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I

(Legislative acts)

DIRECTIVES

DIRECTIVE 2010/73/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 24 November 2010

amending Directives 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading and 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 50 and 114 thereof,

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Central Bank ⁽²⁾,

Acting in accordance with the ordinary legislative procedure ⁽³⁾,

Whereas:

(1) The European Council agreed, at its meeting on 8 and 9 March 2007, that administrative burdens on companies should be reduced by 25 % by the year 2012 in order to enhance the competitiveness of companies in the Union.

(2) Some of the obligations provided for in Directive 2003/71/EC of the European Parliament and of the Council ⁽⁴⁾ have been identified by the Commission as appearing to be excessively burdensome on companies.

(3) Those obligations need to be reviewed in order to reduce the burdens weighing on companies within the Union to the necessary minimum without compromising the protection of investors and the proper functioning of the securities markets in the Union.

(4) Directive 2003/71/EC requires the Commission to make an assessment of the application of that Directive 5 years after the date of its entry into force and to present, where appropriate, proposals for its review. That assessment has revealed that certain elements of Directive 2003/71/EC should be amended in order to simplify and improve its application, increase its efficiency and enhance the international competitiveness of the Union, thereby contributing to the reduction of administrative burdens.

(5) Following the conclusions of the report of the High-Level Group on Financial Supervision in the EU (the 'de Larosière report'), the Commission put forward concrete legislative proposals on 23 September 2009 in order to establish a European System of Financial Supervisors comprising a network of national financial supervisors working in tandem with new European supervisory authorities. One of those new authorities, the European Supervisory Authority (European Securities and Markets Authority), is to replace the Committee of European Securities Regulators.

(6) The way limits of maximum offering amounts are calculated in Directive 2003/71/EC should be clarified for reasons of legal certainty and efficiency. The total consideration for certain offers referred to in that Directive should be computed on a Union-wide basis.

(7) For the purposes of private placements of securities, investment firms and credit institutions should be entitled to treat as qualified investors those persons or entities that are described in points (1) to (4) of Section I of Annex II to Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments ⁽⁵⁾ and other persons or entities that are treated as professional clients, or

⁽¹⁾ Opinion of 18 February 2010 (not yet published in the Official Journal).

⁽²⁾ OJ C 19, 26.1.2010, p. 1.

⁽³⁾ Position of the European Parliament of 17 June 2010 (not yet published in the Official Journal) and decision of the Council of 11 October 2010.

⁽⁴⁾ OJ L 345, 31.12.2003, p. 64.

⁽⁵⁾ OJ L 145, 30.4.2004, p. 1.

that are recognised eligible counterparties in accordance with Directive 2004/39/EC. Investment firms authorised to continue considering existing professional clients as such in accordance with Article 71(6) of Directive 2004/39/EC should be authorised to treat those clients as qualified investors under this Directive. Such an alignment of the relevant provisions of Directives 2003/71/EC and 2004/39/EC is likely to reduce complexity and costs for investment firms in the event of private placements because the firms would be able to define the persons or entities to whom the placement is to be addressed relying on their own list of professional clients and eligible counterparties. The issuer should be able to rely on the list of professional clients and eligible counterparties that has been drawn up in accordance with Annex II to Directive 2004/39/EC. The definition of qualified investors in Directive 2003/71/EC should therefore be widened to include those persons or entities and no separate regime for registers should be maintained.

- (8) Ensuring the correct and full application of Union law is a core prerequisite for the integrity, efficiency and orderly functioning of financial markets. It is expected that the establishment of the European Supervisory Authority (European Securities and Markets Authority) will contribute to that goal by issuing a single rulebook and by fostering a more convergent approach regarding the scrutiny and approval of prospectuses. The Commission should undertake a review of Article 2(1)(m)(ii) of Directive 2003/71/EC in relation to the limitation on the determination of the home Member State for issues of non-equity securities with a denomination below EUR 1 000. Following that review, it should consider whether the provision should be maintained or revoked.
- (9) The threshold of EUR 50 000 in Article 3(2)(c) and (d) of Directive 2003/71/EC no longer reflects the distinction between retail investors and professional investors in terms of investor capacity, since it appears that even retail investors have recently made investments of more than EUR 50 000 in a single transaction. For that reason it is appropriate to increase the said threshold and amend other provisions in which that threshold is mentioned accordingly. Corresponding adjustments should be made in Directive 2004/109/EC of the European Parliament and of the Council⁽¹⁾. Following those adjustments and taking into consideration the outstanding period of debt securities, there should be a grandfathering provision in relation to Article 8(1)(b), Article 18(3) and Article 20(6) of Directive 2004/109/EC in respect of debt securities with a denomination per unit of at least EUR 50 000, which have already been admitted to trading on a regulated market in the Union prior to the entry into force of this Directive.
- (10) A valid prospectus, drawn up by the issuer or the person responsible for drawing up the prospectus and available

to the public at the time of the final placement of securities through financial intermediaries or in any subsequent resale of securities, provides sufficient information for investors to make informed investment decisions. Therefore, financial intermediaries placing or subsequently reselling the securities should be entitled to rely upon the initial prospectus published by the issuer or the person responsible for drawing up the prospectus as long as this is valid and duly supplemented in accordance with Articles 9 and 16 of Directive 2003/71/EC and the issuer or the person responsible for drawing up the prospectus consents to its use. The issuer or the person responsible for drawing up the prospectus should be able to attach conditions to his or her consent. The consent, including any conditions attached thereto, should be given in a written agreement between the parties involved enabling assessment by relevant parties of whether the resale or final placement of securities complies with the agreement. In the event that consent to use the prospectus has been given, the issuer or person responsible for drawing up the initial prospectus should be liable for the information stated therein and in case of a base prospectus, for providing and filing final terms and no other prospectus should be required. However, in case the issuer or the person responsible for drawing up such initial prospectus does not consent to its use, the financial intermediary should be required to publish a new prospectus. In that case, the financial intermediary should be liable for the information in the prospectus, including all information incorporated by reference and, in case of a base prospectus, final terms.

- (11) In order to allow for the efficient application of Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse)⁽²⁾, Directive 2003/71/EC and Directive 2004/109/EC and to clarify underlying problems of differentiation and overlaps, the Commission should put forward a definition for each of the terms 'primary market', 'secondary market' and 'public offer'.
- (12) Liability regimes in the Member States are significantly different due to national competence in civil law. In order to identify and monitor the arrangements in the Member States, the Commission should establish a comparative table of Member States' regimes.
- (13) Article 4(1)(d) of Directive 2003/71/EC provides that the obligation to publish a prospectus does not apply to shares offered, allotted or to be allotted free of charge to existing shareholders. Under Article 3(2)(e) of that Directive an offer with a total consideration of less than EUR 100 000 is entirely exempt from the requirement to publish a prospectus. The exemption in Article 4(1)(d) is therefore redundant, since an offer that is free of charge falls within the scope of Article 3(2)(e).

⁽¹⁾ OJ L 390, 31.12.2004, p. 38.

⁽²⁾ OJ L 96, 12.4.2003, p. 16.

- (14) The current exemptions for securities offered, allotted or to be allotted to existing or former employees or directors are too restrictive to be useful to a significant number of employers operating share schemes for employees in the Union. Participation of employees in the Union is particularly important for small and medium-sized enterprises (SMEs), in which individual employees are likely to have a significant role in the success of the company. Therefore, there should be no requirement to produce a prospectus for offers made in the context of an employee-share scheme by any Union company. Where the securities are not admitted to trading, the issuer is not subject to appropriate ongoing disclosure requirements and rules on market abuse. Therefore, employers or their affiliated undertakings should update the document referred to in Article 4(1)(e) of Directive 2003/71/EC where necessary for an adequate assessment of the securities. The exemption should be extended also to public offers and admissions to trading of companies registered outside the Union whose securities are admitted to trading either on a regulated market or on a third-country market. In the latter case, the Commission must have taken a positive decision on the equivalence of the legal and supervisory framework of the corresponding regulation of markets in the third country in order for the exemption to apply. That should enable Union employees to have access to ongoing information about the company.
- (15) The summary of the prospectus should be a key source of information for retail investors. It should be a self-contained part of the prospectus and should be short, simple, clear and easy for targeted investors to understand. It should focus on key information that investors need in order to be able to decide which offers and admissions of securities to consider further. Such key information should convey the essential characteristics of, and risks associated with, the issuer, any guarantor, and the securities offered or admitted to trading on a regulated market. It should also provide the general terms of the offer, including estimated expenses charged to the investor by the issuer or the offeror, and indicate the total estimated expenses, since these could be substantial. It should also inform the investor of any rights attaching to the securities and of the risks associated with an investment in the relevant security. The format of the summary should be determined in a way that allows comparison of the summaries of similar products by ensuring that equivalent information always appears in the same position in the summary.
- (16) Member States should ensure that no civil liability attaches to any person solely on the basis of the summary, including any translation thereof, unless it is misleading, inaccurate or inconsistent with the relevant parts of the prospectus. The summary should contain a clear warning to this effect.
- (17) It is appropriate to clarify that final terms to a base prospectus should contain only information relating to the securities note which is specific to the issue and which can be determined only at the time of the individual issue. Such information might, for example, include the international securities identification number, the issue price, the date of maturity, any coupon, the exercise date, the exercise price, the redemption price and other terms not known at the time of drawing up the prospectus. Other new information which is capable of affecting the assessment of the issuer and the securities should, in general, be included in a supplement to the prospectus. Furthermore, in order to fulfil the obligation to provide key information also under a base prospectus, issuers should combine the summary with relevant parts of final terms in a way that is easily accessible to investors. No separate approval should be required in those cases.
- (18) In order to improve the efficiency of pre-emptive issues of equity securities and adequately to take account of the size of issuers, without prejudice to investor protection, a proportionate disclosure regime should be introduced for offers of shares to existing shareholders who can either subscribe those shares or sell the right to subscribe for the shares, for offers by SMEs and issuers with reduced market capitalisation (namely small companies whose shares are admitted to trading on a regulated market), and for offers of non-equity securities referred to in Article 1(2)(j) of Directive 2003/71/EC issued by credit institutions. Where such credit institutions issue securities below the limit laid down in that Article, but choose to opt into the regime of this Directive and, consequently, draw up a prospectus, they should be entitled to benefit from the relevant proportionate disclosure regime. The proportionate disclosure regime for pre-emptive issues should apply where the shares offered are of the same class as the shares of the issuer admitted to trading either on a regulated market or on a multilateral trading facility as defined in Article 4(1)(15) of Directive 2004/39/EC as long as the facility is subject to appropriate ongoing disclosure requirements and rules on market abuse. The European Supervisory Authority (European Securities and Markets Authority) should issue guidelines regarding these conditions in order to ensure a consistent approach by the competent authorities.
- (19) Member States publish abundant information on their financial situation which is in general available in the public domain. Where a Member State guarantees an

