28 June 1984 on the combating of air pollution from industrial plants (OJ L 188, 16.7.1984, p. 20). Both these Directives have been implemented in the EEA Agreement through Annex XX. Council Directive 96/61/EEC of 24 September 1996 concerning integrated pollution prevention and control (OJ L 257, 10.10.1996 p. 26: "the IPPC Directive") developed and confirmed this concept. This Directive is also implemented in the EEA Agreement through Annex XX. The scope of the IPPC Directive covers industrial installations with a high pollution potential. The Directive has applied since November 1999 to new installations or existing installations which have undergone substantial changes. Existing installations must comply with the rules of the IPPC Directive by October 2007. Until that date the provisions of the two abovementioned Directives relating to the concept of BAT continue to apply. As a rule, the concrete standards, i.e. the emission or consumption limit values based on the use of the best available techniques, are not set at EEA level, but by the national authorities.

⁽⁷⁾ This definition is contained in the European Commission proposal for a directive of the European Parliament and of the Council on the promotion of electricity from renewable sources in the internal electricity market (OJ C 311 E, 31.10.2000, p. 320). Once the Directive has been adopted, the definition given in the final text will be applied. In this relation: see point 5 of these guidelines.

⁽⁸⁾ Same observation as for footnote 7.

⁽⁹⁾ Commission Communication — Environmental taxes and charges in the single market (OJ C 224, 23.7.1997, p. 6).

8. *Scope*: these guidelines apply to aid ⁽¹⁰⁾ to protect the environment in all sectors governed by the EEA Agreement, including those subject to specific EEA rules on State aid (steel processing ⁽¹¹⁾, shipbuilding, motor vehicles, synthetic fibres and transport) ⁽¹²⁾. State aid for R&D in the environmental field is subject to the rules set out in the guidelines on aid for research and development ⁽¹³⁾. Similarly, the Authority considers that the characteristics of aid for environmental training activities do not justify such aid being treated separately, and such aid will therefore be examined in accordance with the applicable rules on training aid ⁽¹⁴⁾.

By virtue of Article 3 of Commission Decision No 2496/96/ECSC of 18 December 1996 ⁽¹⁵⁾ establishing rules for State aid to the steel industry, implemented in the EEA Agreement through Annex XV, aid for environmental protection in the steel industry will continue to be analysed in accordance with Chapter 15 of the Authority's guidelines of 19 January 1994 on aid for environmental protection, until 22 July 2002.

These guidelines do not apply to stranded costs, which will be dealt with separately ⁽¹⁶⁾. The Authority would point out that *de minimis* aid, that is aid of not more than EUR 100 000 granted to a firm for a period of three years, is not caught by Article 61(1) of the EEA Agreement. Such an aid will be examined in accordance with the applicable rules on *de minimis* aid ⁽¹⁷⁾. The rules on *de minimis* aid do not, however, apply to transport, nor to the sectors covered by Article 27 and Protocols 14 and 25 of the EEA Agreement.

C. *State aid and environmental policy*

9. Articles 73 to 75 of the EEA Agreement (see the ninth recital of the Preamble) give the Contracting Parties express powers in the field of environment. These provisions confirm the "polluter pays" principle, which implies that costs associated with protecting the environment should be internalised by firms just like other production costs. However, the provisions go further calling for the requirements of environmental protection to be included in implementation of other policies of the Contracting Parties and stressing the need for prevention. The theme of integrating the environment into other policies is taken up, along with the concept of "sustainable development" in the EC's fifth action programme on the environment, entitled "Towards sustainability" and adopted in 1993 ⁽¹⁸⁾. This acknowledges that the integration of environmental policy with other policies has not been wholly satisfactory when the traditional approach is relied on, based almost exclusively on regulation and particularly standards. This programme therefore argues for a broadening of the range of policy instruments. Different instruments (regulation, voluntary action and economic measures) or various combinations of these may be the best way of achieving desired environmental objectives in a given situation, depending on the legal, technical, economic and social context. Both positive financial incentives, i.e. subsidies, and disincentives, namely taxes and levies, have their place.
10. In 1996 the European Commission drew up a progress report on the fifth action programme on the environment. The report states that the programme's overall strategy and objectives are still valid. There can be no doubt that progress has been made in integrating environmental and sustainability aspects into other policies. However, what has still not occurred is a genuine change in attitude on the part of all the interested parties: policymakers, firms and the general public. It is important to develop the concept of shared responsibility for the environment and to make the general public aware of the issues at stake.
11. In 1999 the European Commission adopted a global assessment of the fifth action programme. The assessment noted that, although the programme raised awareness of the need for stakeholders, citizens and decision-makers in other sectors to pursue environmental objectives actively, less progress had been made overall in changing economic trends and modes of conduct which were harmful to the environment.

⁽¹⁰⁾ The purpose of these guidelines is not to discuss the concept of State aid, which derives from Article 61(1) of the EEA Agreement and from the case law of the EFTA Court, the Court of Justice of the European Communities and the Court of First Instance of the European Communities.

⁽¹¹⁾ Within the limits laid down in the second paragraph of point 8.

⁽¹²⁾ The Authority points out that the present guidelines concern only environmental aid, without prejudice to the applicability of other provisions governing State aid and subject to the limitations of the rules on combinations of aid in point 66.

⁽¹³⁾ Chapter 14 of the Authority's guidelines.

⁽¹⁴⁾ Chapter 18A of the Authority's guidelines until the Commission Regulation (EC) No 68/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to training aid, OJ L 10, 13.1.2001, p. 20, is incorporated into the EEA Agreement.

