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I

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is obligatory)

REGULATIONS

COMMISSION REGULATION (EC) No 1463/2007

of 12 December 2007

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⁾, 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 13 December 2007.

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

Done at Brussels, 12 December 2007.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 337, 24.12.1994, p. 66. Regulation as last amended by Regulation (EC) No 756/2007 (OJ L 172, 30.6.2007, p. 41).

ANNEX

to Commission Regulation of 12 December 2007 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
0702 00 00	IL	168,9
	MA	91,0
	TN	157,6
	TR	108,7
	ZZ	131,6
0707 00 05	JO	209,9
	MA	47,6
	TR	89,2
	ZZ	115,6
0709 90 70	JO	149,8
	MA	56,0
	TR	108,3
	ZZ	104,7
0709 90 80	EG	359,4
	ZZ	359,4
0805 10 20	AR	12,5
	AU	10,4
	BR	25,6
	SZ	31,4
	TR	100,7
	ZA	38,2
	ZW	20,3
	ZZ	34,2
0805 20 10	MA	79,8
	ZZ	79,8
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	HR	32,2
	IL	66,9
	TR	72,7
	ZZ	57,3
0805 50 10	EG	80,9
	IL	82,7
	TR	105,4
	ZA	65,9
	ZZ	83,7
0808 10 80	AR	79,2
	CA	97,8
	CL	86,0
	CN	76,4
	MK	30,6
	US	87,4
	ZA	82,4
0808 20 50	ZZ	77,1
	AR	71,4
	CN	40,6
	TR	145,7
	US	107,8
	ZZ	91,4

⁽¹⁾ Country nomenclature as fixed by Commission Regulation (EC) No 1833/2006 (OJ L 354, 14.12.2006, p. 19). Code 'ZZ' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 1464/2007**of 12 December 2007****determining the extent to which the applications for import licences submitted in November 2007 for certain dairy products under certain tariff quotas opened by Regulation (EC) No 2535/2001 can be accepted**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products ⁽¹⁾,

Having regard to Commission Regulation (EC) No 1301/2006 of 31 August 2006 laying down common rules for the administration of import tariff quotas for agricultural products managed by a system of import licences ⁽²⁾, and in particular Article 7(2) thereof,

Whereas:

Applications lodged from 20 to 30 November 2007 for certain quotas referred to in Annex I to Commission Regulation (EC)

No 2535/2001 of 14 December 2001 laying down detailed rules for applying Council Regulation (EC) No 1255/1999 as regards the import arrangements for milk and milk products and opening tariff quotas ⁽³⁾, concern quantities greater than those available; therefore, the allocation factors should be fixed for the quantities applied for,

HAS ADOPTED THIS REGULATION:

Article 1

The allocation coefficients set out in the Annex to this Regulation shall be applied to the quantities for which import licences have been sought for the period from 20 to 30 November 2007 in respect of products falling within the quotas referred to in parts I.A, and parts I.D, I.E, I.F, I.H and I.I, of Annex I to Regulation (EC) No 2535/2001.

Article 2

This Regulation shall enter into force on 13 December 2007.

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

Done at Brussels, 12 December 2007.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 160, 26.6.1999, p. 48. Regulation as last amended by Regulation (EC) No 1152/2007 (OJ L 258, 4.10.2007, p. 3). Regulation (EC) No 1255/1999 will be replaced by Regulation (EC) No 1234/2007 (OJ L 299, 16.11.2007, p. 1) as from 1 July 2008.

⁽²⁾ OJ L 238, 1.9.2006, p. 13. Regulation as last amended by Regulation (EC) No 289/2007 (OJ L 78, 17.3.2007, p. 17).

⁽³⁾ OJ L 341, 22.12.2001, p. 29. Regulation as last amended by Regulation (EC) No 487/2007 (OJ L 114, 1.5.2007, p. 8).

ANNEX I.A

Quota number	Allocation coefficient
09.4590	100 %
09.4599	100 %
09.4591	100 %
09.4592	—
09.4593	—
09.4594	100 %
09.4595	1,396665 %
09.4596	100 %

ANNEX I.D

Products originating in Turkey

Quota number	Allocation coefficient
09.4101	—

ANNEX I.E

Products originating from South Africa

Quota number	Allocation coefficient
09.4151	—

ANNEX I.F

Products originating from Switzerland

Quota number	Allocation coefficient
09.4155	—

ANNEX I.H

Products originating in Norway

Quota number	Allocation coefficient
09.4179	100 %

ANNEX I.I

Products originating in Iceland

Quota number	Allocation coefficient
09.4205	100 %
09.4206	100 %

COMMISSION REGULATION (EC) No 1465/2007**of 12 December 2007****amending Annex V to Council Regulation (EC) No 752/2007 as regards the quantitative limits of certain steel products from Ukraine**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 752/2007 of 30 May 2007 on administering certain restrictions on imports of certain steel products from Ukraine ⁽¹⁾,

Whereas:

(1) The European Community and the Government of Ukraine signed an agreement on trade in certain steel products on 18 June 2007 ⁽²⁾ (the Agreement).

(2) Article 10(1) of the Agreement provides that the Agreement shall be automatically renewed year by year provided that neither Party gives the other Party written notice of denunciation of the Agreement at least six months before it expires and that with each renewal, quantities in every product group shall be increased by 2,5 %.

(3) Ukraine has not notified the Community of its wish to denunciate the Agreement. Therefore, the Agreement will be automatically renewed and the quantities in every product group increased by 2,5 %.

(4) Regulation (EC) No 752/2007 should be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

The quantitative limits for the year 2007 set out in Annex V to Regulation (EC) No 752/2007 are replaced by those for the year 2008 set out in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the 1 January 2008. It shall be published in the *Official Journal of the European Union*.

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

Done at Brussels, 12 December 2007.

For the Commission

Peter MANDELSON

Member of the Commission

⁽¹⁾ OJ L 178, 6.7.2007, p. 1.

⁽²⁾ OJ L 178, 6.7.2007, p. 24.

ANNEX

QUANTITATIVE LIMITS FOR THE YEAR 2008

(tonnes)	
Products	2008
<i>SA. Flat-rolled products</i>	
SA1. Coils	194 750
SA2. Heavy plate	399 750
SA3. Other flat-rolled products	143 500
<i>SB. Long products</i>	
SB1. Beams	51 250
SB2. Wire rod	199 875
SB3. Other long products	363 875

Note: SA and SB are product categories.

SA1 to SA3 and SB1 to SB3 are product groups.

COMMISSION REGULATION (EC) No 1466/2007**of 12 December 2007****establishing a prohibition of fishing for hake in ICES zones VIII c, IX and X; EC waters of CECAF
34.1.1 by vessels flying the flag of Portugal**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy ⁽¹⁾, and in particular Article 26(4) thereof,

Having regard to Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to common fisheries policy ⁽²⁾, and in particular Article 21(3) thereof,

Whereas:

- (1) Council Regulation (EC) No 41/2007 of 21 December 2006 fixing for 2007 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks applicable in Community waters and for Community vessels, in waters where catch limitations are required ⁽³⁾, lays down quotas for 2007.
- (2) According to the information received by the Commission, catches of the stock referred to in the Annex to this Regulation by vessels flying the flag of or registered in the Member State referred to therein have exhausted the quota allocated for 2007.

- (3) It is therefore necessary to prohibit fishing for that stock and its retention on board, transhipment and landing,

HAS ADOPTED THIS REGULATION:

*Article 1***Quota exhaustion**

The fishing quota allocated to the Member State referred to in the Annex to this Regulation for the stock referred to therein for 2007 shall be deemed to be exhausted from the date set out in that Annex.

*Article 2***Prohibitions**

Fishing for the stock referred to in the Annex to this Regulation by vessels flying the flag of or registered in the Member State referred to therein shall be prohibited from the date set out in that Annex. It shall be prohibited to retain on board, tranship or land such stock caught by those vessels after that date.

*Article 3***Entry into force**

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

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

Done at Brussels, 12 December 2007.

For the Commission

Fokion FOTIADIS

Director-General for Fisheries and Maritime Affairs

⁽¹⁾ OJ L 358, 31.12.2002, p. 59. Regulation as amended by Regulation (EC) No 865/2007 (OJ L 192, 24.7.2007, p. 1).

⁽²⁾ OJ L 261, 20.10.1993, p. 1. Regulation as last amended by Regulation (EC) No 1967/2006 (OJ L 409, 30.12.2006, p. 11), as corrected by OJ L 36, 8.2.2007, p. 6.

⁽³⁾ OJ L 15, 20.1.2007, p. 1. Regulation as last amended by Commission Regulation (EC) No 898/2007 (OJ L 196, 28.7.2007, p. 22).

ANNEX

No	86
Member State	Portugal
Stock	HKE/8C3411
Species	Hake (<i>Merluccius merluccius</i> .)
Zone	VIII c, IX and X; EC waters of CECAF 34.1.1
Date	24.11.2007

II

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory)

DECISIONS

COUNCIL

COUNCIL DECISION

of 5 December 2007

concerning the rules applicable to national experts and military staff on secondment to the General Secretariat of the Council and repealing Decision 2003/479/EC

(2007/829/EC)

THE COUNCIL OF THE EUROPEAN UNION,

- (4) The rights and obligations of SNEs and seconded military staff set out in this Decision should ensure that they carry out their duties solely in the interests of the GSC.

Having regard to the Treaty on European Union, and in particular Article 28(1) thereof,

- (5) In view of the temporary nature of their work and their particular status, SNEs and seconded military staff should not take responsibility on behalf of the GSC for the exercise of its public law prerogatives, except where derogations are laid down in this Decision.

Having regard to the Treaty establishing the European Community and in particular Article 207(2) thereof,

Whereas:

- (1) Seconded national experts (hereinafter referred to as SNEs) and seconded national military staff (hereinafter referred to as seconded military staff) should enable the General Secretariat of the Council (hereinafter referred to as the GSC) to benefit from their high level of knowledge and professional experience, in particular in areas where such expertise is not readily available.