offer of securities, the issuer should not be obliged to provide in the prospectus information about that Member State acting as guarantor.

exercise of that right voluntarily. To improve legal certainty, the supplement to the prospectus should specify when the right of withdrawal ends.

- (20) In order to improve legal certainty, the validity of a prospectus should commence at its approval, a point in time which is easily verified by the competent authority. Furthermore, in order to enhance flexibility, issuers should also be able to update the registration document in accordance with the procedure for supplementing prospectuses.
- (21) As a consequence of the entry into force of Directive 2004/109/EC, the obligation in Directive 2003/71/EC for the issuer to provide annually a document containing or referring to all information published in the 12 months preceding the issuance of the prospectus has become a dual obligation and should therefore be abolished. As a consequence, a registration document, instead of being updated in accordance with Article 10 of Directive 2003/71/EC, should be updated by means of a supplement or securities note.
- (22) Internet ensures easy access to information. In order to ensure better accessibility for investors, the prospectus should always be published in an electronic form on the relevant website. Where a person other than the issuer is responsible for drawing up the prospectus, it should be sufficient for that person to publish the prospectus on the website of that person.
- (23) In order to improve legal certainty, it should be clarified when the requirement to publish a supplement to the prospectus and the right of withdrawal end. Those provisions should be looked at separately. The obligation to supplement a prospectus should be terminated at the final closing of the offering period or the time when trading of such securities on a regulated market begins, whichever occurs later. On the other hand, the right to withdraw an acceptance should be applicable only where the prospectus relates to an offer of securities to the public and the new factor, mistake or inaccuracy arose before the final closing of the offer and the delivery of the securities. Hence, the right of withdrawal is linked to the timing of the new factor, mistake or inaccuracy that gives rise to a supplement, and assumes that that triggering event has occurred while the offer was open and before delivery of the securities.
- (24) When the prospectus is supplemented, harmonisation at Union level of the time-frame for the exercise by investors of the right of withdrawal of their previous acceptances would provide certainty to issuers making cross-border offers of securities. To provide flexibility to issuers from Member States with a tradition of a longer time-frame in this regard, the issuer or the offeror should be able to extend the term for the
- (25) The authority responsible for the approval of the prospectus should also notify the issuer or the person responsible for drawing up the prospectus of the certificate of approval of the prospectus that is addressed to the authorities of host Member States in accordance with Directive 2003/71/EC in order to provide the issuer or the person responsible for drawing up the prospectus with certainty as to whether and when a notification has actually been effected.
- (26) The measures necessary for the implementation of this Directive should be adopted by means of implementing acts in accordance with Article 291 of the Treaty on the Functioning of the European Union (TFEU). It is particularly important that the European Parliament receive draft measures and draft implementing acts as well as any other relevant information before the Commission decides on the equivalence of prospectuses drawn up in a particular third country.
- (27) In order to respect the principles set out in recital 41 of Directive 2003/71/EC and to take account of the technical developments in the financial markets and to specify the requirements laid down in Directive 2003/71/EC, the Commission should be empowered to adopt delegated acts in accordance with Article 290 TFEU. In particular, delegated acts may be necessary to update the thresholds and the definitions for reduced market capitalisation and SMEs established in this Directive and in Directive 2003/71/EC, and to specify the detailed content and specific form of the summary in accordance with the outcome of the debate launched by the Commission's Communication on Packaged Retail Investment Products of 30 April 2009, aligning to the greatest extent possible the content and form of the summary for securities with that outcome, preventing the duplication of documents and potential confusion for investors as well as minimising the costs.
- (28) The European Parliament and the Council should have 3 months from the date of notification to object to a delegated act. At the initiative of the European Parliament or the Council, it should be possible to prolong that period by 3 months in regard to significant areas of concern. It should also be possible for the European Parliament and the Council to inform the other institutions of their intention not to raise objections. Such early approval of delegated acts is particularly appropriate when deadlines need to be met, for example where there are timetables in the basic act for the Commission to adopt delegated acts.

- (29) In Declaration 39 on Article 290 TFEU, annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, signed on 13 December 2007, the Conference took note of the Commission's intention to continue to consult experts appointed by the Member States in the preparation of draft delegated acts in the financial services area, in accordance with its established practice.
- (30) Since the objective of this Directive, namely reducing administrative burdens relating to the publication of a prospectus in the case of offers of securities to the public and admission to trading in regulated markets within the Union, cannot be sufficiently achieved by Member States and can therefore, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (31) Directives 2003/71/EC and 2004/109/EC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 2003/71/EC

Directive 2003/71/EC is hereby amended as follows:

1. Article 1 is amended as follows:

(a) in paragraph 2:

(i) point (h) is replaced by the following:

‘(h) securities included in an offer where the total consideration for the offer in the Union is less than EUR 5 000 000, which shall be calculated over a period of 12 months;’;

(ii) point (j) is replaced by the following:

‘(j) non-equity securities issued in a continuous or repeated manner by credit institutions where the total consideration for the offer in the Union is less than EUR 75 000 000, which shall be calculated over a period of 12 months, provided that those securities:

(i) are not subordinated, convertible or exchangeable;

(ii) do not give a right to subscribe to or acquire other types of securities and that they are not linked to a derivative instrument.’;

(b) the following paragraph is added:

‘4. In order to take account of technical developments on financial markets, including inflation, the

Commission shall adopt, by means of delegated acts in accordance with Article 24a, and subject to the conditions of Articles 24b and 24c, measures concerning the adjustment of the limits referred to in points (h) and (j) of paragraph 2 of this Article.’;

2. Article 2 is amended as follows:

(a) in paragraph 1:

(i) point (e) is replaced by the following:

‘(e) “qualified investors” means persons or entities that are described in points (1) to (4) of Section I of Annex II to Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments (*), and persons or entities who are, on request, treated as professional clients in accordance with Annex II to Directive 2004/39/EC, or recognised as eligible counterparties in accordance with Article 24 of Directive 2004/39/EC unless they have requested that they be treated as non-professional clients. Investment firms and credit institutions shall communicate their classification on request to the issuer without prejudice to the relevant legislation on data protection. Investment firms authorised to continue considering existing professional clients as such in accordance with Article 71(6) of Directive 2004/39/EC shall be authorised to treat those clients as qualified investors under this Directive;

(*) OJ L 145, 30.4.2004, p. 1.’;

(ii) the following points are added:

‘(s) “key information” means essential and appropriately structured information which is to be provided to investors with a view to enabling them to understand the nature and the risks of the issuer, guarantor and the securities that are being offered to them or admitted to trading on a regulated market and, without prejudice to Article 5(2)(b), to decide which offers of securities to consider further. In light of the offer and securities concerned, the key information shall include the following elements:

(i) a short description of the risks associated with and essential characteristics of the issuer and any guarantor, including the assets, liabilities and financial position;

(ii) a short description of the risk associated with and essential characteristics of the investment in the relevant security, including any rights attaching to the securities;

(iii) general terms of the offer, including estimated expenses charged to the investor by the issuer or the offeror;

- (iv) details of the admission to trading;
- (v) reasons for the offer and use of proceeds;
- (t) “company with reduced market capitalisation” means a company listed on a regulated market that had an average market capitalisation of less than EUR 100 000 000 on the basis of end-year quotes for the previous three calendar years.’;