⁽¹⁵⁾ OJ L 338, 28.12.1996, p. 42.

⁽¹⁶⁾ Stranded costs are costs which firms must bear because of commitments they made and are no longer able to honour as a result of the liberalisation of the sector in question.

⁽¹⁷⁾ Chapter 12 of the Authority's guidelines until the Commission Regulation (EC) No 69/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to the *de minimis* rule, OJ L 10, 13.1.2001, p. 30, is incorporated into the EEA Agreement.

⁽¹⁸⁾ OJ C 138, 17.5.1993, p. 1, implemented in the EEA Agreement through Article 3 of Protocol 31 to the Agreement.

12. The assessment also noted that "it is increasingly clear that damages to the environment have costs to society as a whole and, conversely, that environmental action can generate benefits in the form of economic growth, employment and competitiveness" and that the effective application of the "polluter pays" principle and the full internalisation of environmental costs onto polluters remains a critical process ⁽¹⁹⁾.
13. Against this background and with a view to ensuring a uniform surveillance in the field of State aid throughout the EEA Area, the Authority's approach on the control of State aid for environmental purposes needs to satisfy a double imperative:
 - (a) to ensure the competitive functioning of markets, while promoting the completion of the single market and increased competitiveness in firms;
 - (b) to ensure that the requirements of environmental protection are integrated into the definition and implementation of competition policy, in particular in order to promote sustainable development. The Authority here believes that internalisation of costs is a priority objective that can be achieved in various ways, including by way of instruments based on market laws or those based on a regulatory approach, these being the most effective tools for achieving the objectives described above.
14. Cost internalisation helps to ensure that prices accurately reflect costs in so far as economic operators allocate their financial resources on the basis of the prices of the goods and services they wish to buy. The progress report on the fifth programme emphasises that this aim has not been realised because prices do not reflect ecological costs. This in turn makes it more difficult to raise public awareness and promotes over-exploitation of natural resources.
15. Ensuring that prices reflect costs at all stages of the economic process is the best way of making all parties aware of the cost of protecting the environment. Apart from its potentially adverse effects on trade and competition, State aid generally undermines that aim because it enables certain firms to reduce costs artificially and not to reveal the costs of environmental protection to consumers. In the long term, therefore, some forms of State aid run counter to the objectives of sustainable development.
16. The Authority's guidelines on aid for environmental protection adopted in 1994 form an integral part of this policy. In general, the "polluter pays" principle and the need for firms to internalise the costs associated with protecting the environment would appear to militate against the granting of State aid.
17. Nevertheless, the guidelines state that aid can be justified in two instances:
 - (a) in certain specific circumstances in which it is not yet possible for all costs to be internalised by firms and the aid can therefore represent a temporary second-best solution by encouraging firms to adapt to standards;
 - (b) the aid may also act as an incentive to firms to improve on standards or to undertake further investment designed to reduce pollution from their plants.
18. In the guidelines adopted in 1994, the Authority took the view that, in certain cases, total cost internalisation was not yet possible and that aid might be necessary on a temporary basis. The following changes have nevertheless taken place since 1994:
 - (a) firms have had seven years in which to adapt to the gradual application of the "polluter pays" principle and cost internalisation;
 - (b) the European Commission's 1996 progress report on the fifth action programme and the 1999 evaluation report restate the need to provide for cost internalisation and to use market instruments in order to make significant progress in improving the environment;
 - (c) the use of market instruments and proper pricing is also advocated by the Kyoto Protocol on climate change.
19. The Authority's position is therefore that aid should no longer be used to make up for the absence of cost internalisation. If environmental requirements are to be taken into account in the long term, prices must accurately reflect costs and environmental protection costs must be fully internalised. Consequently, the Authority takes the view that aid is not justified in the case of investments which merely bring companies into line with new or existing Community technical standards ⁽²⁰⁾. In its view, however, in order to address the special

⁽¹⁹⁾ Communication from the Commission — Europe's environment: What directions for the future? The global assessment of the European Community programme of policy and action in relation to the environment and sustainable development, "Towards Sustainability" (COM(1999) 543 final, 24.11.1999).

⁽²⁰⁾ For the definition of "Community standard" see point 7. See also point 5.

difficulties encountered by SMEs, it should be possible to grant them aid for adapting to new Community standards for a period of three years from the adoption of such standards ⁽²¹⁾. Aid may though be useful where it serves as an incentive to achieve levels of protection which are higher than those set by Community standards. This is the case when an EFTA State decides to adopt standards which are more stringent than the Community standards so as to achieve a higher level of environmental protection. It will also apply when a firm invests in environmental protection over and above the strictest existing Community standards or where no Community standards exist.

Specific case of the energy sector and tax reductions

20. Since the guidelines were adopted in 1994 the energy sector has undergone major changes which need to be taken into consideration.
21. Certain EFTA States have adopted, are in the process of adopting or might consider adopting taxes the effects of which are conducive to environmental protection. In some cases, exemptions from or reductions in taxes are granted to firms in particular categories in order to avoid placing them in a difficult competitive situation. The Authority takes the view that such measures may constitute State aid within the meaning of Article 61(1) of the EEA Agreement. However, the adverse effects of such aid can be offset by the positive effect of adopting taxes. Accordingly, if such exemptions are necessary to ensure the adoption or continued application of taxes applicable to all products, the Authority takes the view that they are acceptable, subject to certain conditions and for a limited period of time. This period may last for 10 years if the conditions are met. Thereafter, the EFTA States will remain free to re-notify the measures in question to the Authority, which could adopt the same approach in its analysis while taking into consideration the positive results obtained in environmental terms.
22. Measures may be taken to promote the use of renewable sources of energy and combined heat and energy production. The Authority takes the view that, where measures to promote renewable sources of energy and the combined production of electric power and heat constitute State aid, they are acceptable subject to certain conditions. It must be certain, however, that such aid is not in breach of other provisions of the EEA Agreement.