- (6) This Decision should set out all the conditions of employment of SNEs and seconded military staff and be applicable regardless of the origin of the budgetary appropriations used to cover the expenditure.

- (2) This Decision should foster the exchange of professional experience and knowledge of European policies by temporarily assigning experts from Member States' public administrations or from international organisations to the GSC.

- (7) Special provision should moreover be made for military staff seconded to the GSC to form the European Union Military Staff.

- (3) SNEs should be drawn from public administrations in Member States or from international organisations.

- (8) Since these rules replace those laid down in Council Decision 2003/479/EC ⁽¹⁾, that Decision should be repealed without prejudice to its continuing application to all secondments taking place at the time of entry into force of this Decision,

⁽¹⁾ OJ L 160, 28.6.2003, p. 72. Decision as last amended by Decision 2007/456/EC (OJ L 173, 3.7.2007, p. 27).

HAS DECIDED AS FOLLOWS:

CHAPTER I

GENERAL PROVISIONS

Article 1

Scope

1. These rules are applicable to seconded national experts (SNEs) seconded to the General Secretariat of the Council (GSC) by Member States' public administrations. They shall also apply to experts on secondment from an international organisation.

2. The persons covered by these rules shall remain in the service of their employer throughout the period of secondment and shall continue to be paid by that employer.

3. The GSC shall recruit SNEs in accordance with requirements and budgetary possibilities. The Deputy Secretary-General shall establish the arrangements for such recruitment.

4. Except where the Deputy Secretary-General grants a derogation which is not applicable in the area of the Common Foreign and Security Policy (CFSP)/European Security and Defence Policy (ESDP), SNEs must be nationals of a Member State. SNEs shall be recruited on as wide a geographical basis as possible from among the nationals of the Member States. The Member States and the GSC shall cooperate to ensure, as far as possible, a balance between men and women and observe the principle of equal opportunities.

5. Secondment shall be implemented by an exchange of letters between the Directorate-General for Personnel and Administration of the GSC and the Permanent Representation of the Member State concerned or the international organisation, as appropriate. The place of secondment must be indicated in the exchange of letters. A copy of the rules applicable to SNEs on secondment to the GSC shall be attached to the exchange of letters.

Article 2

Period of secondment

1. The period of secondment may not be less than six months nor exceed two years and may be renewed successively up to a total period not exceeding four years.

2. Notwithstanding paragraph 1, the period for which an SNE is seconded to take part in the preparation of military or civilian operations or to study their launch may be less than six months.

3. The intended period of secondment shall be fixed at the outset in the exchange of letters provided for in Article 1(5). The same procedure shall apply in the case of a renewal of the period of secondment.

4. An SNE who has already been seconded to the GSC may be seconded again, in accordance with internal rules laying down maximum periods during which such persons may be present in GSC departments and subject to the following conditions:

- (a) the SNE must continue to meet the conditions for secondment;
- (b) a period of at least six years must have elapsed between the end of the previous period of secondment and any further secondment; if at the end of the first secondment the SNE has received another, additional contract, the six-year period shall begin to run from the expiry of that contract. This provision shall not prevent the GSC from accepting the secondment of an SNE whose initial secondment lasted for less than four years, but in that case the new secondment shall not exceed the unexpired part of the four-year period;
- (c) the period stated in point (b) shall be reduced to three years if the period of the first secondment is less than six months.

Article 3

Place of secondment

SNEs shall be seconded to Brussels, to a GSC liaison office or to any other place where the European Union operates under a decision adopted by the Council. The place of secondment may be changed during the secondment by means of a further exchange of letters in accordance with Article 1(5) if the possibility of changing that place was not envisaged in the original exchange of letters. The administration which seconds an SNE shall be kept informed of any changes to the place of secondment.

Article 4

Duties

1. An SNE shall assist GSC officials or temporary staff and carry out the tasks assigned to him.

The duties carried out shall be defined by mutual agreement between the GSC and the administration which seconds the national expert in the interest of the departments and taking into account the candidate's qualifications.

2. An SNE shall take part in missions and meetings only:

- (a) if accompanying a GSC official or temporary staff member;
or
- (b) as an observer or solely for information purposes, if alone.

Unless a special mandate has been granted, under the authority of the Secretary-General/High Representative, by the Director-General of the department concerned, the SNE may not commit the GSC externally.

3. The GSC shall retain sole responsibility for approving the results of tasks performed by the SNE.

4. The GSC departments concerned, the SNE's employer and the SNE shall make every effort to avoid any conflict of interest or appearance of such a conflict in relation to the SNE's duties during secondment. To that end, the GSC shall, in good time, inform the SNE and the employer of the intended duties and shall ask each of them to confirm in writing that they know of no reason why the SNE should not be assigned to those duties. The SNE shall be asked in particular to declare any potential conflict between his family circumstances (in particular the professional activities of close family members or any important financial interests of his own, or of close family members) and the proposed duties while on secondment.

The employer and the SNE shall undertake to notify the GSC of any change of circumstances during the secondment which could give rise to any such conflict.

5. Where the GSC considers that the nature of the tasks entrusted to the SNE requires particular security precautions, security clearance shall be obtained before the SNE is seconded.

6. In the event of failure to comply with the provisions of paragraphs 2, 3, 4 and 7, the GSC may terminate the secondment of the SNE under the terms of Article 8(2)(c).

7. Notwithstanding the first subparagraph of paragraph 1 and the first subparagraph of paragraph 2, the Deputy Secretary-General may, on a proposal from the Director-General of the department to which the SNE is assigned, entrust the SNE with specific duties and charge him with the conduct of one or more specific missions after verifying that there is no conflict of interest.

Article 5

Rights and obligations

1. During the period of secondment:

- (a) an SNE shall carry out his duties and shall behave solely with the interests of the Council in mind;
- (b) an SNE shall abstain from any action, and in particular any public expression of opinion, which may reflect on his position at the GSC;
- (c) any SNE who, in the performance of his duties, is called upon to give a decision on the handling or outcome of a matter in which he has a personal interest that could impair his independence, shall inform the head of the department to which he is assigned;
- (d) an SNE shall not, whether alone or together with others, publish or cause to be published any text dealing with the work of the European Union without obtaining permission in accordance with the conditions and rules in force at the GSC. Permission shall be refused only where the intended publication is liable to prejudice the interests of the European Union;
- (e) all rights in any work done by an SNE in the performance of his duties shall be the property of the GSC;
- (f) an SNE shall reside at the place of secondment or at no greater distance therefrom than is compatible with the proper performance of his activities;
- (g) an SNE shall assist and tender advice to the superior to whom he is assigned and shall be responsible to his superior for the performance of the duties entrusted to him;
- (h) an SNE shall, in the exercise of his duties, accept no instructions from his employer or national government. He shall not undertake any activities for his employer, nor for governments, nor for any other person, private company or public body.

2. Both during and after the period of secondment, an SNE shall exercise the greatest discretion with regard to all facts and information of which he becomes aware in the course of or in connection with the performance of his duties. He shall not in any form whatsoever disclose to any unauthorised person any document or information not already lawfully made public, nor shall he use it for personal gain.

3. At the end of the secondment an SNE shall continue to be bound by the obligation to act with integrity and discretion in the exercise of new duties assigned to him and in accepting certain posts or advantages.

To that end, in the three years following the period of secondment an SNE shall inform the GSC forthwith of any duties or tasks he has to perform for his employer which are likely to give rise to a conflict of interest in relation to the tasks he carried out during secondment.

4. SNEs shall be subject to the security rules in force in the GSC.

5. Failure to comply with the provisions of paragraphs 1, 2 and 4 during the period of secondment shall entitle the GSC to terminate the secondment of an SNE under the terms of Article 8(2)(c).

Article 6

Level, professional experience and knowledge of languages

1. To qualify for secondment to the GSC, an SNE must have at least three years' full-time experience of administrative, scientific, technical, advisory or supervisory functions equivalent to those of function groups AD or AST as defined in the Staff Regulations of officials of the European Communities and the Regulations and Rules applicable to other servants of the Communities. Before the secondment, the SNE's employer shall supply the GSC with a statement of the expert's employment covering the previous 12 months.

2. An SNE must have a thorough knowledge of one Community language and a satisfactory knowledge of a second language for the performance of his duties.

Article 7

Suspension of secondment

1. The GSC may authorise suspensions of secondment and specify the terms applicable. During such suspensions:

- (a) the allowances referred to in Articles 15 and 16 shall not be payable;
- (b) the expenses referred to in Articles 18 and 19 shall be payable only if the suspension is at the GSC's request.

2. The GSC shall inform the SNE's employer.

Article 8

Termination of periods of secondment

1. Subject to paragraph 2, secondment may be terminated at the request of the GSC or of the SNE's employer, provided three months' notice is given. It may also be terminated at the SNE's request provided the same notice is given and subject to the GSC's agreement.

2. In certain exceptional circumstances the secondment may be terminated without notice:

- (a) by the SNE's employer, if the employer's essential interests so require;
- (b) by agreement between the GSC and the employer, at the request of the SNE to both parties, if the SNE's essential personal or professional interests so require;
- (c) by the GSC in the event of failure by the SNE to comply with his obligations under these rules. The SNE shall first be given an opportunity to submit his defence.

3. In the event of termination under paragraph 2(c), the GSC shall immediately inform the employer.

CHAPTER II

WORKING CONDITIONS

Article 9

Social security

1. Before the period of secondment begins, the employer from which the national expert is to be seconded shall certify to the GSC that, throughout the period of secondment, the SNE will remain subject to the social security legislation applicable to the public administration or international organisation which employs the SNE and which will assume responsibility for expenses incurred abroad.