(b) paragraphs 2 and 3 are deleted;

(c) paragraph 4 is replaced by the following:

‘4. In order to take account of technical developments on financial markets and to specify the requirements laid down in this Article, the Commission shall adopt, by means of delegated acts in accordance with Article 24a, and subject to the conditions of Articles 24b and 24c, the definitions referred to in paragraph 1, including the adjustment of the figures used for the definition of SMEs, and the thresholds for reduced market capitalisation, taking into account the situation on different national markets, including the classification used by the operators of regulated markets, Union legislation and recommendations as well as economic developments.’;

3. Article 3 is amended as follows:

(a) in paragraph 2:

(i) the first subparagraph is replaced by the following:

‘2. The obligation to publish a prospectus shall not apply to the following types of offer:

- (a) an offer of securities addressed solely to qualified investors; and/or
- (b) an offer of securities addressed to fewer than 150 natural or legal persons per Member State, other than qualified investors; and/or
- (c) an offer of securities addressed to investors who acquire securities for a total consideration of at least EUR 100 000 per investor, for each separate offer; and/or
- (d) an offer of securities whose denomination per unit amounts to at least EUR 100 000; and/or
- (e) an offer of securities with a total consideration in the Union of less than EUR 100 000, which shall be calculated over a period of 12 months.’;

(ii) the following subparagraph is added:

‘Member States shall not require another prospectus in any such subsequent resale of securities or final placement of securities through financial intermediaries as long as a valid

prospectus is available in accordance with Article 9 and the issuer or the person responsible for drawing up such prospectus consents to its use by means of a written agreement.’;

(b) the following paragraph is added:

‘4. In order to take account of technical developments on financial markets, including inflation, the Commission shall adopt, by means of delegated acts in accordance with Article 24a, and subject to the conditions of Articles 24b and 24c, measures concerning the thresholds in points (c) to (e) of paragraph 2 of this Article.’;

4. Article 4 is amended as follows:

(a) in paragraph 1:

(i) points (c) to (e) are replaced by the following:

‘(c) securities offered, allotted or to be allotted in connection with a merger or division, provided that a document is available containing information which is regarded by the competent authority as being equivalent to that of the prospectus, taking into account the requirements of Union legislation;

(d) dividends paid out to existing shareholders in the form of shares of the same class as the shares in respect of which such dividends are paid, provided that a document is made available containing information on the number and nature of the shares and the reasons for and details of the offer;

(e) securities offered, allotted or to be allotted to existing or former directors or employees by their employer or by an affiliated undertaking provided that the company has its head office or registered office in the Union and provided that a document is made available containing information on the number and nature of the securities and the reasons for and details of the offer.’;

(ii) the following subparagraphs are added:

‘Point (e) shall also apply to a company established outside the Union whose securities are admitted to trading either on a regulated market or on a third-country market. In the latter case, the exemption shall apply provided that adequate information, including the document referred to in point (e), is available at least in a language customary in the sphere of international finance and provided that the Commission has adopted an equivalence decision regarding the third-country market concerned.

On the request of the competent authority of a Member State, the Commission shall adopt equivalence decisions in accordance with the procedure referred to in Article 24(2), stating whether the legal and supervisory framework of a third country ensures that a regulated market authorised in that third country complies with legally binding requirements which are, for the purpose of the application of the exemption under point (e), equivalent to the requirements resulting from Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) (*), from Title III of Directive 2004/39/EC and from Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market (**), and which are subject to effective supervision and enforcement in that third country. That competent authority shall indicate why it considers that the legal and supervisory framework of the third country concerned is to be considered equivalent and shall provide relevant information to this end.

Such a third-country legal and supervisory framework may be considered equivalent where that framework fulfils at least the following conditions:

- (i) the markets are subject to authorisation and to effective supervision and enforcement on an ongoing basis;
- (ii) the markets have clear and transparent rules regarding admission of securities to trading so that such securities are capable of being traded in a fair, orderly and efficient manner, and are freely negotiable;
- (iii) security issuers are subject to periodic and ongoing information requirements ensuring a high level of investor protection; and
- (iv) market transparency and integrity are ensured by the prevention of market abuse in the form of insider dealing and market manipulation.

As regards point (e), in order to take into account the developments of financial markets, the Commission may adopt by means of delegated acts in accordance with Article 24a, and subject to the conditions of Articles 24b and 24c, measures to specify the above criteria or to add further ones to be applied in the assessment of the equivalence.

(*) OJ L 96, 12.4.2003, p. 16.

(**) OJ L 390, 31.12.2004, p. 38.;

(b) in paragraph 2, point (d) is replaced by the following:

‘(d) securities offered, allotted or to be allotted in connection with a merger or a division, provided that a document is available containing information which is regarded by the competent authority as being equivalent to that of the prospectus, taking into account the requirements of Union legislation;’

5. Article 5 is amended as follows:

(a) in paragraph 2:

(i) in the first subparagraph, the introductory part is replaced by the following:

‘2. The prospectus shall contain information concerning the issuer and the securities to be offered to the public or to be admitted to trading on a regulated market. It shall also include a summary that, in a concise manner and in non-technical language, provides key information in the language in which the prospectus was originally drawn up. The format and content of the summary of the prospectus shall provide, in conjunction with the prospectus, appropriate information about essential elements of the securities concerned in order to aid investors when considering whether to invest in such securities.

The summary shall be drawn up in a common format in order to facilitate comparability of the summaries of similar securities and its content should convey the key information of the securities concerned in order to aid investors when considering whether to invest in such securities. The summary shall also contain a warning that:’

(ii) the second subparagraph is replaced by the following:

‘Where the prospectus relates to the admission to trading on a regulated market of non-equity securities having a denomination of at least EUR 100 000, there shall be no requirement to provide a summary, save where a Member State so requires in accordance with Article 19(4).’;

(b) paragraph 3 is replaced by the following:

‘3. The issuer, offeror or person asking for the admission to trading on a regulated market may draw up the prospectus as a single document or separate documents. A prospectus composed of separate documents shall divide the required information into a registration document, a securities note and a summary note. The registration document shall contain the information relating to the issuer. The securities note shall contain the information concerning the securities offered to the public or to be admitted to trading on a regulated market.’;

- (c) in paragraph 4, the third subparagraph is replaced by the following:

‘Where the final terms of the offer are neither included in the base prospectus nor in a supplement, the final terms shall be made available to investors, filed with the competent authority of the home Member State and communicated, by the issuer, to the competent authority of the host Member State(s) when each public offer is made as soon as practicable and, if possible, in advance of the beginning of the public offer or admission to trading. The final terms shall contain only information that relates to the securities note and shall not be used to supplement the base prospectus. Article 8(1)(a) shall apply in those cases.’;

- (d) paragraph 5 is replaced by the following:

‘5. In order to take account of technical developments on financial markets and to specify the requirements laid down in this Article, the Commission shall adopt, by means of delegated acts in accordance with Article 24a and subject to the conditions of Articles 24b and 24c, measures relating to the following:

- (a) the format of the prospectus or base prospectus, the summary, final terms and supplements; and
- (b) the detailed content and specific form of the key information to be included in the summary.

Those delegated acts shall be adopted by 1 July 2012.’;

6. in Article 6(2), the second subparagraph is replaced by the following:

‘However, Member States shall ensure that no civil liability shall attach to any person solely on the basis of the summary, including any translation thereof, unless it is misleading, inaccurate or inconsistent, when read together with the other parts of the prospectus, or it does not provide, when read together with the other parts of the prospectus, key information in order to aid investors when considering whether to invest in such securities. The summary shall contain a clear warning to that effect.’;

7. Article 7 is amended as follows:

- (a) paragraph 1 is replaced by the following:

‘1. Detailed delegated acts regarding the specific information which must be included in a prospectus, avoiding duplication of information when a prospectus is composed of separate documents, shall be adopted by the Commission in accordance with Article 24a and subject to the conditions of Articles 24b and 24c.’;

- (b) in paragraph 2:

- (i) point (b) is replaced by the following:

‘(b) the various types and characteristics of offers and admissions to trading on a regulated market of non-equity securities. The information required in a prospectus shall be appropriate from the point of view of the investors concerned for non-equity securities having a denomination per unit of at least EUR 100 000;’;

- (ii) point (e) is replaced by the following:

‘(e) the various activities and size of the issuer, in particular credit institutions issuing non-equity securities referred to in Article 1(2)(j), companies with reduced market capitalisation and SMEs. For such companies the information shall be adapted to their size and, where appropriate, to their shorter track record;’;

- (iii) the following point is added:

‘(g) a proportionate disclosure regime shall apply to offers of shares by companies whose shares of the same class are admitted to trading on a regulated market or a multilateral trading facility as defined in Article 4(1)(15) of Directive 2004/39/EC, which are subject to appropriate ongoing disclosure requirements and rules on market abuse, provided that the issuer has not disapplied the statutory pre-emption rights.’;

- (c) paragraph 3 is replaced by the following:

‘3. The delegated acts referred to in paragraph 1 shall be based on the standards in the field of financial and non-financial information set out by international securities commission organisations, in particular by IOSCO and on the indicative Annexes to this Directive.’;

8. Article 8 is amended as follows:

- (a) in the introductory part of paragraph 2 and in paragraph 3, the term ‘implementing measures’ is replaced by ‘delegated acts’;

- (b) the following paragraph is inserted:

‘3a. Where securities are guaranteed by a Member State, an issuer, an offeror or a person asking for admission to trading on a regulated market, when drawing up a prospectus in accordance with Article 1(3), shall be entitled to omit information about such guarantor.’;

(c) paragraph 4 is replaced by the following:

‘4. In order to take account of technical developments on financial markets and to specify the requirements laid down in this Article, the Commission shall adopt, by means of delegated acts in accordance with Article 24a and subject to the conditions of Articles 24b and 24c, measures concerning paragraph 2.’;

9. Article 9 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. A prospectus shall be valid for 12 months after its approval for offers to the public or admissions to trading on a regulated market, provided that the prospectus is completed by any supplements required pursuant to Article 16.’;

(b) paragraph 4 is replaced by the following:

‘4. A registration document, as referred to in Article 5(3), previously filed and approved, shall be valid for a period of up to 12 months. The registration document, updated in accordance with Article 12(2) or Article 16, accompanied by the securities note and the summary note shall be considered to constitute a valid prospectus.’;

10. Article 10 is deleted;

11. Article 11 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. Member States shall allow information to be incorporated in the prospectus by reference to one or more previously or simultaneously published documents that have been approved by the competent authority of the home Member State or filed with it in accordance with this Directive or Directive 2004/109/EC. Such information shall be the most recent available to the issuer. The summary shall not incorporate information by reference.’;

(b) paragraph 3 is replaced by the following:

‘3. In order to take account of technical developments on financial markets and to specify the requirements laid down in this Article, the Commission shall adopt, by means of delegated acts in accordance with Article 24a and subject to the conditions of Articles 24b and 24c, measures concerning the information to be incorporated by reference.’;

12. in Article 12, paragraph 2 is replaced by the following:

‘2. In this case, the securities note shall provide information that would normally be provided in the registration document, where there has been a material change or recent development which could affect investors’

assessments since the latest updated registration document, unless such information is provided in a supplement in accordance with Article 16. The securities and summary notes shall be subject to a separate approval.’;

13. in Article 13, paragraph 7 is replaced by the following:

‘7. In order to take account of technical developments on financial markets and to specify the requirements laid down in this Article, the Commission shall adopt, by means of delegated acts in accordance with Article 24a and subject to the conditions of Articles 24b and 24c, measures concerning the conditions in accordance with which time limits may be adjusted.’;

14. Article 14 is amended as follows:

(a) in paragraph 2:

(i) point (c) in the first subparagraph is replaced by the following:

‘(c) in electronic form on the issuer’s website or, if applicable, on the website of the financial intermediaries placing or selling the securities, including paying agents; or’;

(ii) the second subparagraph is replaced by the following:

‘Member States shall require issuers or the persons responsible for drawing up a prospectus that publish their prospectus in accordance with point (a) or (b) also to publish their prospectus electronically in accordance with point (c).’;

(b) paragraph 8 is replaced by the following:

‘8. In order to take account of technical developments on financial markets and to specify the requirements laid down in this Article, the Commission shall adopt, by means of delegated acts in accordance with Article 24a and subject to the conditions of Articles 24b and 24c, measures concerning paragraphs 1 to 4 of this Article.’;

15. in Article 15, paragraph 7 is replaced by the following:

‘7. In order to take account of technical developments on financial markets and to specify the requirements laid down in this Article, the Commission shall adopt, by means of delegated acts in accordance with Article 24a and subject to the conditions of Articles 24b and 24c, measures concerning the dissemination of advertisements announcing the intention to offer securities to the public or the admission to trading on a regulated market, in particular before the prospectus has been made available to the public or before the opening of the subscription, and concerning paragraph 4 of this Article.’;

16. Article 16 is replaced by the following:

'Article 16

Supplements to the prospectus

1. Every significant new factor, material mistake or inaccuracy relating to the information included in the prospectus which is capable of affecting the assessment of the securities and which arises or is noted between the time when the prospectus is approved and the final closing of the offer to the public or, as the case may be, the time when trading on a regulated market begins, whichever occurs later, shall be mentioned in a supplement to the prospectus. Such a supplement shall be approved in the same way in a maximum of seven working days and published in accordance with at least the same arrangements as were applied when the original prospectus was published. The summary, and any translations thereof, shall also be supplemented, if necessary, to take into account the new information included in the supplement.

2. Where the prospectus relates to an offer of securities to the public, investors who have already agreed to purchase or subscribe for the securities before the supplement is published shall have the right, exercisable within two working days after the publication of the supplement, to withdraw their acceptances, provided that the new factor, mistake or inaccuracy referred to in paragraph 1 arose before the final closing of the offer to the public and the delivery of the securities. That period may be extended by the issuer or the offeror. The final date of the right of withdrawal shall be stated in the supplement.'

17. in Article 18, paragraph 1 is replaced by the following:

'1. The competent authority of the home Member State shall, at the request of the issuer or the person responsible for drawing up the prospectus and within three working days following receipt of that request or, where the request is submitted together with the draft prospectus, within one working day after the approval of the prospectus, notify the competent authority of the host Member State with a certificate of approval attesting that the prospectus has been drawn up in accordance with this Directive and with a copy of that prospectus. If applicable, that notification shall be accompanied by a translation of the summary produced under the responsibility of the issuer or person responsible for drawing up the prospectus. The same procedure shall be followed for any supplement to the prospectus. The issuer or the person responsible for drawing up the prospectus shall also be notified of the certificate of approval at the same time as the competent authority of the host Member State.'

18. in Article 19, paragraph 4 is replaced by the following:

'4. Where admission to trading on a regulated market of non-equity securities whose denomination per unit amounts to at least EUR 100 000 is sought in one or more Member States, the prospectus shall be drawn up either in a language accepted by the competent authorities

of the home and host Member States or in a language customary in the sphere of international finance, at the choice of the issuer, offeror or person asking for admission to trading, as the case may be. Member States may choose to require in their national legislation that a summary be drawn up in their official language(s);

19. in Article 20, the first subparagraph of paragraph 3 is replaced by the following:

'3. The Commission shall adopt, by means of delegated acts in accordance with Article 24a and subject to the conditions of Articles 24b and 24c, measures to establish general equivalence criteria, based on the requirements laid down in Articles 5 and 7.'

20. in Article 21(4)(d), the words 'its implementing measures' are replaced by 'the delegated acts referred to therein';

21. the following articles are inserted:

'Article 24a

Exercise of the delegation

1. The power to adopt delegated acts referred to in Article 1(4), Article 2(4), Article 3(4), the fifth subparagraph of Article 4(1), Article 5(5), Article 7(1), Article 8(4), Article 11(3), Article 13(7), Article 14(8), Article 15(7) and the first subparagraph of Article 20(3) shall be conferred on the Commission for a period of 4 years from 31 December 2010. The Commission shall draw up a report in respect of the delegated power at the latest 6 months before the end of the four-year period. The delegation of power shall be automatically extended for periods of an identical duration, unless the European Parliament or the Council revokes it in accordance with Article 24b.

2. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

3. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in Articles 24b and 24c.

Article 24b

Revocation of the delegation

1. The delegation of power referred to in Article 1(4), Article 2(4), Article 3(4), the fifth subparagraph of Article 4(1), Article 5(5), Article 7(1), Article 8(4), Article 11(3), Article 13(7), Article 14(8), Article 15(7) or the first subparagraph of Article 20(3) may be revoked at any time by the European Parliament or by the Council.

2. The institution which has commenced an internal procedure for deciding whether to revoke a delegation of power shall endeavour to inform the other institution and the Commission within a reasonable time before the final decision is taken, indicating the delegated power which could be subject to revocation.

3. The decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect immediately or at a later date specified therein. It shall not affect the validity of the delegated acts already in force. It shall be published in the *Official Journal of the European Union*.

Article 24c

Objections to delegated acts

1. The European Parliament or the Council may object to a delegated act within a period of 3 months from the date of notification.

At the initiative of the European Parliament or the Council that period shall be extended by 3 months.

2. If, on expiry of the period referred to in paragraph 1, neither the European Parliament nor the Council has objected to the delegated act, it shall be published in the *Official Journal of the European Union* and shall enter into force on the date stated therein.

The delegated act may be published in the *Official Journal of the European Union* and enter into force before the expiry of that period if the European Parliament and the Council have both informed the Commission of their intention not to raise objections.

3. If either the European Parliament or the Council objects to the delegated act within the period referred to in paragraph 1, it shall not enter into force. In accordance with Article 296 of the Treaty on the Functioning of the European Union, the institution which objects shall state the reasons for objecting to the delegated act.;

22. in Section I(C) and Sections III and IV of Annex I, Section II of Annex II, Sections II and III of Annex III, and the third bullet point of Annex IV, the term 'key information' is replaced by 'essential information'.