D. General conditions for authorising environmental aid

D.1. Investment aid

D.1.1. Transitional investment aid to help SMEs adapt to new Community standards ⁽²²⁾

23. For a period of three years from the adoption ⁽²³⁾ of new Community standards, investment aid to help SMEs meet new standards may be authorised up to a maximum of 15 % gross of eligible costs.

D.1.2. General conditions for authorising investment aid to firms improving on Community standards ⁽²⁴⁾

24. Investment aid enabling firms to improve on the Community standards applicable may be authorised up to not more than 30 % gross of the eligible investment costs as defined in point 32. These conditions also apply to aid where firms undertake investment in the absence of Community standards or where they have to undertake investment in order to comply with national standards that are more stringent than the applicable Community standards.

D.1.3. Investment in energy

25. Investments in energy saving as defined in point 7 are deemed equivalent to investments to promote environmental protection. Such investments play a major role in achieving economically environmental objectives ⁽²⁵⁾. They are, therefore, eligible for investment aid at the basic rate of 40 % of eligible costs.

⁽²¹⁾ It is the date of the adoption within the Community that is the relevant point of departure for the calculation of the period allowed, see points 5 and 7.

⁽²²⁾ For the definition of "Community standard" see point 7. See also point 5.

⁽²³⁾ Same observation as for footnote 21.

⁽²⁴⁾ For the definition of "Community standard" see point 7. See also point 5.

⁽²⁵⁾ See: Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions — Action Plan to improve energy efficiency in the European Community (COM(2000) 247 final, 26.4.2000).

26. Investments in the combined production of electric power and heat may also qualify under these guidelines if it can be shown that the measures are beneficial in terms of the protection of the environment because the conversion efficiency⁽²⁶⁾ is particularly high, because the measures will allow energy consumption to be reduced or because the production process will be less damaging to the environment⁽²⁷⁾. In this connection, the Authority will take into particular consideration the type of primary energy used in the production process. Such investment may be given aid at the basic rate of 40 % of eligible cost.
27. Investments to promote renewable sources of energy are deemed equivalent to environmental investments undertaken in the absence of Community standards⁽²⁸⁾. It should also be borne in mind that measures in support of renewable sources of energy are one of the environmental and long-term objectives that should be encouraged most⁽²⁹⁾. The rate of aid for investment in support of these forms of energy is therefore 40 % of eligible costs.

The Authority takes the view that renewable energy installations serving all the needs of an entire community such as an island or residential area should also benefit. Investments made in this connection may qualify for a bonus of 10 percentage points on top of the basic rate of 40 % of eligible costs.

The Authority considers that, where it can be shown to be necessary, EFTA States will be able to grant investment aid to support renewable energy, up to 100 % of eligible costs. The installations concerned will not be entitled to receive any further support.

D.1.4. *Bonus for firms located in assisted regions*

28. In regions which are eligible for national regional aid, firms may receive aid to promote regional development. To encourage them to invest further in the environment, it should be possible, where appropriate, to provide additional aid towards any environmental investment carried out in accordance with point 24⁽³⁰⁾.
29. Consequently, in regions eligible for regional aid, the maximum rate of environmental aid applicable to eligible costs as defined in point 32 is determined as follows.

In assisted regions the maximum rate of aid applicable is the higher of the following two options:

- (a) either the basic rate for environmental investment aid, i.e. 30 % gross (standard system), 40 % gross (investments in energy saving, in renewable sources of energy or to promote the combined production of electric power and heat) or 50 % gross (investments in renewable sources of energy that supply an entire community), plus five percentage points gross in the regions covered by Article 61(3)(c) and 10 percentage points in the regions covered by Article 61(3)(a) of the EEA Agreement⁽³¹⁾;
- (b) or the regional aid rate plus 10 percentage points gross.

D.1.5. *Bonus for SMEs*

30. Where investments of the kind referred to in points 24 to 27 are carried out by small or medium-sized enterprises, an increase of 10 percentage points gross may be authorised⁽³²⁾. For the purposes of these guidelines, the definition of SMEs is that given by the applicable EEA rule⁽³³⁾.

The above bonuses for assisted regions and SMEs may be combined, but the maximum rate of environmental aid may never exceed 100 % gross of the eligible costs. SMEs do not qualify for a double bonus either under the provisions applicable to regional aid or under those applicable in the environmental field⁽³⁴⁾.

⁽²⁶⁾ By "conversion efficiency" is meant the ratio between the quantity of primary energy used to produce a secondary form of energy and the quantity of secondary energy actually produced. It is calculated as follows: electric energy produced + thermal energy produced/energy used.

⁽²⁷⁾ See: Council Resolution of 18 December 1997 on a Community strategy to promote combined heat and power (OJ C 4, 8.1.1998, p. 1).

⁽²⁸⁾ For the definition of "Community standard" see point 7. See also point 5.

⁽²⁹⁾ See: Council Regulation of 8 June 1998 on renewable sources of energy (OJ C 198, 24.6.1998, p. 1).

⁽³⁰⁾ These bonuses are not available where the EFTA State grants investment aid in accordance with the third paragraph of point 27 (aid of up to 100 % of eligible costs).

⁽³¹⁾ Investments in assisted regions are eligible for investment aid if the conditions of Chapter 25 of the Authority's guidelines on regional State aid are met.