2. From the commencement of his secondment, the SNE shall be covered by the GSC against the risk of accident. The GSC shall provide him with a copy of the terms of this cover on the day on which he reports to the relevant department of the Directorate-General for Personnel and Administration to complete the administrative formalities related to the secondment.

3. When, in the context of a mission in which the SNE is participating under the terms of Articles 4(2) and 20, or when, as a result of specific risks at the place of secondment, additional or specific insurance is required, the relevant costs shall be borne by the GSC.

Article 10

Working hours

1. An SNE shall be subject to the rules in force in the GSC as regards working hours. These rules may be modified by the Deputy General-Secretary where the needs of the department so require.

2. An SNE shall serve on a full-time basis throughout the period of secondment. Following a duly justified request from a Directorate-General and subject to compatibility with the interests of the GSC, the Director-General of Personnel and Administration may authorise an SNE to work part-time, after agreement from his employer.

3. Where part-time working is authorised, the SNE shall work at least half of the normal working time.

4. The allowances in force within the GSC for shift-work or standby duty may be paid to SNEs.

Article 11

Absence for reasons of sickness or accident

1. In the event of absence for reasons of sickness or accident, an SNE shall notify his superior as soon as possible, stating his present address. He shall produce a medical certificate if absent for more than three days and may be required to undergo a medical examination arranged by the GSC.

2. If absence due to sickness or accident of not more than three days exceeds a total of 12 days over a period of 12 months, an SNE shall be required to produce a medical certificate for any further absence due to sickness.

3. Where the period of sick leave exceeds one month or the period of service performed by the SNE, whichever is the longer, the allowances referred to in Article 15(1) and (2) shall be automatically suspended. This provision shall not apply in the event of illness linked to pregnancy. Sick leave may not extend beyond the duration of the secondment of the person concerned.

4. However, an SNE who is the victim of a work-related injury which occurs during the secondment shall continue to receive in full the allowances provided for in Article 15(1) and

(2) throughout the period during which he is unfit for work up to the end of the period of secondment.

Article 12

Annual leave, special leave and holidays

1. An SNE shall be entitled to two-and-a-half working days of leave per whole month of service (30 days per calendar year).

2. Leave is subject to prior authorisation by the department to which the SNE is assigned.

3. An SNE may, on reasoned application, be granted special leave in the following cases:

— marriage of the SNE: two days,

— serious illness of spouse: up to three days annually,

— death of spouse: four days,

— serious illness of a relative in the ascending line: up to two days annually,

— death of a relative in the ascending line: two days,

— birth of a child: ten days, to be taken during the month following the birth,

— serious illness of a child: up to two days annually,

— removal to take up duties: up to two days,

— death of a child: four days.

Additional special leave of two days per period of 12 months may be granted at the request (with due justification) of the person concerned.

4. Upon a duly substantiated application by the SNE's employer, up to two days of special leave in a 12-month period may be granted by the GSC on a case-by-case basis.

5. In the case of part-time work, annual leave shall be reduced proportionately.

6. Days of annual leave not taken by the end of the period of secondment shall be forfeited.

7. Paragraph 3 shall not apply to those SNEs whose period of secondment is less than six months. However, an SNE whose period of secondment is less than six months may be granted special leave, on the basis of a reasoned application and subject to a decision by the Director-General of the department to which he is assigned. That special leave may not exceed three days for the whole period of secondment. Before granting the leave, the above Director-General in charge must consult the Director-General of Personnel and Administration.

Article 13

Maternity leave

1. An SNE who is pregnant shall be granted maternity leave of 20 weeks, during which period she shall receive the allowances provided for in Article 15. The leave shall begin not earlier than six weeks before the probable date of delivery indicated in the certificate and shall end not earlier than 14 weeks after the date of delivery. In the event of multiple or premature birth or birth of a handicapped child, the period of leave shall be 24 weeks. For the purposes of this provision, a premature birth shall be one which occurs before the end of the 34th week of pregnancy.

2. Where the national legislation of the SNE's employer grants longer maternity leave, the secondment shall be suspended for the period exceeding that granted by the GSC. In that case a period equivalent to the suspension shall be added at the end of the secondment if the interests of the GSC warrant it.

3. An SNE may, alternatively, apply for a suspension of the secondment to cover the whole of the period allowed for maternity. In that case a period equivalent to the suspension shall be added at the end of the secondment if the interests of the GSC warrant it.

Article 14

Management and control

Management and control of leave shall lie with the administration of the GSC. Control of working time and absences shall be the responsibility of the Directorate-General or department to which the SNE is assigned.

CHAPTER III

ALLOWANCES AND EXPENSES

Article 15

Allowances

1. An SNE shall be entitled to a daily subsistence allowance throughout the period of secondment. Where the distance

between the place of origin and the place of secondment is 150 km or less, the daily allowance shall be EUR 29,44. Where the distance is more than 150 km, the daily allowance shall be EUR 117,74.

2. If the SNE has not received removal expenses from either the GSC or from the employer, an additional monthly allowance shall be paid as shown in the table below:

Distance between place of origin and place of secondment (km)	Amount in euro
0-150	0
> 150	75,68
> 300	134,54
> 500	218,65
> 800	353,20
> 1 300	555,03
> 2 000	664,37

This allowance shall be paid monthly in arrears. It shall be payable until the end of the month in which, where applicable, the SNE has effected his removal under the terms of Article 19(1).

3. These allowances shall be payable for periods of mission, annual leave, maternity leave, special leave and holidays granted by the GSC.

4. When the SNE starts the secondment, he shall receive an advance amount equivalent to 75 days of the subsistence allowance, whereupon entitlement to any further such allowances shall cease during the corresponding period. If the secondment to the GSC is ended before the expiry of the period taken into account to calculate the advance, the SNE shall be obliged to return the amount corresponding to the remaining part of that period.

5. At the time of the exchange of letters provided for in Article 1(5) the GSC shall be informed of any payment similar to that mentioned in paragraphs 1, 2, 7 and 8 of this Article received by the SNE. Any such amounts shall be deducted from the corresponding allowances paid by the GSC.

6. Daily and monthly allowances shall be adjusted each year without retroactive effect on the basis of the adaptation of the basic salaries of Community officials in Brussels and Luxembourg.

7. For SNEs seconded to a GSC Liaison Office or to any other place where the Union operates under a decision adopted by the Council, the allowances referred to in paragraphs 1 and 2 may be replaced by a housing allowance where this is justified by circumstances relating to accommodation costs at the place of secondment, subject to a reasoned decision by the Director-General of Personnel and Administration.

8. A special allowance, determined on the basis of the place of secondment, if this place is situated outside the EU, to take account of the cost of living or particularly difficult living conditions, may be granted subject to a reasoned decision by the Director-General of Personnel and Administration. This allowance shall be paid monthly and shall be fixed at between 10 and 15 % of the basic salary of an official in step 1 of grade AD 6 or grade AST 4, depending on the function group to which he is assimilated.

Article 16

Additional flat-rate allowance

1. Except where the place of origin of an SNE is 150 km or less from the place of secondment, he shall, where appropriate, receive an additional flat-rate allowance equal to the difference between the gross annual salary (less family allowances) paid by his employer plus any allowances paid by the GSC, pursuant to Article 15, and the basic salary payable to an official in step 1 of grade AD 6 or grade AST 4, depending on the function group to which he is assimilated.

2. This allowance shall be adjusted once a year without retroactive effect on the basis of the adaptation of the basic salaries of Community officials.

Article 17

Places of recruitment, secondment, origin and return

1. For the purposes of these rules,

- the place of recruitment shall be the place where the SNE performed his duties for the employer immediately prior to secondment,
- the place of secondment shall be the place where the GSC department or office to which the SNE is assigned is located, or the place where the SNE operates under a decision adopted by the Council,
- the place of origin shall be the place where his employer's head office is located,

- the place of return shall be the place where the SNE will perform his main activity after the secondment is terminated.

2. If either the place of recruitment or the place of return is located outside the territory of the European Union or in a Member State other than that in which the SNE employer's head office is located or, if the SNE does not pursue a professional activity after his secondment is terminated, the place of origin shall be considered to be the place of recruitment or place of return, as appropriate.

The place of recruitment, the place or places of secondment and the place of origin shall be determined in the exchange of letters referred to in Article 1(5). The place of return shall be determined on the basis of a declaration by the SNE's employer.

3. For the purposes of applying this Article, circumstances arising from work done by SNEs for a State other than that of the place of secondment or for an international organisation shall not be taken into account.

Article 18

Travel expenses

1. An SNE whose place of recruitment is more than 150 km from the place of secondment shall be entitled to reimbursement of travel expenses:

- (a) for himself;
- (b) for his spouse and dependent children, provided that they live with the SNE and that the removal is reimbursed by the GSC.

2. Unless the journey is made by air, the amount shall be reimbursed at a flat rate, limited to the cost of the second-class rail fare, without supplements. This shall also apply to journeys made by car. Where the rail journey exceeds 500 km or where the standard route involves a sea-crossing, air travel may be reimbursed up to the actual cost of a reduced-price ticket (PEX or APEX), on production of tickets and boarding cards.

3. An SNE shall be entitled to reimbursement for himself and, if applicable, for the persons referred to in paragraph 1(b), of travel expenses to the place of return at the end of the secondment within the above limits. The reimbursement may not be for a sum higher than that to which the SNE would have been entitled if he had returned to his place of recruitment.

4. If an SNE has effected his removal from his place of recruitment to his place of secondment, he shall be entitled each year to a flat-rate payment equal to the cost of a return journey from his place of secondment to his place of origin for himself, his spouse and any dependent children, on the basis of the provisions in force at the GSC.

Article 19

Removal expenses

1. An SNE may remove his furniture and his personal effects from the place of recruitment to the place of secondment, at the GSC's expense, after obtaining its prior authorisation, pursuant to the rules in force at the GSC concerning reimbursement of removal expenses, provided the following conditions are met:

- (a) the initial period of secondment must be for two years;
- (b) the SNE's place of recruitment must be 100 km or more from the place of secondment;
- (c) the removal must be completed within six months of the starting date of the secondment;
- (d) authorisation must be requested at least two months before the intended date of removal;
- (e) the removal costs are not being refunded by the employer;
- (f) the SNE must send originals of estimates, receipts and invoices to the GSC and a certificate from the SNE's employer confirming that the employer is not bearing the removal costs.