Article 2

Amendments to Directive 2004/109/EC

Directive 2004/109/EC is hereby amended as follows:

1. in Article 2(1)(i), point (i) is replaced by the following:

'(i) in the case of an issuer of debt securities the denomination per unit of which is less than EUR 1 000 or an issuer of shares:

- where the issuer is incorporated in the Union, the Member State in which it has its registered office,
- where the issuer is incorporated in a third country, the Member State referred to in point (iii) of Article 2(1)(m) of Directive 2003/71/EC.

The definition of "home" Member State shall be applicable to debt securities in a currency other than euro, provided that the value of such denomination per unit is, at the date of the issue, less than EUR 1 000, unless it is nearly equivalent to EUR 1 000;;

2. Article 8 is amended as follows:

(a) in paragraph 1, point (b) is replaced by the following:

'(b) an issuer exclusively of debt securities admitted to trading on a regulated market, the denomination per unit of which is at least EUR 100 000 or, in the case of debt securities denominated in a currency other than euro, the value of such denomination per unit is, at the date of the issue, equivalent to at least EUR 100 000.;

(b) the following paragraph is added:

'4. By way of derogation from paragraph (1)(b), Articles 4, 5 and 6 shall not apply to issuers of exclusively debt securities the denomination per unit of which is at least EUR 50 000 or, in the case of debt securities denominated in a currency other than euro, the value of such denomination per unit is, at the date of the issue, equivalent to at least EUR 50 000, which have already been admitted to trading on a regulated market in the Union before 31 December 2010, for as long as such debt securities are outstanding.;

3. in Article 18, paragraph 3 is replaced by the following:

'3. Where only holders of debt securities whose denomination per unit amounts to at least EUR 100 000 or, in the case of debt securities denominated in a currency other than euro whose denomination per unit is, at the date of the issue, equivalent to at least EUR 100 000, are to be invited to a meeting, the issuer may choose as venue any Member State, provided that all the facilities and information necessary to enable such holders to exercise their rights are made available in that Member State.

The choice referred to in the first subparagraph shall also apply with regard to holders of debt securities whose denomination per unit amounts to at least EUR 50 000 or, in the case of debt securities denominated in a currency other than euro, the value of such denomination per unit is, at the date of the issue, equivalent to at least EUR 50 000, which have already been admitted to trading on a regulated market in the Union before 31 December 2010, for as long as such debt securities are outstanding, provided that all the facilities and information necessary to enable such holders to exercise their rights are made available in the Member State chosen by the issuer.;

4. in Article 20, paragraph 6 is replaced by the following:

‘6. By way of derogation from paragraphs 1 to 4, where securities whose denomination per unit amounts to at least EUR 100 000 or, in the case of debt securities denominated in a currency other than euro equivalent to at least EUR 100 000 at the date of the issue, are admitted to trading on a regulated market in one or more Member States, regulated information shall be disclosed to the public either in a language accepted by the competent authorities of the home and host Member States or in a language customary in the sphere of international finance, at the choice of the issuer or of the person who, without the issuer’s consent, has requested such admission.

The derogation referred to in the first subparagraph shall also apply to debt securities the denomination per unit of which is at least EUR 50 000 or, in the case of debt securities denominated in a currency other than euro, the value of such denomination per unit is, at the date of the issue, equivalent to at least EUR 50 000, which have already been admitted to trading on a regulated market in one or more Member States before 31 December 2010, for as long as such debt securities are outstanding.’.

Article 3

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 July 2012. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main measures of national law which they adopt in the field covered by this Directive.

Article 4

Review

By 1 January 2016, the Commission shall assess the application of Directive 2003/71/EC as amended by this Directive, in particular with regard to the application and the effects of the rules, including liability, regarding the summary with key information, the impact of the exemption provided for in Article 4(1)(e) on the protection of employees and the proportionate disclosure regime referred to in Article 7(2)(e) and (g) and the electronic publication of prospectuses in accordance with Article 14 and it shall review point (ii) of Article 2(1)(m) in relation to the limitation on the determination of the home Member State for issues of non-equity securities with a denomination below EUR 1 000 in order to consider whether that provision should be maintained or revoked. The Commission shall also assess the need to revise the definition of the term ‘public offer’ and the need to define the terms ‘primary market’ and ‘secondary market’ and, in this respect, shall fully clarify the links between Directive 2003/71/EC and Directives 2003/6/EC and 2004/109/EC. Following its assessment, the Commission shall present a report to the European Parliament and the Council, accompanied, where appropriate, by proposals to amend Directive 2003/71/EC.

Article 5

Entry into force

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

Article 6

Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 24 November 2010.

For the European Parliament

The President

J. BUZEK

For the Council

The President

O. CHASTEL

II

(Non-legislative acts)

REGULATIONS

COMMISSION REGULATION (EU) No 1169/2010

of 10 December 2010

on a common safety method for assessing conformity with the requirements for obtaining a railway safety authorisation**(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways and amending Council Directive 95/18/EC on the licensing of railway undertakings and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (Railway Safety Directive) ⁽¹⁾, and in particular Article 6(1) thereof,

Having regard to Recommendation ERA/REC/SAF/09-2009 from the European Railway Agency, delivered to the Commission on 18 September 2009, on a common safety method (CSM) for conformity assessment,

Whereas:

- (1) The purpose of the common safety method (CSM) to be established is to provide a framework for national safety authorities to harmonise their decision-making criteria across the Union, in accordance with Article 17(4) of Directive 2004/49/EC. It should enable national safety authorities to assess conformity with requirements in a uniform manner.
- (2) The CSM should include all the harmonised requirements and assessment methods to enable national safety authorities to issue an infrastructure manager with a safety authorisation covering the adequacy of the safety management system in general and any network-specific authorisation. Furthermore, it is likely that the infrastructure manager will apply for the network-specific part of the authorisation at the same time as it applies for a general authorisation based on its safety management system.

- (3) National safety authorities assess the ability of an infrastructure manager to comply with all the requirements required to operate in general and on the specific network for which it is seeking an authorisation by assessing its safety management system at global level.
- (4) Each national safety authority needs to put in place arrangements to examine whether the results outlined in the application for a safety authorisation are being delivered in operation after the award of the authorisation and whether all the necessary requirements are complied with on a continuous basis, as required by Article 16(2)(f) and Article 17(2) of Directive 2004/49/EC. This therefore requires the development of a post-award supervision regime based on key fundamental principles in order to ensure a harmonised approach by national safety authorities in each Member State.
- (5) The measures provided for in this Regulation are in accordance with the opinion of the Committee referred to in Article 27(1) of Directive 2004/49/EC,

HAS ADOPTED THIS REGULATION:

*Article 1***Subject-matter**

This Regulation establishes a common safety method (CSM) for assessing conformity with requirements for obtaining safety authorisation as referred to in Article 6(3)(b) of Directive 2004/49/EC.

The CSM includes:

- (a) a procedure and criteria for assessing applications by infrastructure managers for safety authorisations as referred to in Article 11(1)(a) and (b) of Directive 2004/49/EC, as set out in Annex I and II to this Regulation;

⁽¹⁾ OJ L 164, 30.4.2004, p. 44.

- (b) principles for supervising compliance with the requirements of Directive 2004/49/EC after the national safety authority has granted the authorisation, as set out in Annex III to this Regulation.

Article 2

Definition

For the purposes of this Regulation, the following definition shall apply:

‘supervision’ means the arrangements put in place by the national safety authority to oversee safety performance after it has granted a safety authorisation.

Article 3

Procedures for assessing applications

1. When examining applications for safety authorisations submitted after the entry into force of this Regulation, national safety authorities shall apply the procedure set out in Annex I to this Regulation for assessing their conformity with requirements in Directive 2004/49/EC. The national safety authorities shall also use the assessment criteria set out in Annex II to this Regulation.

2. During assessment, national safety authorities may accept commitments by applicants that they will manage risks through

the use of contracts with third parties. The contracts shall also specify the exchange of information needed to ensure the safe operation of vehicles, especially in areas relating to managing maintenance.

3. Products or services provided by contractors or suppliers to infrastructure managers shall be presumed to conform to safety requirements if the contractors, suppliers, or products are certified in accordance with relevant certification schemes established under Union legislation, for the provision of such products and services.

Article 4

Supervision

After granting a safety authorisation, national safety authorities shall supervise infrastructure managers’ continued application of their safety management system and shall apply the principles for supervision set out in Annex III.

Article 5

Entry into force

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

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

Done at Brussels, 10 December 2010.

For the Commission

The President

José Manuel BARROSO

ANNEX I

Procedure for assessing conformity with requirements for obtaining safety authorisations to be issued in accordance with Article 11(1)(a) and (b) of Directive 2004/49/EC

1. The procedures that a national safety authority puts in place to receive and assess applications and to award safety authorisation shall be built upon the following framework principles.