⁽³²⁾ This bonus is not available where the EFTA State grants investment aid in accordance with the third paragraph of point 27 (aid of up to 100 % of eligible costs).

⁽³³⁾ For the time being that given in Chapter 10.2 of the Authority's guidelines on aid to small and medium-sized enterprises, which corresponds to Commission Recommendation 96/280/EC of 3 April 1996 giving the definition of small and medium-sized enterprises (OJ L 107, 30.4.1996, p. 4).

⁽³⁴⁾ Investments by SMEs are eligible for investment aid under the provisions of Commission Regulation (EC) No 70/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to State aid for small and medium-sized enterprises (OJ L 10, 13.1.2001, p. 33), which is to be implemented in the EEA Agreement through Annex XV thereto.

D.1.6. *The investments concerned*

31. The investments concerned are investments in land which are strictly necessary in order to meet environmental objectives, investments in buildings, plant and equipment intended to reduce or eliminate pollution and nuisances, and investments to adapt production methods with a view to protecting the environment.

Spending on technology transfer through the acquisition of operating licences or of patented and non-patented know-how may also qualify. But any such intangible asset must satisfy the following tests:

- (a) it must be regarded as a depreciable asset;
- (b) it must be purchased on market terms, from an entity in which the acquirer has no power of direct or indirect control;
- (c) it must be included in the assets of the firm, and remain in the establishment of the recipient of the aid and be used there for at least five years. This conditions does not apply if these intangible assets are technically out of date. If it is sold during those five years, the yield from the sale must be deducted from the eligible costs and all or part of the amount of aid must, where appropriate, be reimbursed.

D.1.7. *Eligible costs*

32. Eligible costs must be confined strictly to the extra investment costs necessary to meet the environmental objectives.

This has the following consequences: where the cost of investment in environmental protection cannot be easily identified in the total cost, the Authority will take account of objective and transparent methods of calculating, e.g. the cost of a technically comparable investment that does not though provide the same degree of environmental protection.

In all cases, eligible costs must be calculated net of the benefits accruing from any increase in capacity, cost savings engendered during the first five years of the life of the investment and additional ancillary production during that five-year period ⁽³⁵⁾.

For renewable energy, eligible investment costs are normally the extra costs borne by the firm compared with a conventional power plant with the same capacity in terms of the effective production of energy.

Where SMEs adapt to new Community standards ⁽³⁶⁾, eligible costs include additional investments needed to attain the level of environmental protection required by those standards.

Where the firm is adapting to national standards adopted in the absence of Community standards, the eligible costs consist of the additional investment costs necessary to achieve the level of environmental protection required by the national standards.

Where the firm is adapting to national standards which are more stringent than the Community standards or undertakes a voluntary improvement on Community standards, the eligible costs consist of the additional investment costs necessary to achieve a level of environmental protection higher than the level required by the Community standards. The cost of investments needed to reach the level of protection required by the Community standards is not eligible.

Where no standards exist, eligible costs consist of the investment costs necessary to achieve a higher level of environmental protection than that which the firm or firms in question would achieve in the absence of any environmental aid.

D.1.8. *Rehabilitation of polluted industrial sites*

33. Interventions made by firms repairing environmental damage by rehabilitating polluted industrial sites may come within the scope of these guidelines ⁽³⁷⁾. The environmental damage concerned may be damage to the quality of the soil or of surface or underground water ⁽³⁸⁾.

Where the person responsible for the pollution is clearly identified, that person must finance the rehabilitation in accordance with the "polluter pays" principle, and no State aid may be given. By "person responsible for the pollution" is meant the person liable under the law applicable in each EFTA State, without prejudice to the adoption of EEA rules in the matter.

⁽³⁵⁾ If the investments are concerned solely with environmental protection without any other economic benefits, no additional reduction will be applied in determining the eligible costs.

⁽³⁶⁾ For the definition of "Community standard" see point 7. See also point 5.

⁽³⁷⁾ The Authority would point out that rehabilitation work carried out by public authorities is not, as such, caught by Article 61 of the EEA Agreement. Problems of State aid may, however, arise if the land is sold after rehabilitation at a price below its market value.

⁽³⁸⁾ All expenditure incurred by a firm in rehabilitating its site, whether or not such expenditure can be shown as a fixed asset on its balance sheet, ranks as eligible investment in the case of the rehabilitation of polluted sites.

Where the person responsible for the pollution is not identified or cannot be made to bear the cost, the person responsible for the work may receive aid ⁽³⁹⁾.

Aid for the rehabilitation of polluted industrial sites may amount to up to 100 % of the eligible costs, plus 15 % of the cost of the work. The eligible costs are equal to the cost of the work less the increase in the value of the land.

The total amount of aid may under no circumstances exceed the actual expenditure incurred by the firm.

D.1.9. *Relocation of firms*

34. The Authority takes the view that as a rule the relocation of firms to new sites does not constitute environmental protection and does not therefore give entitlement to aid under these guidelines.

The granting of aid may, however, be justified when a firm established in an urban area or in an area comparable to a Natura 2000 designated area ⁽⁴⁰⁾ lawfully carries on an activity that creates major pollution and must, on account of this location, move from its place of establishment to a more suitable area.

All the following criteria must be satisfied at the same time:

- (a) the change of location must be dictated on environmental protection grounds and must have been ordered by administrative or judicial decision;
- (b) the firm must comply with the strictest environmental standards applicable in the new region where it is located.

A firm satisfying the above conditions may receive investment aid in accordance with point 24. The provisions of point 30 concerning the granting of a bonus for SMEs will apply.