2. Subject to paragraph 3, where the removal to the place of secondment has been reimbursed by the GSC, the SNE shall be entitled at the end of the secondment, after prior authorisation, to reimbursement of removal costs from the place of secondment to the place of return, pursuant to the rules in force in the GSC concerning reimbursement of removal costs, subject to fulfilment of the conditions set out in paragraph 1(d) and (e) above and the following further conditions:

- (a) the removal cannot take place earlier than six months before the end of the secondment;
- (b) the removal must be completed within six months following the end of the secondment;
- (c) the amount of removal expenses reimbursed by the GSC for the removal at the end of the secondment may not exceed

the amount of the removal expenses to which he would have been entitled if he had returned to his place of recruitment;

- (d) after sending the originals of estimates received and the invoice for the removal to the GSC, and a declaration by the SNE's employer confirming that the employer is not bearing all or part of the removal costs.

3. An SNE whose secondment is terminated at his request or at the employer's request within two years of the start of the secondment shall not be entitled to reimbursement of removal costs at the end of the secondment.

Article 20

Missions and mission expenses

- 1. An SNE may be sent on mission subject to Article 4.
- 2. Mission expenses shall be reimbursed in accordance with the provisions in force at the GSC.

Article 21

Training

An SNE shall be entitled to attend training courses organised by the GSC, if the interests of the GSC warrant it. The reasonable interests of the SNE, having regard in particular to his professional career after the secondment, shall be considered when a decision on permission to attend courses is taken.

Article 22

Administrative provisions

- 1. The SNE shall report to the relevant department of the Directorate-General for Personnel and Administration on the first day of secondment to complete the requisite administrative formalities. He shall take up his duties on either the first or the 16th of the month.
- 2. An SNE assigned to a GSC liaison office shall report to the relevant department of the GSC at his place of secondment.
- 3. Payments shall be made by the appropriate department of the GSC, in euro, into a bank account opened at a banking institution in Brussels. In the case of an SNE seconded to a place other than Brussels, payments may be made in euro into a bank account opened at a banking institution either in Brussels or at the SNE's place of origin. The accommodation allowance may be paid in another currency into a bank account opened at a banking institution at the place of secondment.

CHAPTER IV

NATIONAL EXPERTS ON FREE SHORT-TERM SECONDMENT*Article 23***SNEs on free short-term secondment**

1. For the purposes of this Decision, an SNE on free short-term secondment (SNE-FSTS) shall mean a highly specialised SNE seconded to perform very specific duties for a maximum period of three months. Such secondment entails the payment of no allowances or expenses for the Council except, where appropriate, those provided for in Article 28 and without prejudice to a different agreement between the GSC and the administration which seconded the SNE-FSTS.

2. An SNE-FSTS may be seconded only in exceptional cases, with the authorisation of the Deputy Secretary-General. An SNE-FSTS may be seconded only for the purposes of performing duties which it would be difficult to have performed in the GSC within a very short time span. Such duties include:

— fact-finding missions,

— the planning and appraisal of specific crisis management operations,

— participation in specific crisis management exercises.

3. Subject to Articles 23 to 28, the rules laid down in Articles 1 to 14 and 20 to 22 shall also apply to SNEs-FSTS.

4. Without prejudice to Article 5, an SNE-FSTS's conduct must always reflect the fact that he is seconded to the Council and must never reflect adversely on his position.

*Article 24***Period of secondment**

1. The period referred to in Article 23(1) may be extended once, for a maximum period of three months.

2. An SNE-FSTS who has been seconded to the GSC may be seconded again in accordance with the rules laid down in this Decision and always subject to the following conditions:

— a minimum period of one year must have elapsed between the end of the previous period of secondment and a further secondment if the SNE is seconded subject to the rules of this chapter,

— a minimum period of three years must have elapsed between the end of the previous period of secondment and a further secondment if the SNE is seconded subject to the rules set out in Article 1 of this Decision.

3. In exceptional cases, the period indicated in the first indent of paragraph 2 may be shortened by decision of the Deputy Secretary-General.

*Article 25***Scope**

1. In the exchange of letters provided for in Article 1(5) reference shall be made to the person in charge within the directorate-general or directorate, unit, mission or exercise to which the SNE-FSTS will be seconded and the duties to be performed by the latter shall be described in detail.

2. As for the specific duties which devolve upon him, the SNE-FSTS shall receive instructions from the person in charge referred to in paragraph 1.

*Article 26***Insurance**

Without prejudice to Article 28 and notwithstanding Article 9(2), an SNE-FSTS will not be covered by the GSC against risks of accident.

*Article 27***Working conditions**

1. Notwithstanding Article 10(1), an SNE-FSTS shall abide by the rules in force as regards working hours at the place of secondment. These rules may be modified by the person in charge of the administrative unit, mission or exercise to which an SNE-FSTS is seconded where the needs of the department so require.

2. Notwithstanding the second sentence of Article 10(2), an SNE-FSTS shall work only on a full-time basis during his secondment.

3. Article 10(4) shall not apply to an SNE-FSTS.

4. The management and control of an SNE-FSTS's presence and holidays shall lie with the person in charge mentioned in Article 25(2).

5. Article 12(3), (4) and (7) shall not apply to an SNE-FSTS. However, he may be granted special leave by decision of the Director-General of the department to which he is seconded, on the basis of a reasoned application submitted by him. Such leave may not exceed three days over the entire period of secondment. Before granting such leave, the Director-General referred to above must consult the Director-General of Personnel and Administration.

Article 28

Missions

1. If an SNE-FSTS takes part in missions in a place other than his place of secondment, he will be reimbursed in accordance with the rules in force for the reimbursement of missions involving officials, except where another arrangement has been agreed between the GSC and the administration which seconds an SNE-FSTS.

2. If, in connection with a mission, special 'high risk' insurance is provided by the GSC for officials, this facility shall also apply to an SNE-FSTS who is taking part in the same mission.

3. An SNE-FSTS who takes part in a mission outside the territory of the EU will be subject to the security arrangements in force in the GSC for such missions.

CHAPTER V

APPLICATION OF THE RULES TO SECONDED NATIONAL MILITARY STAFF

Article 29

Rules applying to seconded military staff

Subject to Articles 30 to 42, the rules laid down in the preceding chapters shall also apply to military staff seconded to the GSC in order to form the European Union Military Staff pursuant to Council Decision 2001/80/CFSP of 22 January 2001 on the establishment of the Military Staff of the European Union ⁽¹⁾.

Article 30

Conditions

Seconded military staff must be on paid service in the armed forces of a Member State throughout their secondment. They must be nationals of a Member State.

Article 31

Recruitment

Notwithstanding the second sentence of Article 1(3), the Secretary-General/High Representative shall establish the arrangements for recruitment of seconded military staff.

Article 32

Exchange of letters

For the purposes of applying Article 1(5), the exchange of letters shall take place between the Secretary-General/High Representative and the Permanent Representation of the Member State concerned. This exchange of letters must also mention any restriction on an SNE's participation in missions.

Article 33

Length of secondment

1. Notwithstanding Article 2(1), the length of secondment may not be less than six months nor more than three years and it may be extended successively up to a total period not exceeding four years.

2. Notwithstanding Article 2(4)(b), except in exceptional cases, a period of at least three years must have elapsed between the end of the previous period of secondment and a further secondment, where the conditions so justify and in agreement with the Secretary-General/High Representative.

Article 34

Tasks

Notwithstanding Article 4(1), seconded military staff acting under the authority of the Secretary-General/High Representative shall fulfil the mission, carry out the tasks and perform the duties assigned to them in accordance with the Annex to Decision 2001/80/CFSP.

Article 35

External commitments

Notwithstanding the second subparagraph of Article 4(2), seconded military staff may not involve the GSC in an external commitment, except under a special mandate granted under the authority of the Secretary-General/High Representative.

Article 36

Security clearance

Notwithstanding Article 4(5), the appropriate level of the seconded military staff member's security clearance, which may not be lower than SECRET, must be stipulated in the exchange of letters referred to in Article 1(5).

⁽¹⁾ OJ L 27, 30.1.2001, p. 7. Decision as amended by Decision 2005/395/CFSP (OJ L 132, 26.5.2005, p. 17).

*Article 37***Professional experience**

Notwithstanding Article 6(1), a military staff member working at administrative or advisory level and showing a high degree of competence for the duties to be carried out may be seconded to the GSC.

*Article 38***Suspension and termination of secondment**

1. Authorisation for Article 7(1) to be applied to a seconded military staff member shall be given by the Secretary-General/High Representative.

2. Notwithstanding Article 8(2), secondment may be terminated without notice if the interests of the GSC or of the seconded military staff member's national administration so require or for any other sufficient cause.

*Article 39***Serious failure to comply with obligations**

1. Secondment may be terminated without notice in serious cases of intentional or negligent failure of the seconded military staff member to comply with his obligations. Notwithstanding Article 8(2)(c), the decision shall be taken by the Secretary-General/High Representative after the person concerned has had an opportunity to submit his defence. Before taking a decision, the Secretary-General/High Representative shall notify the Permanent Representative of the Member State of which the seconded military staff member is a national. Following that decision, the allowances referred to in Articles 18 and 19 shall no longer be granted.

Prior to the decision referred to in the first subparagraph, a seconded military staff member may be suspended where serious failure to comply with his obligations is alleged against him by the Secretary-General/High Representative after the person concerned has been given an opportunity to submit his defence. The allowances referred to in Articles 15 and 16 shall not be paid during this suspension, which may not exceed three months.