- (a) Setting up and reviewing the assessment process

National safety authorities shall develop structured and auditable processes to be undertaken by suitably competent persons. They shall scrutinise applications against the assessment criteria for safety management systems set out in Annex II. They shall record and give reasons for all decisions. The national safety authority's overall assessment process shall be periodically internally reviewed and continuously improved to secure its continued effectiveness and efficiency.

- (b) Quality of the assessment process

National safety authorities shall monitor the quality of their own performance at key stages in the processing of applications for safety authorisations.

- (c) Scope of the assessment

The assessment shall be at management-system level and process-driven. Where scrutiny reveals shortcomings, the national safety authority may exercise discretion and, depending on the nature and seriousness of the non-conformity, shall outline the points which need to be enhanced. Ultimately, the national safety authority shall exercise its power to reject an application.

The assessment shall be:

- appropriate to the risks, character and extent of operations of the applicant;
- based on judgments of the infrastructure manager's overall ability to operate safely as described in its safety management system.

- (d) Timing of the assessment

National safety authorities shall complete the assessment within the time required by Article 12 of Directive 2004/49/EC whilst ensuring that the evidence provided by the applicant is sufficiently examined. The national safety authority shall inform infrastructure managers of issues of major concern as early as practically possible during the assessment phase.

- (e) Decision making during the assessment

A decision to accept or reject an application for a safety authorisation shall be based on the evidence provided by the applicant and on whether compliance with the relevant requirements has been shown or not.

2. The national safety authority shall assess whether the attached summary of the safety management system manual allows an initial judgment on the quality and appropriateness of the safety management system and shall decide in which areas further information is necessary. The national safety authority may, as part of this request for more information, seek as much detailed information as it deems reasonably necessary to help its assessment of the application.
3. When granting a safety authorisation, compliance of the applicant's safety management system with the assessment criteria shall be documented in relation to each assessment criterion.
4. When identifying a point of query or possible non-compliance, the national safety authority shall be specific and help the applicant to understand the level of detail expected in the response. To do this it shall:
 - (a) refer accurately to the relevant criteria and ensure that the applicant has understood clearly the identified areas of non-compliance;

- (b) identify the relevant part of related regulations, rules, and standards;
 - (c) state why the assessment criterion is not met;
 - (d) agree on further commitments, information and any supporting evidence to be provided, as required by the level of detail of the criterion, and specify both the action required by the applicant to rectify the deficiency and the timeframe for compliance;
 - (e) specify areas which could be subject to further scrutiny through supervision after the award of the authorisation.
-

ANNEX II

Criteria for assessing conformity with the requirements for obtaining safety authorisations to be issued in accordance with Article 11(1)(a) and (b) of Directive 2004/49/EC**A. RISK CONTROL MEASURES FOR ALL RISKS ASSOCIATED WITH THE ACTIVITY OF THE INFRASTRUCTURE MANAGER ⁽¹⁾**

- A.1. There are procedures in place to identify risks associated with railway operations, including those directly arising from work activities, job design or workload and the activities of other organisations/persons.
- A.2. There are procedures in place to develop and put in place risk control measures.
- A.3. There are procedures in place to monitor the effectiveness of risk control arrangements and to implement changes when required.
- A.4. There are procedures in place to recognise the need to work together with other entities (such as railway undertakings, manufacturer, maintenance supplier, entity in charge of maintenance, railway vehicle keeper, service provider and procurement entity), where appropriate, on issues where they have shared interfaces that are likely to affect the putting in place of adequate risk control measures in accordance with Article 4(3) of Directive 2004/49/EC.
- A.5. There are procedures for agreed documentation and communication with the relevant entities, including the identification of roles and responsibilities of each participating organisation and the specifications for information exchanges.
- A.6. There are procedures to monitor the effectiveness of these arrangements and to implement changes when required.

B. RISK CONTROL RELATED TO THE SUPPLY OF MAINTENANCE AND MATERIAL ⁽²⁾

- B.1. There are procedures to derive maintenance requirements/standards/processes from safety data.
- B.2. There are procedures to adapt maintenance intervals according to the type and extent of service performed.
- B.3. There are procedures to ensure that the responsibility for maintenance is clearly defined to identify the competencies required for maintenance posts and to allocate appropriate levels of responsibility.
- B.4. There are procedures to collect information on malfunctions and defects arising from day-to-day operation and to report them to those responsible for maintenance.
- B.5. There are procedures to identify and report risks arising from defects and construction non-conformities or malfunctions throughout the lifecycle to interested parties.
- B.6. There are procedures to verify and control the performance and results of maintenance to ensure that they comply with corporate standards.

C. RISK CONTROL RELATED TO THE USE OF CONTRACTORS AND CONTROL OF SUPPLIERS ⁽³⁾

- C.1. There are procedures to verify the competence of contractors (including subcontractors) and suppliers.
- C.2. There are procedures to verify and control the safety performance and results of all contracted services and products supplied either by the contractor or supplier to ensure that they comply with the requirements set out in the contract.

⁽¹⁾ Article 9(2) of Directive 2004/49/EC.

⁽²⁾ Article 9(2) of Directive 2004/49/EC.

⁽³⁾ Article 9(2) of Directive 2004/49/EC.

- C.3. Responsibilities and tasks relating to railway safety issues are clearly defined, known and allocated between the contracting partners and among all other interested parties.
- C.4. There are procedures to ensure traceability of safety-related documents and contracts.
- C.5. There are procedures to ensure that safety tasks, including the exchange of safety-related information, are performed by the contractors or the supplier according to relevant requirements set out in the contract.
- D. RISKS ARISING FROM THE ACTIVITIES OF OTHER PARTIES EXTERNAL TO THE RAILWAY SYSTEM ⁽¹⁾
- D.1. There are procedures to identify potential risks from parties external to the railway system where appropriate and reasonable.
- D.2. There are procedures to establish control measures to mitigate the risks identified under D1 insofar as the responsibilities of the applicant are concerned.
- D.3. There are procedures to monitor the effectiveness of the measures identified under D2 and implement changes where appropriate.
- E. DOCUMENTATION OF THE SAFETY MANAGEMENT SYSTEM
- E.1. There is a description of the activity that makes clear the type, extent and risk of operation.
- E.2. There is a description of the structure of the safety management system, including the allocation of roles and responsibilities.
- E.3. There is a description of safety management system procedures required by Article 9 and Annex III of Directive 2004/49/EC, consistent with the type and extent of services operated.
- E.4. Safety-critical processes and tasks relevant to the type of activity/service are listed and briefly described.
- F. DISTRIBUTION OF RESPONSIBILITIES ⁽²⁾
- F.1. There is a description of how coordination of safety management system activities across the organisation is ensured, based on proven knowledge and lead responsibility at management level.
- F.2. There are procedures to ensure that staff with delegated responsibilities within the organisation have the authority, competence and appropriate resources to fulfil their duty.
- F.3. Safety-related areas of responsibility and the distribution of responsibilities to specific functions associated with them, together with their interfaces, are clearly defined.
- F.4. There is a procedure to ensure that safety tasks are clearly defined and delegated to staff with appropriate competence.
- G. SECURING CONTROL BY THE MANAGEMENT ON DIFFERENT LEVELS ⁽³⁾
- G.1. There is a description of how responsibilities are allocated for each safety-related process throughout the organisation.
- G.2. There is a procedure for regular monitoring of task performance assured by the line management chain that must intervene if the tasks are not being properly performed.
- G.3. There are procedures to identify and manage the impact of other management activities on the safety management system.

⁽¹⁾ Article 9(2) of Directive 2004/49/EC.

⁽²⁾ Annex III to Directive 2004/49/EC, point 1.

⁽³⁾ Annex III to Directive 2004/49/EC, point 1.

G.4. There are procedures to hold those with a role in the management of safety accountable for their performance.

G.5. There are procedures to allocate resources to deliver the tasks under the safety management system.

H. INVOLVING STAFF AND THEIR REPRESENTATIVES ON ALL LEVELS ⁽¹⁾

H.1. There are procedures in place to ensure that staff and staff representatives are adequately represented and consulted in defining, proposing, reviewing and developing the safety aspects of operational procedures that may involve staff.

H.2. Staff involvement and consultation arrangements are documented.

I. ENSURING CONTINUOUS IMPROVEMENT ⁽²⁾

There are procedures in place to ensure, where reasonably practicable, the continuous improvement of the safety management system; these shall include:

(a) procedures for periodic reviews of the safety management system, as found to be necessary;

(b) procedures for describing arrangements to monitor and analyse relevant safety data;

(c) procedures for describing how identified shortcomings are rectified;

(d) procedures for describing the implementation of new safety management rules based on development and lessons learnt;

(e) procedures for describing how internal audit findings are used to bring about improvement in the safety management system.

J. SAFETY POLICY APPROVED BY THE ORGANISATION'S CHIEF EXECUTIVE AND COMMUNICATED TO ALL STAFF ⁽³⁾

A document describing the organisation's safety policy exists and is:

(a) communicated and made available to all staff, e.g. via the organisation's intranet;

(b) appropriate to the type and extent of service;

(c) approved by the organisation's chief executive.