In order to determine the amount of eligible costs in the case of relocation aid, the Authority will take into account the yield from the sale or renting of the plant or land abandoned, the compensation paid in the event of expropriation and the costs connected with the purchase of land or the construction or purchase of new plant of the same capacity as the plant abandoned. Account may also be taken of any other gains connected with the transfer of the plant, notably gains resulting from an improvement, on the occasion of the transfer, in the technology used and accounting gains associated with better use of the plant. Investments relating to any capacity increase may not be taken into consideration in calculating the eligible costs conferring entitlement to the granting of environmental aid.

If the administrative or judicial decision ordering the change of location results in the early termination of a contract for the renting of land or buildings, any penalties imposed on the firm for having terminated the contract may be taken into consideration in calculating the eligible costs.

D.1.10. *Common rules*

35. Aid for investment to improve on Community standards or undertaken where no Community standards exist may not be granted where such improvements merely bring companies into line with Community standards already adopted but not yet in force ⁽⁴¹⁾. A firm may be given aid to enable it to comply with national standards which are more stringent than Community standards or where no Community standards exist only if it complies with the national standards by the final date laid down in the relevant national measures. Investments carried out after that date do not qualify ⁽⁴²⁾.

D.2. **Aid to SMEs for advisory/consultancy services in the environmental field**

36. Advisory/consultancy services play an important part in helping SMEs to make progress in environmental protection. The Authority therefore takes the view that aid may be granted in line with the provisions of Regulation (EC) No 70/2001 ⁽⁴³⁾, which is to be implemented in the EEA Agreement through Annex XV.

⁽³⁹⁾ The person responsible for performing the work need not necessarily be the person responsible for the pollution within the meaning in which that expression is used here.

⁽⁴⁰⁾ See: Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ L 206, 22.7.1992, p. 7), which forms part of the European Ecological Network known as Natura 2000. (The EFTA States do not participate in this programme, but there are areas within the EFTA States that would qualify as Natura 2000 areas, and in such cases the Authority's view is that EFTA States should have the opportunity to grant aid in accordance with point 34).

⁽⁴¹⁾ For the definition of "Community standard" see point 7. See also point 5.

⁽⁴²⁾ The rules set out in this point are without prejudice to point 23 concerning aid for SMEs.

⁽⁴³⁾ See footnote 34.

D.3. Operating aid

D.3.1. Rules applicable to all operating aid to promote waste management and energy saving

37. The following rules apply to two types of operating aid, namely:
- (a) aid for the management of waste where such management is in line with the hierarchical classification of the principles of waste management ⁽⁴⁴⁾;
 - (b) aid in the energy-saving field.

38. Where such aid is shown to be absolutely necessary, it should be strictly limited to compensating for extra production costs by comparison with the market prices of the relevant products or services ⁽⁴⁵⁾. Such aid must also be temporary and, as a general rule, must be wound down over time, so as to provide an incentive for prices to reflect costs reasonably rapidly.

39. The Authority takes the view that firms should normally bear the costs of treating industrial waste in accordance with the "polluter pays" principle. However, operating aid may be necessary where national standards are introduced which are more stringent than the applicable Community standards, or where national standards are introduced in the absence of Community standards, so that firms temporarily lose competitiveness at international level ⁽⁴⁶⁾.

Firms receiving operating aid towards the treatment of industrial or non-industrial waste must finance the service provided in proportion to the amount of waste they produce and/or the cost of treatment.

40. All such operating aid is subject to a limit duration of five years where the aid is "degressive". Its intensity may amount to 100 % of the extra costs in the first year but must have fallen in a linear fashion to zero by the end of the fifth year.
41. In the case of "non-degressive" aid, its duration is limited to five years and its intensity must not exceed 50 % of the extra costs.

D.3.2. Rules applicable to all operating aid in the form of tax reductions or exemptions

42. When adopting taxes that are to be levied on certain activities for reasons of environmental protection, EFTA States may deem it necessary to make provision for temporary exemptions for certain firms notably because of the absence of harmonisation at European level or because of the temporary risks of a loss of international competitiveness. In general, such exemptions constitute operating aid caught by Article 61(1) of the EEA Agreement. When assessing whether such measures qualify for exemptions from the general State aid prohibition as laid down in Article 61(1), it has to be ascertained among other things whether the tax in question corresponds to a tax which is to be levied within the European Community as the result of a Community decision ⁽⁴⁷⁾. This aspect will be essential with regard to whether or not there could be a loss of international competitiveness for the taxpayer.

43. If the tax does not correspond to a tax which is to be levied within the European Community as the result of a Community decision, the firms affected may have some difficulty in adapting rapidly to the new tax burden. In such circumstances there may be justification for a temporary exemption enabling certain firms to adapt to the new situation.

44. If the tax does not correspond to a tax which is to be levied within the European Community as the result of a Community directive, there are two possible scenarios:

- (a) an EFTA State applies tax to certain products at a rate higher than the minimum rate laid down in the Community directive and grants an exemption to certain firms, which, as a result, pay tax at a rate which is lower but nevertheless at least equal to the minimum rate set by the directive. The Authority takes the view that, in those circumstances, a temporary exemption may be justified to enable firms to adapt to higher taxation and to provide them with an incentive to act in a more environmentally friendly manner;

⁽⁴⁴⁾ See classification given in the Communication from the Commission on the review of the Community strategy for waste management (COM(96) 399 final of 30.7.1996). In this communication, the Commission recalls that waste management is a priority objective for the Community in order to reduce the risks to the environment. The concept of waste treatment must be looked at from three angles: re-utilisation, recycling and recovery. Waste, whose production is unavoidable, must be treated and eliminated without danger. The said communication is, by reason of its legal character, not implemented in the EEA Agreement. Similar classifications of waste are, however, given in several binding Council Decisions which are implemented in the EEA Agreement through Annex XX, for instance Council Decisions 94/3, 94/904 and 2000/532. For the purpose of assessing whether a measure taken by an EFTA State contains an element of State aid, the Authority will base its decisions on the classification given in the Commission communication in order to find the accurate point of reference. Otherwise, measures taken by an EFTA State would not be judged under the same conditions as measures taken by an EC Member State.