2. The Secretary-General/High Representative shall inform the national authorities of any violation by a military staff member on secondment of the rules set out or referred to in this Decision.

3. A military staff member on secondment shall continue to be subject to his national disciplinary rules.

*Article 40***Working hours**

The second sentence of Article 10(2) shall not apply to seconded military staff.

*Article 41***Special leave**

Notwithstanding Article 12(4), unpaid additional special leave may be granted by the GSC for training by the employer, subject to a duly reasoned application by the employer.

*Article 42***Allowances**

Notwithstanding Article 15(1) and Article 16, the exchange of letters referred to in Article 1(5) may stipulate that allowances provided for therein will not be paid.

CHAPTER VI

FINAL PROVISIONS*Article 43***Repeals**

Council Decision 2003/479/EC shall be repealed. However, it shall remain applicable to all secondments taking place at the time of the entry into force of this Decision, without prejudice to Article 44.

*Article 44***Effect**

This Decision shall take effect on the day of its publication in the *Official Journal of the European Union*.

It shall apply from the first day of the month following its entry into force to each new secondment or renewal of secondment.

Done at Brussels, 5 December 2007.

For the Council

The President

J. VIEIRA DA SILVA

IV

(Other acts)

EUROPEAN ECONOMIC AREA

EFTA SURVEILLANCE AUTHORITY

EFTA SURVEILLANCE AUTHORITY DECISION

No 90/04/COL

of 23 April 2004

amending for the forty-sixth time the procedural and substantive rules in the field of State aid by introducing a new Chapter 24C: The application of the State aid rules to public service broadcasting

THE EFTA SURVEILLANCE AUTHORITY,

HAVING REGARD TO the Agreement on the European Economic Area ⁽¹⁾, in particular to Articles 61 to 63 and Protocol 26 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, Article 5(2)(b) and Article 1 in Part I of Protocol 3 thereof,

WHEREAS under Article 24 of the Surveillance and Court Agreement, the EFTA Surveillance Authority shall give effect to the provisions of the EEA Agreement 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⁾ adopted on 19 January 1994 by the EFTA Surveillance Authority ⁽⁴⁾,

WHEREAS, on 17 October 2001, the European Commission adopted a new Communication setting out the principles for the application of the State aid rules to public service broadcasting ⁽⁵⁾,

WHEREAS this Communication is also of relevance for the European Economic Area,

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 European Commission,

HAVING consulted the European Commission,

RECALLING that the EFTA Surveillance Authority has consulted the EFTA States in a multilateral meeting on the subject,

HAS ADOPTED THIS DECISION:

1. The State Aid Guidelines shall be amended by introducing a new Chapter 24C, Application of State aid rules to public service broadcasting. The new chapter is contained in Annex I to this Decision.

⁽¹⁾ Hereinafter referred to as the EEA Agreement.

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

⁽³⁾ Hereinafter referred to as the State Aid Guidelines.

⁽⁴⁾ Initially published in OJ L 231, 3.9.1994, and in the EEA Supplement thereto No 32 on the same date, last amended by Decision No 62/04/COL of 31 March 2004 (not yet published).

⁽⁵⁾ Communication from the Commission on the application of State aid rules to public service broadcasting, OJ C 320, 15.11.2001, p. 5.

2. The EFTA States shall be informed by means of a letter, including a copy of this Decision and including the Annex thereto.
3. 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 the Annex.
4. The Decision, including Annex I, shall be published in the EEA Section of and in the EEA Supplement to the *Official Journal of the European Union*.
5. The Decision shall be authentic in the English language.

Done at Brussels, 23 April 2004.

For the EFTA Surveillance Authority

Hannes HAFSTEIN

President

Einar M. BULL

College Member

ANNEX

24C. THE APPLICATION OF THE STATE AID RULES TO PUBLIC SERVICE BROADCASTING ⁽¹⁾**24C.1. Introduction**

- (1) Over the last two decades, broadcasting has undergone important changes. The abolition of monopolies, the emergence of new players and rapid technological developments have fundamentally altered the competitive environment. Television broadcasting was traditionally a reserved activity. Since its inception, it has mostly been provided by public undertakings under a monopoly regime, mainly as a consequence of the limited availability of broadcasting frequencies and the high barriers to entry.
- (2) In the 1970s, however, economic and technological developments made it increasingly possible for the EFTA States to allow other operators to broadcast. EFTA States have therefore decided to introduce competition in the market. This has led to a wider choice for consumers, as many additional channels and new services have become available; it has also favoured the emergence and growth of strong European operators, the development of new technologies, and a larger degree of pluralism in the sector. Whilst opening the market to competition, EFTA States considered that public service broadcasting ought to be maintained, as a way to ensure the coverage of a number of areas and the satisfaction of needs that private operators would not necessarily fulfil to the optimal extent.
- (3) The increased competition, together with the presence of State-funded operators, has also led to growing concerns for a level playing field, which have been brought to the Authority's attention by private operators. The complaints allege infringements of Article 61 of the EEA Agreement in relation to the public funding schemes established in favour of public service broadcasters.
- (4) These guidelines set out the principles to be followed by the Authority in the application of Articles 61 and 59(2) of the EEA Agreement to State funding of public service broadcasting. This will make the Authority's policy in this area as transparent as possible.

24C.2. The Role of Public Service Broadcasting

- (1) As stated by the Resolution of the EC Council and of Representatives of the Governments of the EC Member States of 1 January 1999 concerning public service broadcasting (hereinafter referred to as 'Resolution on public service broadcasting') ⁽²⁾, 'public service broadcasting in view of its cultural, social and democratic functions which it discharges for the common good has a vital significance for ensuring democracy, pluralism social cohesion, cultural and linguistic diversity'.
- (2) Public service broadcasting, although having a clear economic relevance, is not comparable to a public service in any other economic sector. There is no other service that *at the same time* has access to such a wide sector of the population, provides it with so much information and content, and by doing so conveys and influences both individual and public opinion.
- (3) Public service broadcasting has an important role to play in promoting cultural diversity in each country, in providing educational programming, in objectively informing the public, in guaranteeing pluralism and in supplying quality entertainment, democratically and free-of-charge ⁽³⁾.
- (4) Furthermore, broadcasting is generally perceived as a very reliable source of information and represents, for a not inconsiderable proportion of the population, the main source of information. It thus enriches public debate and ultimately ensures that all citizens participate to a fair degree in public life.
- (5) The role of public service ⁽⁴⁾ in general is recognised by the EEA Agreement. The key provision in this respect is Article 59(2) of the EEA Agreement, which reads as follows: 'Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in this Agreement, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Contracting Parties'.

⁽¹⁾ This chapter is to a large extent based on the Commission Communication on the application of the State aid rules to public service broadcasting, OJ C 320, 15.11.2001, p. 5.

⁽²⁾ OJ C 30, 5.2.1999, p. 1; incorporated into the EEA Agreement in Annex X, point 4, as an act which the Contracting Parties shall take note of, by Decision No 118/1999, OJ L 325, 21.12.2000, p. 33 and EEA Supplement No 60, 21.12.2000, p. 423 (Icelandic) and p. 424 (Norwegian), e.i.f. 1.10.1999.

⁽³⁾ 'The digital age of European audiovisual policy. Report from the EC high-level group on audiovisual policy', 1998.

⁽⁴⁾ For the purpose of the present guidelines, the term 'public service' corresponds with the term 'services of general economic interest' used in Article 59(2) of the EEA Agreement.

- (6) The Court of Justice of the European Communities has acknowledged in two cases that the broadcast of television services can be regarded as 'services of general economic interest' under Article 86(2) of the EC Treaty ⁽⁵⁾. The European Court of Justice has stressed that these services are subject to the competition provisions unless it is demonstrated that to apply those rules would be incompatible with the performance of their tasks ⁽⁶⁾.
- (7) The Resolution on public service broadcasting, taking the particular nature of the broadcasting sector into account, stated the principles and conditions according to which the provisions of the Treaty establishing the European Communities should be applied to this sector:

'The provisions of the Treaty establishing the European Community shall be without prejudice to the competence of Member States to provide for the funding of public service broadcasting insofar as such funding is granted to broadcasting organisations for the fulfillment of the public service remit as conferred, defined and organised by each Member State, and insofar as such funding does not affect trading conditions and competition in the Community to an extent which would be contrary to the common interest, while the realisation of the remit of that public service shall be taken into account'.

As the Resolution is incorporated into the EEA Agreement as an act which the Contracting Parties shall take note of ⁽⁷⁾, similar principles as those quoted would be applicable in the EEA.

- (8) The Resolution on public service broadcasting further reaffirmed the importance of public service broadcasting for social, democratic and cultural life. 'Broad public access, without discrimination and on the basis of equal opportunities, to various channels and services is a necessary precondition for fulfilling the special obligation of public service broadcasting'. Moreover, public service broadcasting needs to 'benefit from technological progress', bring 'the public the benefits of the new audiovisual and information services and the new technologies' and to undertake 'the development and diversification of activities in the digital age'. Finally, 'public service broadcasting must be able to continue to provide a wide range of programming in accordance with its remit as defined by the Member States in order to address society as a whole; in this context it is legitimate for public service broadcasting to seek to reach wide audiences'.
- (9) Given these characteristics, which are peculiar to the broadcasting sector, a public service mandate encompassing 'a wide range of programming in accordance with its remit', as stated by the Resolution on public service broadcasting, can in principle be considered as legitimate, as aiming at a balanced and varied programming, capable of preserving a certain level of audience for public broadcasters and, thus, of ensuring the accomplishment of the mandate, i.e. the fulfilment of the democratic, social and cultural needs of the society and the guaranteeing of pluralism.
- (10) It should be noted that commercial broadcasters, of whom a number are subject to public service requirements, also play a role in achieving the objectives of the Resolution on public service broadcasting to the extent that they contribute to pluralism, enrich cultural and political debate and widen the choice of programmes.