K. QUALITATIVE AND QUANTATIVE TARGETS OF THE ORGANISATION FOR MAINTAINING AND ENHANCING SAFETY, AND PLANS AND PROCEDURES FOR REACHING THESE TARGETS ⁽⁴⁾

K.1. There are procedures to determine relevant safety targets in line with the legal framework, and there is a document stating these targets.

K.2. There are procedures to determine relevant safety targets consistent with the type and extent of the railway operations covered and the relevant risks.

K.3. There are procedures to regularly assess overall safety performance in relation to the organisation's corporate safety targets and to those established at member state level.

⁽¹⁾ Annex III to Directive 2004/49/EC, point 1.

⁽²⁾ Annex III to Directive 2004/49/EC, point 1.

⁽³⁾ Annex III to Directive 2004/49/EC, point 2(a).

⁽⁴⁾ Annex III to Directive 2004/49/EC, point 2(b).

- K.4. There are procedures in place to regularly monitor and review operational arrangements by:
- (a) collecting relevant safety data to derive trends in safety performance and assess compliance with targets;
 - (b) interpreting relevant data and implementing necessary changes.
- K.5. There are procedures in place by the infrastructure manager to develop plans and procedures for reaching its targets.
- L. PROCEDURES TO MEET EXISTING, NEW AND ALTERED TECHNICAL AND OPERATIONAL STANDARDS OR OTHER PRESCRIPTIVE CONDITIONS ⁽¹⁾
- L.1. For safety-related requirements relevant to the type and extent of operations, there are procedures for:
- (a) identifying these requirements and updating relevant procedures to reflect changes made to them (change control management);
 - (b) implementing them;
 - (c) monitoring compliance with them;
 - (d) taking action when non-compliance is identified.
- L.2. There are procedures in place to ensure that the right staff, procedures, specific documents, equipment and rolling stock are used for the purpose intended.
- L.3. The safety management system has procedures in place to ensure that maintenance is carried out according to the relevant requirements.
- M. PROCEDURES AND METHODS FOR CARRYING OUT RISK EVALUATION AND IMPLEMENTING RISK CONTROL MEASURES WHENEVER A CHANGE OF THE OPERATING CONDITIONS OR NEW MATERIAL IMPOSES NEW RISKS ON THE INFRASTRUCTURE OR ON OPERATION ⁽²⁾
- M.1. There are management procedures for changes in equipment, procedures, organisation, staffing or interfaces.
- M.2. There are risk assessment procedures to manage changes and to apply the CSM on risk evaluation and assessment as referred to in Commission Regulation (EC) No 352/2009 ⁽³⁾ when required.
- M.3. There are procedures in place to feed the results of risk assessment into other processes within the organisation and make them visible to relevant staff.
- N. PROVISION OF STAFF TRAINING PROGRAMMES AND SYSTEMS TO ENSURE THAT STAFF COMPETENCE IS MAINTAINED AND TASKS CARRIED OUT ACCORDINGLY ⁽⁴⁾
- N.1. There is a competence management system that includes at least:
- (a) identification of the knowledge and skills required for safety-related tasks;
 - (b) selection principles (basic educational level, mental aptitude and physical fitness required);
 - (c) initial training and certification of acquired competence and skills;

⁽¹⁾ Annex III to Directive 2004/49/EC, point 2(c).

⁽²⁾ Annex III to Directive 2004/49/EC, point 2(d).

⁽³⁾ OJ L 108, 29.4.2009, p. 4.

⁽⁴⁾ Annex III to Directive 2004/49/EC, point 2(e).

- (d) ongoing training and periodic update of existing knowledge and skills;
- (e) periodic checks of competence where appropriate;
- (f) special measures in case of accidents/incidents or long absence from work, as required/where appropriate;
- (g) specific safety management system training for staff directly involved in ensuring that the safety management system works.

N.2. There are procedures within the competence management system providing for:

- (a) the identification of posts that perform safety tasks;
- (b) the identification of posts that entail responsibilities for taking operational decisions within the safety management system;
- (c) staff to have the necessary knowledge, skills and aptitude (medical and psychological) appropriate to their tasks and periodically undergo retraining;
- (d) allocating staff with the competence appropriate to relevant tasks;
- (e) monitoring how tasks are performed and implementing corrective actions where required.

O. ARRANGEMENTS FOR THE PROVISION OF SUFFICIENT INFORMATION WITHIN THE ORGANISATION AND, WHERE APPROPRIATE, BETWEEN ORGANISATIONS OPERATING ON THE SAME INFRASTRUCTURE ⁽¹⁾

O.1. There are procedures to ensure that:

- (a) staff have knowledge and understanding of the safety management system and information is easily accessible; and
- (b) appropriate documentation on the safety management system is given to relevant safety personnel.

O.2. There are procedures to ensure that:

- (a) key operational information is relevant and valid;
- (b) staff are aware of its existence before it is applied;
- (c) it is available to staff and where required copies are formally given to them.

O.3. There are arrangements in place for the sharing of information between the infrastructure manager and other railway undertakings.

P. PROCEDURES AND FORMATS FOR DOCUMENTING SAFETY INFORMATION, AND DESIGNATION OF A PROCEDURE FOR CONFIGURATION CONTROL OF VITAL SAFETY INFORMATION ⁽²⁾

P.1. There are procedures to ensure that all relevant safety information is accurate, complete, consistent, easy to understand, appropriately updated, and duly documented.

⁽¹⁾ Annex III to Directive 2004/49/EC, point 2(f).

⁽²⁾ Annex III to Directive 2004/49/EC, point 2(g).

- P.2. There are procedures to:
- (a) format, generate, distribute and manage control of changes to all relevant safety documentation;
 - (b) receive, collect and store all relevant documentation/information on paper or by other registration systems.
- P.3. There is a procedure for configuration control of vital safety information.
- Q. PROCEDURES TO ENSURE THAT ACCIDENTS, INCIDENTS, NEAR MISSES AND OTHER DANGEROUS OCCURRENCES ARE REPORTED, INVESTIGATED AND ANALYSED AND THAT NECESSARY PREVENTIVE MEASURES ARE TAKEN ⁽¹⁾
- Q.1. There are procedures to ensure that accidents, incidents, near misses and other dangerous occurrences:
- (a) are reported, logged, investigated and analysed;
 - (b) are reported, as required by relevant legislation, to national bodies.
- Q.2. There are procedures to ensure that:
- (a) recommendations from the national safety authority, from the national investigating body, and from industry/internal investigations are evaluated and implemented if appropriate or mandated;
 - (b) relevant reports/information from other railway undertakings, infrastructure managers, entities in charge of maintenance and railway vehicle keepers are considered and taken into account.
- Q.3. There are procedures for relevant information relating to the investigation and causes of accidents, incidents, near misses and other dangerous occurrences to be used to learn and, where required, to adopt preventive measures.
- R. PROVISION OF PLANS FOR ACTION AND ALERTS AND INFORMATION IN CASE OF EMERGENCY, AGREED UPON WITH THE APPROPRIATE PUBLIC AUTHORITIES ⁽²⁾
- R.1. A document identifies all types of emergency, including degraded operations, and there are procedures in place to identify new ones.
- R.2. There are procedures in place to ensure that, for each identified type of emergency:
- (a) the emergency services can be promptly contacted;
 - (b) the emergency services are provided with all relevant information both in advance, to prepare their emergency response, and at the time of an emergency.
- R.3. The roles and responsibilities of all parties are identified and set out in a document.
- R.4. Plans for action, alerts and information exist and include:
- (a) procedures to alert all staff with responsibility for emergency management;
 - (b) arrangements to communicate these to all parties, including emergency instructions for passengers;
 - (c) arrangements for contacting competent staff immediately so they can take any decisions required.

⁽¹⁾ Annex III to Directive 2004/49/EC, point 2(h).

⁽²⁾ Annex III to Directive 2004/49/EC, point 2(i).

- R.5. There is a document describing how resources and means have been allocated and how training requirements have been identified.
- R.6. There are procedures in place to re-establish normal operating conditions as soon as possible.
- R.7. There are procedures for testing emergency plans in cooperation with other parties to train staff, test procedures, identify weak points and verify how potential emergency situations are managed.
- R.8. There are procedures in place to coordinate emergency plans with railway undertakings which operate on the organisation's infrastructure and any other infrastructure with which it has an interface.
- R.9. There are arrangements in place to halt operations and railway traffic promptly, if necessary, and to inform all interested parties of the action taken.
- S. PROVISIONS FOR RECURRENT INTERNAL AUDITING OF THE SAFETY MANAGEMENT SYSTEM ⁽¹⁾
- S.1. There is an internal auditing system which is independent and impartial and which acts in a transparent way.
- S.2. There is a schedule of planned internal audits which can be revised depending on the results of previous audits and monitoring of performance.
- S.3. There are procedures in place to identify and select suitably competent auditors.
- S.4. Procedures are in place to:
- (a) analyse and evaluate the results of the audits;
 - (b) recommend follow-up measures;
 - (c) follow up the effectiveness of measures;
 - (d) document the execution of audits and the results of audits.
- S.5. There are procedures to ensure that senior levels of the management chain are aware of the results of audits and take overall responsibility for implementation of changes to the safety management system.
- S.6. There is a document showing how audits are planned in relation to routine monitoring arrangements to ensure compliance with internal procedures and standards.
- T. SAFE DESIGN OF THE RAILWAY INFRASTRUCTURE ⁽²⁾
- T.1. There are procedures to ensure the safe design of the infrastructure throughout the life-cycle of the infrastructure, covering design and installation.
- T.2. There are procedures which take into account technical change of the infrastructure and the management of that change.
- T.3. There are procedures which show that relevant rules covering the design of the infrastructure and any national safety methods have been identified and that the applicant can comply with them.