⁽⁴⁵⁾ The concept of production costs must be understood as being net of any aid but inclusive of a normal level of profit.

⁽⁴⁶⁾ For the definition of "Community standard" see point 7. See also point 5.

⁽⁴⁷⁾ See point 5.

- (b) an EFTA State applies tax to certain products at a rate corresponding to the minimum rate laid down in the Community directive and grants an exemption to certain firms, which are thus subject to taxation at a rate below the mentioned minimum rate. If such an exemption would not have been authorised within the European Community by the directive in question, it will constitute aid which is incompatible with Article 61 of the EEA Agreement. If such an exemption would have been authorised within the European Community by the directive, the Authority may take the view that it is compatible with Article 61 in so far as it is necessary and is not disproportionate in the light of the EEA objectives pursued. The Authority will be specially concerned to ensure that any such exemption is strictly limited in time.
45. In general, the tax measures in question should make a significant contribution to protecting the environment. Care should be taken to ensure that the exemptions do not, by their very nature, undermine the general objectives pursued.
46. These exemptions can constitute operating aid which may be authorised on the following conditions:
- 46.1. When, for environmental reasons, an EFTA State introduces a new tax in a sector of activity or on products in respect of which no corresponding European Community tax harmonisation has been carried out or when the tax envisaged by the EFTA State exceeds that provided for in Community legislation, the Authority takes the view that exemption decisions covering a 10-year period with no degressivity may be justified in two cases:
- (a) these exemptions are conditional on the conclusion of agreements between the EFTA State concerned and the recipient firms whereby the firms or associations of firms undertake to achieve environmental protection objectives during the period for which the exemptions apply or when firms conclude voluntary agreements which have the same effect. Such agreements or undertakings may relate, among other things, to a reduction in energy consumption, a reduction in emissions or any other environmental measure. The substance of the agreements must be negotiated by each EFTA State and will be assessed by the Authority when the aid projects are notified to it. EFTA States must ensure strict monitoring of the commitments entered into by the firms or associations of firms. The agreements concluded between an EFTA State and the firms concerned must stipulate the penalty arrangements applicable if the commitments are not met.
- These provisions also apply where an EFTA State makes a tax reduction subject to conditions that have the same effect as the agreements or commitments referred to above;
- (b) these exemptions need not be conditional on the conclusion of agreements between the EFTA State concerned and the recipient firms if the following alternative conditions are satisfied:
 - where the reduction concerns a tax corresponding to a harmonised European Community tax, the amount effectively paid by the firms after the reduction must remain higher than the European Community minimum in order to provide the firms with an incentive to improve environmental protection,
 - where the reduction concerns a tax which does not correspond to a tax subject to harmonisation at European Community level, the firms eligible for the reduction must nevertheless pay a significant proportion of the national tax.
- 46.2. The provisions in point 46.1 above may be applied to existing taxes if the following two conditions are satisfied at the same time:
- (a) the tax in question must have an appreciable positive impact in terms of environmental protection;
 - (b) the derogations for the firms concerned must have been decided on when the tax was adopted or must have become necessary as a result of a significant change in economic conditions that placed the firms in a particularly difficult competitive situation. In the latter instance, the amount of the reduction may not exceed the increase in costs resulting from the change in economic conditions. Once there is no longer any increase in costs, the reduction must no longer apply.
- 46.3. EFTA States may also encourage the development of processes for producing electric power from conventional energy sources such as gas that have an energy efficiency very much higher than the energy efficiency obtained with conventional production processes. In such cases, given the importance of such techniques for environmental protection and provided that the primary energy used reduces significantly the negative effects in terms of environmental protection, the Authority takes the view that total exemptions from taxes may be justified for a period of five years where aid is non-degressive. Derogations for 10 years may also be granted in accordance with the conditions set out in points 46.1 and 46.2.
47. Where an existing tax is increased significantly and where the EFTA State concerned takes the view that derogations are needed for certain firms, the conditions set out in point 46.1 as regards new taxes are applicable by analogy.

48. When the reductions concern a tax which corresponds to a tax subject to harmonisation at European Community level and when the national tax is lower than or equal to a corresponding harmonised Community minimum, the Authority takes the view that long-term exemptions are not justified.

However, in all cases of reduction of tax, the EFTA State may grant operating aid in accordance with points 40 and 41 if the reduction granted satisfies the conditions laid down in these points. If the tax corresponds to a tax subject to harmonisation at European Community level, an express authorisation to derogate from the Community minimum must then in any event be provided for in the corresponding Community tax harmonisation provision.