24C.3. The legal context

- (1) The application of the State aid rules to public service broadcasting has to take into account a wide number of different elements. The EEA Agreement includes Article 61 on State aid as well as Article 59(2) on the application of the rules of the EEA Agreement and the competition rules, in particular, to services of general economic interest. Protocol 3 to the Surveillance and Court Agreement establishes the rules of procedure in State aid cases.
- (2) For the European Communities, the Treaty of Amsterdam introduced a specific provision (Article 16 of the EC treaty) on services of general economic interest and an interpretative protocol on the system of public service broadcasting. The Treaty of Maastricht had already introduced an Article which defines the role of the Community in the field of culture (Article 151 of the EC Treaty) and a possible compatibility clause for State aid aimed at promoting culture (Article 87(3)(d) of the EC Treaty). The EEA Agreement does not contain a 'cultural exemption' similar to Article 87(3)(d) of the EC Treaty. However, this does not mean that an exemption for such measures is excluded. As accepted by the authority in previous cases, such support measures might be approved on cultural grounds on the basis of article 61(3)(c) of the EEA Agreement ⁽⁸⁾.

⁽⁵⁾ Article 86(2) of the EC Treaty corresponds to Article 59(2) of the EEA Agreement.

⁽⁶⁾ Case T-69/89 *Radio Telefís Éireann v Commission* [1991] ECR II 485, paragraph 82; Case 155/73 *Giuseppe Sacchi* [1974] ECR 409, paragraph 15.

⁽⁷⁾ See footnote 2.

⁽⁸⁾ EFTA Surveillance Authority Decision 32/02/COL of 20.2.2002 concerning film production and film related activities in Norway. Further details can be seen in section 24.C.5(2) of these Guidelines.

- (3) Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities ⁽⁹⁾ as amended by Directive 97/36/EC ⁽¹⁰⁾, has been incorporated into Annex X of the EEA Agreement ⁽¹¹⁾. Directive 80/723/EEC of 25 June 1980 on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings ⁽¹²⁾, as amended by Directive 2000/52/EC ⁽¹³⁾ of 26 July 2000, was incorporated into the legal framework of the EEA Agreement by EEA Joint Committee Decision No 6/2001 ⁽¹⁴⁾. These rules are subject to interpretation by the EFTA Court within the 'EFTA pillar' and by the European Court of Justice and the European Court of First Instance within the 'Community pillar'. The Authority has also adopted several guidelines on the application of the State aid rules which correspond to similar communications issued by the EC Commission.

24C.4. Applicability of Article 61(1) of the EEA Agreement

24C.4.1. The State aid character of State financing of public service broadcasters

- (1) Article 61(1) of the EEA Agreement states: 'Save as otherwise provided in this Agreement, any aid granted by EC Member States, EFTA States or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, insofar as it affects trade between the Contracting Parties, be incompatible with the functioning of this Agreement'.
- (2) The effect of State intervention, not its purpose, is the decisive element in any assessment of its State aid content under Article 61(1) of the EEA Agreement. State financing of public service broadcasters is normally to be regarded as State aid, inasmuch as it meets the above criteria. Public service broadcasters are normally financed out of the State budget or through a levy on TV-set holders. In certain specific circumstances, the State makes capital injections or debt cancellations in favour of public service broadcasters. These financial measures are normally attributable to the public authorities and involve the transfer of State resources. Moreover, and to the extent that such measures fail to satisfy the market economy investor test, in accordance with Chapter 19 of the Authority's State Aid Guidelines on public authorities' holdings and Chapter 20 concerning the application of State aid provisions to public enterprises in the manufacturing sector ⁽¹⁵⁾, they favour in most cases only certain broadcasters and may thereby distort competition. Naturally, the existence of State aid will have to be assessed on a case-by-case basis, and depends also on the specific nature of the funding ⁽¹⁶⁾.
- (3) As the European Court of Justice has observed: 'When aid granted by the State or through State resources strengthens the position of an undertaking compared with other undertakings competing in intra-Community trade the latter must be regarded as unaffected by that aid' ⁽¹⁷⁾. Thus, State financing of public service broadcasters can generally be considered to affect trade between the Contracting Parties. This is clearly the position as regards the acquisition and sale of programme rights, which often takes place at an international level. Advertising, too, in the case of public broadcasters who are allowed to sell advertising space, has a cross-border effect, especially for homogeneous linguistic areas across national boundaries. Moreover, the ownership structure of commercial broadcasters may extend to more than one EEA State.
- (4) According to the case-law of the European Court of Justice and the Court of First Instance ⁽¹⁸⁾, in general any transfer of State resources to a certain undertaking has to be regarded as State aid (provided that all the conditions for the application of Article 87(1) of the EC Treaty are fulfilled). However, as the European Court of Justice has decided in its judgment concerning *Altmark Trans GmbH* ⁽¹⁹⁾ (hereinafter referred to as the *Altmark* judgment) that 'where a State measure must be regarded as compensation for the services provided by the recipient undertakings in order to discharge public service obligations, so that those undertakings do not enjoy a real financial advantage and the measure thus does not have the effect of putting them in a more favorable competitive position than the undertakings competing with them, such a measure is not caught by Article 92(1) [now Article 87(1) of the EC Treaty]'.

⁽⁹⁾ OJ L 298, 17.10.1989, p. 23.

⁽¹⁰⁾ OJ L 202, 30.7.1997, p. 60.

⁽¹¹⁾ Joint Committee Decision No 82/19999, OJ L 296, 23.11.2000, p. 39 and EEA Supplement No 54, 23.11.2000, p. 99 (Icelandic) and Del. 2, p. 69 (Norwegian) e.i.f. 1.7.2000.

⁽¹²⁾ OJ L 195, 29.7.1980, p. 35, incorporated into the EEA Agreement in Annex XV thereto.

⁽¹³⁾ OJ L 193, 29.7.2000, p. 75.

⁽¹⁴⁾ OJ L 66, 8.3.2001, p. 48 and EEA Supplement No 12, 8.3.2001, p. 6, e.i.f. 1.6.2002.

⁽¹⁵⁾ Chapter 19 of the Authority's State Aid Guidelines is based on Bulletin EC 9-1984 on the Application of [ex] Articles 92 and 93 of the EEC Treaty to public authorities' holdings. Chapter 20 corresponds to Commission Communication to the Member States on the application of [ex] Articles 92 and 93 of the EEC Treaty (now Articles 87 and 88 of the EC Treaty) and of Article 5 of Commission Directive 80/723/EEC to public undertakings in the manufacturing sector, OJ C 307, 13.11.1993, p. 3.

⁽¹⁶⁾ See EC Commission Decisions NN 88/98 'Financing of a 24/hour advertising free news channel with licence fee by the BBC', OJ C 78, 18.3.2000, p. 6 and aid NN 70/98, 'State aid to public broadcasting channels Kinderkanal and Phoenix', OJ C 238, 21.8.1999, p. 3.

⁽¹⁷⁾ Cases 730/79 *Philip Morris Holland v Commission* [1980] ECR 2671, paragraph 11; C-303/88 *Italy v Commission* [1991] ECR I-1433, paragraph 27; C-156/98 *Germany v Commission* [2000] ECR I-6857, paragraph 33.

⁽¹⁸⁾ Cases T-106/95 *FFSA and Others v Commission* [1997] ECR II-229; T-46/97 *SIC v Commission* [2000] ECR II-2125 and C-332/98 *France v Commission* [2000] ECR I-4833.

⁽¹⁹⁾ Case C-280/00 *Altmark Trans GmbH, Regierungspräsidium Magdeburg v Nahverkehrsgesellschaft Altmark GmbH* [2003] ECR I-7747, paragraph 89 et seq.

- (5) According to the *Altmark* judgment of the European Court of Justice, the four conditions below must however be satisfied for such a compensation to escape the classification as State aid:
- first, the recipient undertaking must actually have public service obligations to discharge, and the obligations must be clearly defined,
 - second, the parameters on the basis of which the compensation is calculated must be established in advance in an objective and transparent manner, to avoid it conferring an economic advantage which may favour the recipient undertaking over competing undertakings,
 - third, the compensation cannot exceed what is necessary to cover all or part of the costs incurred in the discharge of public service obligations, taking into account the relevant receipts and a reasonable profit for discharging those obligations,
 - fourth, where the undertaking which is to discharge public service obligations, in a specific case, is not chosen pursuant to a public procurement procedure which would allow for the selection of the tenderer capable of providing those services at the least cost to the community, the level of compensation needed must be determined on the basis of an analysis of the costs which a typical undertaking, well run and adequately provided with means of transport so as to be able to meet the necessary public service requirements, would have incurred in discharging those obligations, taking into account the relevant receipts and a reasonable profit for discharging the obligations⁽²⁰⁾.
- (6) The Authority will take this interpretation of the European Court of Justice into account, when it assesses public service compensation payments under Article 61(1) of the EEA Agreement. State support which fulfills the above mentioned criteria, does therefore not constitute State aid within the meaning of Article 61(1) of the EEA Agreement and does not need to be notified to the Authority.

24C.4.2. *Nature of the aid: existing aid as opposed to new aid*

- (1) The funding schemes currently in place in most of the EFTA States were introduced a long time ago. As a first step, therefore, the Authority must determine whether these schemes may be regarded as 'existing aid' within the meaning of Article 1(1) in Part I of Protocol 3 to the Surveillance and Court Agreement⁽²⁰⁾.
- (2) Existing aid is regulated by Article 1(1) in Part I of Protocol 3 to the Surveillance and Court Agreement which states that: 'The EFTA Surveillance Authority shall, in cooperation with the EFTA States, keep under constant review all systems of aid existing in those States. It shall propose to the latter any appropriate measures required by the progressive development or by the functioning of the EEA Agreement'.
- (3) Pursuant to Article 1(b)(i) in Part II of Protocol 3 to the Surveillance and Court Agreement, existing aid includes '*all aid which existed prior to the entry into force of the EEA Agreement in the respective EFTA States, that is to say, aid schemes and individual aid which were put into effect before, and are still applicable after, the entry into force of the EEA Agreement*'.
- (4) Pursuant to Article 1(b)(v) in Part II of Protocol 3 to the Surveillance and Court Agreement, existing aid also includes 'aid which is deemed to be an existing aid because it can be established that at the time it was put into effect it did not constitute an aid, and subsequently became an aid due to the evolution of the European Economic Area and without having been altered by the EFTA State (...)'.
- (5) In accordance with Protocol 3 to the Surveillance and Court Agreement and the case-law of the European Court of Justice⁽²¹⁾, the Authority must verify whether or not the legal framework under which the aid is granted has changed since its introduction. The Authority must take into account all the legal and economic elements related to the broadcasting system of a given EFTA State. Although the legal and economic elements relevant for such an assessment present common features in all EEA States, the Authority believes that a case-by-case approach is the most appropriate.

24C.5. **Assessment of the compatibility of State aid under Articles 61(2) and 61(3) of the EEA Agreement**

- (1) State aid to public broadcasters must be examined by the Authority in order to determine whether or not it can be found compatible with the functioning of the EEA Agreement. The derogations listed in Article 61(2) and Article 61(3) of the EEA Agreement can be applied.

⁽²⁰⁾ Corresponds to Article 88(1) of the EC Treaty.

⁽²¹⁾ Case C-44/93 *Namur-Les Assurances du Crédit SA v Office National du Dueroire and the Belgian State* [1994] ECR I-3829.

- (2) The EEA Agreement does not contain a provision corresponding to Article 151(4) of the EC Treaty which obliges the EC Commission to take cultural aspects into account in its actions under other provisions, nor does it contain a cultural exemption similar to Article 87(3)(d) of the EC Treaty. This does not, however, mean that the application of the State aid rules does not leave any room for the consideration of cultural aspects. In this respect, it should be recalled that the Authority established in a decision regarding State aid for film production and film-related activities in Norway, that film support measures might be approved on cultural grounds under the application of Article 61(3)(c) of the EEA Agreement, provided that this approach takes the criteria developed by the EC Commission sufficiently into account and that the approach does not deviate from the EC Commission's practice prior to the adoption of Article 87(3)(d) of the EC Treaty. Secondly, it should be noted that the EC Commission in its decision NN 49/97 and N 357/99 regarding a support package for Irish film and television production, explicitly stressed that the introduction of Articles 151(1) and 87(3)(d) of the EC Treaty did not necessarily reflect a change in the EC Commission's policy towards the cultural sector. Thirdly, with regard to broadcasting, the Resolution on public service broadcasting acknowledges that public service broadcasting fulfills a cultural function and that the application of the competition rules should take the realization of the remit of the public service into account.
- (3) It is for the Authority to decide on the actual application of any exemption provision in Article 61(3) of the EEA Agreement and how cultural aspects should be taken into account. It should be recalled that the provisions granting exemption from the prohibition of State aid have to be applied strictly. Therefore, in the EC Commission's view also the notion of 'culture' for the purpose of exempting aid from the prohibition of State aid within the meaning of Article 87(3)(d) of the EC Treaty must be interpreted restrictively. The same applies when the Authority is examining whether a measure can be exempted on cultural grounds under Article 61(3)(c) of the EEA Agreement. As stated by the EC Commission in its *Kinderkanal* and *Phoenix* decision, the educational and democratic needs of a Member State have to be regarded as distinct from the promotion of culture ⁽²²⁾. In this respect, it should be noted that there is a distinction between the cultural, social and democratic needs of each society. Education may, of course, have a cultural aspect.
- (4) State aid to public service broadcasters often does not differentiate between those three needs. Consequently, unless an EFTA State provides for the separate definition and the separate funding of State aid to promote culture alone, such aid cannot generally be approved on that basis. It can normally be assessed, however, on the basis of Article 59(2) of the EEA Agreement concerning services of general economic interest. In any event, whatever the legal base for assessing compatibility, the substantive analysis would be conducted by the Authority on the basis of the same criteria, namely those set out in these Guidelines.

24C.6. Assessment of the compatibility of State aid under Article 59(2) of the EEA Agreement

- (1) The European Court of Justice has consistently held that Article 86 of the EC Treaty ⁽²³⁾ provides for a derogation and must therefore be interpreted restrictively. The European Court of Justice has clarified that in order for a measure to benefit from such a derogation, it is necessary that all the following conditions be fulfilled:
- (i) the service in question must be a service of general economic interest and clearly defined as such by the Member State (definition);
 - (ii) the undertaking in question must be explicitly entrusted by the Member State with the provision of that service (entrustment);
 - (iii) the application of the competition rules of the Treaty (in this case, the ban on State aid) must obstruct the performance of the particular tasks assigned to the undertaking and the exemption from such rules must not affect the development of trade to an extent that would be contrary to the interests of the Community (proportionality test).
- (2) It is for the Authority to assess whether these criteria are satisfied when it applies the corresponding Article 59(2) of the EEA Agreement in relation to the EFTA States.
- (3) In the specific case of public service broadcasting, the above approach has to be adapted in light of the Resolution on public service broadcasting which refers to the 'public service remit as conferred, defined and organised by each Member State' (definition and entrustment) and provides for a derogation from the Treaty rules in the case of the funding of public service broadcasting 'in so far as such funding is granted to broadcasting organisations for the fulfilment of the public service remit ... and ... does not affect trading conditions and competition in the Community to an extent which would be contrary to the common interest, while the realisation of the remit of that public service shall be taken into account' (proportionality).

⁽²²⁾ See footnote 16.

⁽²³⁾ Article 86 of the EC Treaty corresponds to Article 59 of the EEA Agreement.

- (4) As the EC Commission's recent case practice demonstrates, a measure which does not fulfill all of the Altmark criteria, will still have to be analysed according to Article 86(2) of the EC Treaty, respectively Article 59(2) of the EEA Agreement ⁽²⁴⁾.

24C.6.1. Definition of public service remit

- (1) In order to meet the condition mentioned in 24C.6(1) for application of Article 59(2) of the EEA Agreement, it is necessary to establish an official definition of the public service mandate. Only then can the Authority assess with sufficient legal certainty whether the derogation under Article 59(2) of the EEA Agreement is applicable.
- (2) Definition of the public service mandate falls within the competence of the EFTA States, which can decide at national, regional or local level. Generally speaking, in exercising that competence, account must be taken of the concept of 'services of general economic interest'. However, given the specific nature of the broadcasting sector, a 'wide' definition, entrusting a given broadcaster with the task of providing balanced and varied programming in accordance with the remit, while preserving a certain level of audience, may be considered legitimate under Article 59(2) of the EEA Agreement. Such a definition would be consistent with the objective of fulfilling the democratic, social and cultural needs of a particular society and guaranteeing pluralism, including cultural and linguistic diversity.
- (3) Similarly, the public service remit might include certain services that are not 'programmes' in the traditional sense, such as on-line information services, to the extent that while taking into account the development and diversification of activities in the digital age, they are addressing the same democratic, social and cultural needs of the society in question.
- (4) Whenever the scope of the public service remit is extended to cover new services, the definition and entrustment act should be modified accordingly, within the limits of Article 59(2) of the EEA Agreement.
- (5) The Authority's task is to verify whether or not the EFTA States respect the provisions of the EEA Agreement. As regards the definition of public service in the broadcasting sector, the role of the Authority is limited to checking for manifest error. It is not for the Authority to decide whether a programme is to be provided as a service of general economic interest, nor to question the nature or the quality of a certain product. The definition of the public service remit would, however, be in manifest error if it included activities that could not reasonably be considered to meet the 'democratic, social and cultural needs of each society'. That would normally be the position in the case of e-commerce, for example. In this context, it must be recalled that the public service remit describes the services offered to the public in the general interest. The question of the definition of the public service remit must not be confused with the question of the financing mechanism chosen to provide these services. Therefore, whilst public service broadcasters may perform commercial activities such as the sale of advertising space in order to obtain revenue, such activities cannot normally be viewed as part of the public service remit.
- (6) The definition of the public service mandate should be as precise as possible. It should leave no doubt as to whether a certain activity performed by the entrusted operator is intended by the EFTA State to be included in the public service remit or not. Without a clear and precise definition of the obligations imposed upon the public service broadcaster, the Authority would not be able to carry out its tasks under Article 59(2) of the EEA Agreement and, therefore, could not grant any exemption under that provision.
- (7) Clear identification of the activities covered by the public service remit is also important for non-public service operators, so that they can plan their activities.
- (8) Finally, the terms of the public service remit should be precise, so that EFTA States' authorities can effectively monitor compliance, as described in the following chapter.

24C.6.2. Entrustment and supervision

- (1) In order to benefit from the exemption under Article 59(2) of the EEA Agreement, the public service remit should be entrusted to one or more undertakings by means of an official act (for example, by legislation, contract or terms of reference).
- (2) It is not sufficient, however, that the public service broadcaster be formally entrusted with the provision of a well-defined public service. It is also necessary that the public service be actually supplied as provided for in the formal agreement between the State and the entrusted undertaking. It is therefore desirable that an appropriate authority or appointed body monitor its application. The need for such an appropriate authority or body in charge of supervision is apparent in the case of quality standards imposed on the entrusted operator. It is not for the Authority to judge on the fulfilment of quality standards: it must be able to rely on appropriate supervision by the EFTA States.

⁽²⁴⁾ Commission Decision C62/1999, RAI, paragraph 99 and C85/2001, RTP, paragraph 158.

- (3) It is within the competence of the EEA State to choose the mechanism to ensure effective supervision of the fulfilment of the public service obligations. The role of such a body would seem to be effective only if the authority is independent from the entrusted undertaking.
- (4) In the absence of sufficient and reliable indications that the public service is actually supplied as mandated, the Authority would not be able to carry out its tasks under Article 59(2) of the EEA Agreement and, therefore, could not grant any exemption under that provision.