D.3.3. Rules applicable to operating aid for renewable energy sources

49. As regards the production of renewable energy, operating aid will usually be allowable under these guidelines.
50. The Authority takes the view that such aid qualifies for special treatment because of the difficulties these sources of energy have sometimes encountered in competing effectively with conventional sources. It must also be borne in mind that it is a common objective to encourage the development of these sources of energy, notably on environmental grounds. Aid may be necessary in particular where the technical processes available do not allow energy to be produced at unit costs comparable to those of conventional sources.
51. Operating aid may be justified here in order to cover the difference between the cost of producing energy from renewable energy sources and the market price of that energy. The form of such aid may vary depending on the kind of energy involved and the support mechanism worked out by the EFTA State. Moreover, when studying cases, the Authority will take account of the competitive position of each form of energy involved.
52. EFTA States may grant aid for renewable energy sources as follows:

D.3.3.1. Option 1

53. In the renewable energy field, unit investment costs are particularly high and generally account for a significant proportion of firms' costs and do not allow firms to charge competitive prices on the markets where they sell energy.
54. In order to take better account of this market-access barrier for renewable energies, EFTA States may grant aid to compensate for the difference between the production cost of renewable energy and the market price of the form of power concerned. Any operating aid may be granted only for plant depreciation. Any further energy produced by the plant will not qualify for any assistance. However, the aid may also cover a fair return on capital if EFTA States can show that this is indispensable given the poor competitiveness of certain renewable energy sources.

In determining the amount of operating aid, account should also be taken of any investment aid granted to the firm in question in respect of the new plant.

When notifying aid schemes to the Authority, EFTA States must state the precise support mechanisms and in particular the methods of calculating the amount of aid. If the Authority authorises the scheme, the EFTA State must then apply those mechanisms and methods of calculation when it comes to granting aid to firms.

55. Unlike most other renewable sources of energy, biomass requires relatively less investment but brings higher operating costs. The Authority will, therefore, be amenable to operating aid exceeding the amount of investment where EFTA States can show that the aggregate costs by firms after plant depreciation are still higher than the market prices of the energy.

D.3.3.2. Option 2

56. EFTA States may grant support for renewable energy sources by using market mechanisms such as green certificates or tenders. These systems allow all renewable energy producers to benefit indirectly from guaranteed demand for their energy, at a price above the market price for conventional power. The price of these green certificates is not fixed in advance but depends on supply and demand.
57. Where they constitute State aid, these systems may be authorised by the Authority if EFTA States can show that support is essential to ensure the viability of the renewable energy sources concerned, does not in the aggregate result in overcompensation for renewable energy and does not dissuade renewable energy producers from becoming more competitive. With a view to verifying that these criteria are met, the Authority intends to authorise these aid systems for a period of 10 years, after which it will have to be assessed whether the support measure needs to be continued.

D.3.3.3. Option 3

58. EFTA States may grant operating aid to new plants producing renewable energy that will be calculated on the basis of the external costs avoided. These are the environmental costs that society would have to bear if the same quantity of energy were produced by a production plant operating with conventional forms of energy. They will be calculated on the basis of the difference between, on the one hand, the external costs produced and not paid by renewable energy producers and, on the other hand, the external costs produced and not paid by non-renewable energy producers. To carry out these calculations, the EFTA State will have to sue a method of calculation that is internationally recognised and has been communicated to the Authority. It will have to provide among other things a reasoned and quantified comparative cost analysis, together with an assessment of competing energy producers' external costs, so as to demonstrate that the aid does genuinely compensate for external costs not covered.

At any event, the amount of the aid thus granted to the renewable-energy producer must not exceed EUR 0,05 per kWh.

Furthermore, the amount of aid granted to producers that exceeds the amount of aid resulting from option 1 must be reinvested by the firms in renewable sources of energy. It will be taken into account by the Authority if this activity also qualifies for State aid.

59. If option 3 is to remain consistent with the general rules on competition, the Authority must be certain that the aid does not give rise to any distortion of competition contrary to the common interest. In other words, it must be certain that the aid will result in an actual overall increase in the use of renewable energy sources at the expense of conventional energy sources, and not in a simple transfer of market shares between renewable energy sources. The following conditions will therefore have to be met:
- aid granted under this option must form part of a scheme which treats firms in the renewable energy sector on an equal footing,
 - the scheme must provide for aid to be granted without discrimination as between firms producing the same renewable energy,
 - the scheme must be re-examined by the Authority every five years.

D.3.3.4. Option 4

60. EFTA States may still grant operating aid in accordance with the general rules governing such aid in points 40 and 41.

D.3.4. *Rules applicable to operating aid for the combined production of electric power and heat*

61. The Authority takes the view that operating aid for the combined production of electric power and heat may be justified provided that the conditions set out in point 26 are met. Such aid may be granted to firms distributing electric power and heat to the public where the costs of producing such electric power or heat exceed its market price. In similar circumstances, operating aid may be granted in accordance with the rules in points 53 to 60. The decision as to whether the aid is essential will take account of the costs and revenue resulting from the production and sale of the electric power or heat.
62. Operating aid may be granted on the same conditions as for the industrial use of the combined production of electric power and heat where it can be shown that the production cost of one unit of energy using that technique exceeds the market price of one unit of conventional energy. The production cost may include the plant's normal return on capital but any gains by the firm in terms of heat production must be deducted from production costs.

E. *Policies, measures and instruments for reducing greenhouse gases*

63. The Kyoto Protocol ⁽⁴⁸⁾ calls for a limitation or reduction in greenhouse gas emissions during the period 2008 to 2012. The Authority takes the view that some of the means adopted to comply with the objectives of the Protocol could constitute State aid but it is still too early to lay down the conditions for authorising any such aid.

F. *Basis of exemption for all projects examined by the Authority*

64. Subject to the limits and conditions set out in these guidelines, environmental aid will be authorised by the Authority pursuant to Article 61(3)(c) of the EEA Agreement for aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest.

⁽⁴⁸⁾ Norway and Liechtenstein have signed, but still not ratified, the Kyoto Protocol. Iceland has not signed the Protocol. However, all three countries have signed and ratified the climate convention, which constitutes the framework for the Protocol.

65. Aid to promote the execution of important projects of common European interest, which are an environmental priority and will often have beneficial effects beyond the frontiers of the EFTA State(s) concerned, can be authorised under the exemption provided for in Article 61(3)(b) of the EEA Agreement. However, the aid must be necessary for the project to proceed, and the project must be specific, well defined and qualitatively important and must make an exemplary and clearly identifiable contribution to the common European interest. When this exemption is applied, the Authority may authorise aid at higher rates than the limits laid down for aid authorised pursuant to Article 61(3)(c).

G. ***Overlapping of aid from different sources***

66. The aid ceilings stipulated in these guidelines are applicable irrespective of whether the aid in question is financed wholly or in part from state resources or from resources accruing from EEA cooperation. Aid authorised under these guidelines may not be combined with other forms of European Community financing obtained through the participation of EFTA States in Community programmes, if such overlapping produces an aid intensity higher than that laid down in these guidelines.

In the case of aid serving different purposes and involving the same eligible costs, the most favourable aid ceiling will apply.

H. ***“Appropriate measures” within the meaning of Article 1(1) of Protocol 3 to Surveillance and Court Agreement***

67. For the purpose of these guidelines and acting under Article 1(1) of Protocol 3 to the Surveillance and Court Agreement, the Authority will propose the following appropriate measures to the EFTA States in respect of their existing systems of aid.
68. In order to enable it to assess any substantial amounts of aid granted under existing schemes and to decide whether such aid is compatible with the functioning of the EEA Agreement, the Authority will propose, as an appropriate measure under Article 1(1) of Protocol 3 to the Surveillance and Court Agreement, that EFTA States should notify it in advance of any individual case of investment aid granted under an existing scheme where the eligible costs exceed EUR 25 million and where the aid exceeds the gross grant equivalent of EUR 5 million. Notification will be given by means of the form of which a model is shown in the Annex to these guidelines.
69. The Authority will also propose, as an appropriate measure under Article 1(1) of Protocol 3 to the Surveillance and Court Agreement, that EFTA States should bring their existing environmental aid schemes into line with these guidelines before 1 January 2002.
70. The Authority will ask the EFTA States to confirm within one month of receipt of the proposed measures referred to in points 67 to 69 that they agree to the proposals. In the absence of any reply, the Authority will take it that the relevant EFTA State does not agree.
71. The Authority would point out that, with the exception of aid classed as *de minimis* aid under Commission Regulation (EC) No 69/2001⁽⁴⁹⁾, which is to be implemented in the EEA Agreement through Annex XV, these guidelines do not affect the obligation incumbent on Member States under Article 1(3) of Protocol 3 to the Surveillance and Court Agreement to notify any individual aid granted to firms outside the framework of authorised schemes.
72. The Authority intends to ensure that any authorisation for a future scheme complies with these guidelines.

I. ***Application of the guidelines***

73. These guidelines will apply from the date of their adoption by the EFTA Surveillance Authority. They will cease to be applicable on 31 December 2007. After consulting the EFTA States, the Authority may amend them before that date on the basis of important competition policy or environmental policy or environmental policy considerations or in order to take account of other policies.
74. The Authority will apply these guidelines to all aid projects notified in respect of which it is called upon to take a decision after the guidelines are adopted by the EFTA Surveillance Authority, even where the projects were notified prior to the adoption.

In the case of non-notified aid, the Authority will apply:

- (a) these guidelines if the aid was granted after their adoption;
- (b) the 1994 guidelines on aid for environmental protection, published in *Official Journal of the European Communities* L 231 of 3 September 1994, when aid is granted in all other cases.

⁽⁴⁹⁾ OJ L 10, 13.1.2001, p. 30.

J. ***Integration of environmental policy into other State aid guidelines***

75. Articles 73 to 75 of the EEA Agreement call for the requirements of environmental protection to be included in the implementation of other policies of the EFTA States.

When the Authority adopts or revises other guidelines or frameworks on State aid, it will consider how the present requirements can best be taken into account. It will also examine whether it would not be expedient to ask the EFTA States to provide an environmental impact study whenever they notify it of an important aid project, irrespective of the sector involved.

ANNEX

Additional information ordinary to be supplied when notifying State aid for environmental purposes under Article 1(3) of Protocol 3 to the Surveillance and Court Agreement

(Schemes, cases of aid granted under an approved scheme, and one-off aid measures)

1. *Objectives*

Detailed description of the objectives of the measure, and of the type of environmental protection it is intended to promote.

2. *Description of the measure*

Detailed description of the measure and of the recipients.

Description of the total costs of the investments involved and of the eligible costs.

If the measure in question has already been applied in the past, what environmental results have been obtained?

If the measure is a new one, what environmental results are anticipated, and over what period?

If the aid is to be granted towards an improvement on standards, what are the standards applicable, and in what way does the measure allow an appreciably higher level of environmental protection to be achieved?

If the aid is to be granted in the absence of standards, please give a detailed description of the way.'

CORRIGENDA**Corrigendum to Commission Regulation (EC) No 1745/2001 of 31 August 2001 suspending the buying-in of butter in certain Member States**

(Official Journal of the European Communities L 234 of 1 September 2001)

On page 47 in Article 1:

for: '... France, Greece, Italy, the Netherlands, Austria, ...',

read: '... France, Greece, the Netherlands, Austria, ...'.