24C.6.3. Funding of public service broadcasting and the proportionality test

24C.6.3.1. The choice of funding

- (1) Public service duties may be either quantitative, qualitative or both. Whatever their form, they could justify compensation, as long as they entail supplementary costs that the broadcaster would normally not have incurred.
- (2) Funding schemes can be divided into two broad categories: 'single-funding' and 'dual-funding'. The 'single-funding' category comprises those systems in which public service broadcasting is financed only through public funds, in whatever form. 'Dual-funding' systems comprise a wide range of schemes, where public service broadcasting is financed by different combinations of State funds and revenues from commercial activities, such as the sale of advertising space or programmes.
- (3) As stated by the Resolution on public service broadcasting: 'The provisions of the Treaty establishing the European Community shall be without prejudice to the competence of Member States to provide for the funding of public service broadcasting ...'. This will include the choice of the financing scheme. As long as competition in the relevant markets (e.g. advertising, acquisition and/or sale of programmes) is not affected to an extent which is contrary to the common interest, there can be no objection in principle to the choice of a dual financing scheme (combining public funds and advertising revenues) rather than a single funding scheme (solely public funds).
- (4) While EFTA States are free to choose the means of financing public service broadcasting, the Authority has to verify, under Article 59(2) of the EEA Agreement, that the derogation from the normal application of the competition rules for the performance of the service of general economic interest does not affect competition in the EEA area in a disproportionate manner. The test is of a 'negative' nature: it examines whether the measure adopted is not disproportionate. The aid should also not affect the development of trade to such an extent as would be contrary to the common interests.
- (5) The Resolution on public service broadcasting confirms this approach also for public service broadcasting, stating that funding should not 'affect trading conditions and competition in the Community to an extent which would be contrary to the common interest, while the realisation of the remit of that public service shall be taken into account'.

24C.6.3.2. Transparency requirements for the State aid assessment

- (1) The above-described assessment by the Authority requires a clear and precise definition of the public service remit and a clear and appropriate separation between public service activities and non-public service activities. Separation of accounts between these two spheres is normally already required at national level to ensure transparency and accountability when using public funds. A separation of accounts is necessary to allow the Authority to carry out its proportionality test. It will provide the Authority with a tool for examining alleged cross-subsidisation and for defending justified compensation payments for general economic interest tasks. Only on the basis of proper cost and revenue allocation can it be determined whether the public financing is actually limited to the net costs of the public service remit and thus acceptable under Article 59(2) of the EEA Agreement.
- (2) The transparency requirements in the financial relations between public authorities and public undertakings and within undertakings granted special or exclusive rights or entrusted with the operation of a service of general economic interest are indicated in Directive 80/73/EEC ⁽²⁵⁾.
- (3) The EFTA States have been required by Directive 80/723/EEC to take the measures necessary to ensure — in the case of any undertaking granted special or exclusive rights or entrusted with the operation of a service of general economic interest and receiving State aid in any form whatsoever and which carries out other activities, that is to say, non-public service activities — that: (a) the internal accounts corresponding to different activities, i. e. public service and non-public service activities, are separate; (b) all costs and revenues are correctly assigned or allocated on the basis of consistently applied and objectively justifiable cost accounting principles; and (c) the cost-accounting principles according to which separate accounts are maintained are clearly established.

⁽²⁵⁾ See footnote 12.

- (4) The general transparency requirements apply also to broadcasters as indicated in the fifth recital of Directive 2000/52/EC ⁽²⁶⁾. The new requirements apply to public service broadcasters, in so far as they are beneficiaries of State aid and they are entrusted with the operation of a service of general economic interest, for which the State aid was not fixed for an appropriate period following an open, transparent and non-discriminatory procedure. The obligation of separation of accounts does not apply to public service broadcasters whose activities are limited to the provision of services of general economic interest and which do not operate activities outside the scope of those services.
- (5) In the broadcasting sector, the separation of accounts does not pose a particular problem on the revenue side, but may not be straightforward or, indeed, feasible on the cost side. This is due to the fact that, in the broadcasting sector, EFTA States may consider the whole programming of the broadcasters as covered by the public service remit, while at the same time allowing for its commercial exploitation. In other words, different activities share the same input to a large extent.
- (6) For these reasons, the Authority considers that, on the revenue side, broadcasting operators should give a detailed account of the sources and amount of all income accruing from the performance of non-public service activities.
- (7) On the expenditure side, costs specific to the non-public service activity should be clearly identified. In addition, whenever the same resources — personnel, equipment, fixed installation, etc. — are used to perform both public service and non-public service tasks, their costs should be allocated on the basis of the difference in the firm's total costs with and without non-public service activities ⁽²⁷⁾.
- (8) The above implies that, contrary to the approach generally adopted in other utilities sectors, costs that are entirely attributable to public service activities, while benefiting also commercial activities, need not be apportioned between the two and can be entirely allocated to public service. This could be the case, for example, with the production costs of a programme which is shown as part of the public service remit but is also sold to other broadcasters. The main example, however, would be that of the number of viewers, which is generated both to fulfil the public service remit and to sell advertising space. It is considered that a full distribution of these costs between the two activities risks being arbitrary and not meaningful. However, cost allocation from the point of view of transparency of accounts should not be confused with cost recovery in the definition of pricing policies. The latter issue is addressed in section 24 C.6.3.3.(2).

24C.6.3.3. Proportionality

- (1) In carrying out the proportionality test, the Authority starts from the consideration that the State funding is normally necessary for the undertaking to carry out its public service tasks. However, in order to satisfy this test, it is necessary that the State aid does not exceed the net costs of the public service mission, also taking into account other direct or indirect revenues derived from the public service mission. For this reason, the net benefit that non-public service activities derive from the public service activity will be taken into account in assessing the proportionality of the aid.
- (2) On the other hand, there might be market distortions which are not necessary for the fulfilment of the public service mission. For example, a public service broadcaster, in so far as lower revenues are covered by the State aid, might be tempted to depress the prices of advertising or other non-public service activities on the market, so as to reduce the revenue of competitors. Such conduct, if demonstrated, could not be considered as intrinsic to the public service mission attributed to the broadcaster. Whenever a public service broadcaster undercuts prices in non-public service activities below what is necessary to recover the stand-alone costs that an efficient commercial operator in a similar situation would normally have to recover, such practice would indicate the presence of overcompensation of public service obligations. This would in any event affect trading conditions and competition in the European Economic Area to an extent which would be contrary to the common interest.
- (3) Accordingly, in carrying out the proportionality test, the Authority will consider whether or not any distortion of competition arising from the aid can be justified in terms of the need to perform the public service as defined by the EFTA State and to provide for its funding. When necessary the Authority will also take action in light of other provisions of the EEA Agreement.

⁽²⁶⁾ See footnote 13 and 14.

⁽²⁷⁾ This implies reference to the hypothetical situation in which the non-public service activities were to be discontinued: the costs that would be so avoided represent the amount of common costs to be allocated to non-public service activities.

- (4) The analysis of the effects of State aid on competition and development of trade will inevitably have to be based on the specific characteristics of each situation. The actual competitive structure and other characteristics of each of the markets cannot be described in the present communication, as they are generally quite different from each other. For the same reason, these Guidelines cannot *ex ante* define the conditions under which the prices of the public service broadcasters are in line with the principles explained in section 24.C.6.3.3. (2). Therefore the assessment under Article 59(2) of the EEA Agreement of the compatibility of State aid to public broadcasters can finally only be made on a case-by-case basis, according to the Authority's practice.
- (5) In its assessment, the Authority will take into account the fact that, to the extent that State aid is necessary to carry out the public service obligation, the system as a whole might also have the positive effect of maintaining an alternative source of supply in some relevant markets ⁽²⁸⁾. However, this effect has to be balanced against possible negative effects of the aid, such as preventing other operators from entering these markets, thereby allowing a more oligopolistic market structure, or leading to possible anti-competitive behaviour of public service operators in the relevant markets.
- (6) The Authority will also take into account the difficulty some EFTA States may have to collect the necessary funds, if costs per inhabitant of the public service are, *ceteris paribus*, higher ⁽²⁹⁾.
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⁽²⁸⁾ This does not mean that State aid can be justified as a tool, which increases supply and competition in a market. State aid which allows an operator to stay in the market in spite of its recurrent losses causes a major distortion of competition, as it leads in the long run to higher inefficiency, smaller supply and higher prices for consumers. Lifting legal and economic barriers to entry, ensuring an effective anti-trust policy and promoting pluralism are more effective instruments in this respect. Natural monopolies are normally subject to regulation.

⁽²⁹⁾ Similar difficulties may also be encountered when public service broadcasting is addressed to linguistic minorities or to local needs.

CORRIGENDA**Corrigendum to Commission Regulation (EC) No 1875/2006 of 18 December 2006 amending Regulation (EEC) No 2454/93 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code**

(Official Journal of the European Union L 360 of 19 December 2006)

On page 99, point 15, first paragraph, second sentence:

for: 'The relevant customs procedure shall be entered in the form of the codes used in the second or third subdivision of Box 1 of the single administrative document.'

read: 'The relevant customs procedure shall be entered in the form of the letters used as column headings (A to K) to identify customs procedures in the matrix in Annex 37, Title I, point B.'

Corrigendum to Council Regulation (EC) No 1459/2007 of 10 December 2007 amending Regulation (EC) No 1858/2005 imposing a definitive anti-dumping duty on imports of steel ropes and cables originating, *inter alia*, in South Africa

(Official Journal of the European Union L 326 of 12 December 2007)

On page 19, recital 14:

for: 'Commission Decision 2007/1459/EC ...',

read: 'Commission Decision 2007/814/EC ...';

and footnote 1:

for: '(1) See page 18 of this Official Journal.'

read: '(1) See page 25 of this Official Journal.'