⁽¹⁾ Annex III to Directive 2004/49/EC, point 2(j).

⁽²⁾ Article 11(1)(b) of Directive 2004/49/EC.

U. SAFE OPERATION OF THE INFRASTRUCTURE ⁽¹⁾

- U.1. There are procedures to ensure that the infrastructure is managed and operated safely, taking into account the number, type and extent of operators running services on the network including all necessary interactions depending on the complexity of the operation.
- U.2. There are procedures which show how safety is managed at the physical and/or operational borders of the infrastructure.
- U.3. There are procedures which show how effective cooperation and coordination is managed, both in normal and emergency situations.
- U.4. There are procedures which show that rules covering the safe operation and management of infrastructure/vehicle interfaces have been identified and that the applicant can comply with them.

V. PROVISION OF MAINTENANCE & MATERIAL ⁽²⁾

- V.1. There are procedures to ensure that maintenance of the infrastructure is undertaken safely, including clear management control and documented audit and inspection.
- V.2. There are procedures which ensure that the maintenance of the infrastructure meets the specific needs of the network.
- V.3. There are procedures which show that rules covering the supply of maintenance and material have been identified and that the applicant can comply with them.

W. MAINTENANCE AND OPERATION OF THE TRAFFIC CONTROL AND SIGNALLING SYSTEM ⁽³⁾

- W.1. There are procedures to ensure that the traffic control and signalling system is operated and maintained so as to ensure the safe operation of the railway.
- W.2. There are procedures to comply with existing, new and altered technical and operational standards.
- W.3. There are procedures which set out how safety is managed at the physical and/or operational borders of the traffic control and signalling system, including how cooperation, if necessary, is managed.
- W.4. There are procedures which show that rules covering the safe operation and maintenance of the traffic control and signalling system have been identified and that the applicant can comply with them.

⁽¹⁾ Article 11(1)(b) of Directive 2004/49/EC.

⁽²⁾ Article 11(1)(b) of Directive 2004/49/EC.

⁽³⁾ Article 11(1)(b) of Directive 2004/49/EC.

ANNEX III

Principles for supervision after the award of an authorisation

1. The approach of national safety authorities to supervision of compliance as referred to in Articles 4(1) and 16(2)(e) of Directive 2004/49/EC shall be based on the following principles. These principles apply to the framework of supervision activities as a whole and to individual cases within that framework.
 2. National safety authorities shall apply the principle of proportionality between enforcement and risk. Action taken by a national safety authority to achieve compliance or bring infrastructure managers to account for not meeting their legal obligations shall be proportionate to any risks to safety or to the potential seriousness of any non-compliance, including any actual or potential harm.
 3. National safety authorities shall apply the principle of consistency of approach to ensure that a national safety authority takes a similar approach in similar circumstances to achieve similar ends.
 4. National safety authority supervision activity shall be targeted primarily at those activities which a national safety authority believes give rise to the most serious risks or where the hazards are least well-controlled. To do so, the national safety authority shall have methods and power to assess the day-to-day safety performance of the infrastructure manager.
 5. National safety authorities shall decide on priorities to use their resources effectively but the decision on how best to do that should rest with each individual national safety authority. Action shall be focused on those who are responsible for the risk and who are best placed to control it.
 6. National safety authorities shall apply the principle of transparency to help infrastructure managers understand what is expected of them (including what they should or should not do) and what they should expect from the national safety authority.
 7. National safety authorities shall be accountable for their decisions in accordance with Article 17(3) of Directive 2004/49/EC. National safety authorities shall therefore have policies and principles by which they can be assessed. Moreover, national safety authorities shall also have a complaints procedure.
 8. National safety authorities shall develop cooperation arrangements between each other in order to share information with each other and to coordinate their response to any breaches of safety. In addition, national safety authorities shall develop cooperation arrangements with other competent authorities in order to share information and to develop unified approaches to issues that impinge on railway safety.
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COMMISSION REGULATION (EU) No 1170/2010**of 10 December 2010****approving non-minor amendments to the specification for a name entered in the register of protected designations of origin and protected geographical indications [Pancetta Piacentina (PDO)]**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs⁽¹⁾, and in particular the first subparagraph of Article 7(4) thereof,

Whereas:

- (1) Pursuant to the first subparagraph of Article 9(1) of Regulation (EC) No 510/2006 and in accordance with Article 17(2) thereof, the Commission has examined Italy's application for the approval of amendments to the specification for the protected designation of origin 'Pancetta Piacentina' registered under Commission Regulation (EC) No 1107/96⁽²⁾, as amended by Commission Regulation (EC) No 1263/96⁽³⁾.

- (2) Since the amendments in question are not minor within the meaning of Article 9 of Regulation (EC) No 510/2006, the Commission published the amendment application in the *Official Journal of the European Union*⁽⁴⁾, as required by the first subparagraph of Article 6(2) of that Regulation. As no statement of objection within the meaning of Article 7 of Regulation (EC) No 510/2006 has been notified to the Commission, the amendments should be approved,

HAS ADOPTED THIS REGULATION:

Article 1

The amendments to the specification published in the *Official Journal of the European Union* regarding the name contained in the Annex to this Regulation are hereby approved.

Article 2

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

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

Done at Brussels, 10 December 2010.

For the Commission

The President

José Manuel BARROSO

⁽¹⁾ OJ L 93, 31.3.2006, p. 12.

⁽²⁾ OJ L 148, 21.6.2006, p. 1.

⁽³⁾ OJ L 163, 2.7.1996, p. 19.

⁽⁴⁾ OJ C 64, 16.3.2010, p. 32.

ANNEX

Agricultural products intended for human consumption listed in Annex I to the Treaty:

Class 1.2. Meat products (cooked, salted, smoked, etc.)

ITALY

Pancetta Piacentina (PDO)

COMMISSION REGULATION (EU) No 1171/2010**of 10 December 2010****entering a name in the register of protected designations of origin and protected geographical indications [Melón de La Mancha (PGI)]**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs ⁽¹⁾, and in particular the first subparagraph of Article 7(4) thereof,

Whereas:

- (1) Pursuant to the first subparagraph of Article 6(2) and in accordance with Article 17(2) of Regulation (EC) No 510/2006, Spain's application to register the name 'Melón de La Mancha' was published in the *Official Journal of the European Union* ⁽²⁾.

- (2) As no statement of objection under Article 7 of Regulation (EC) No 510/2006 has been received by the Commission, that name should therefore be entered in the register,

HAS ADOPTED THIS REGULATION:

Article 1

The name contained in the Annex to this Regulation is hereby entered in the register.

*Article 2*This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

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

Done at Brussels, 10 December 2010.

*For the Commission**The President*

José Manuel BARROSO

⁽¹⁾ OJ L 93, 31.3.2006, p. 12.

⁽²⁾ OJ C 121, 8.5.2010, p. 7.

ANNEX

Agricultural products intended for human consumption listed in Annex I to the Treaty:

Class 1.6. Fruit, vegetables and cereals, fresh or processed

SPAIN

Melón de La Mancha (PGI)

COMMISSION REGULATION (EU) No 1172/2010**of 6 December 2010****establishing a prohibition of fishing for cod in VIa; EU and international waters of Vb east of 12° 00' W by vessels flying the flag of France**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy ⁽¹⁾, and in particular Article 36(2) thereof,

Whereas:

- (1) Council Regulation (EU) No 53/2010 of 14 January 2010 fixing for 2010 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in EU waters and, for EU vessels, in waters where catch limitations are required ⁽²⁾, lays down quotas for 2010.
- (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 2010.
- (3) It is therefore necessary to prohibit fishing activities for that stock,

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 2010 shall be deemed to be exhausted from the date set out in that Annex.

*Article 2***Prohibitions**

Fishing activities 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. In particular it shall be prohibited to retain on board, relocate, tranship or land fish from that 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, 6 December 2010.

*For the Commission,
On behalf of the President,*

Lowri EVANS

Director-General for Maritime Affairs and Fisheries

⁽¹⁾ OJ L 343, 22.12.2009, p. 1.

⁽²⁾ OJ L 21, 26.1.2010, p. 1.

ANNEX

No	21/T&Q
Member State	France
Stock	COD/5B6A-C
Species	Cod (<i>Gadus morhua</i>)
Zone	Vla; EU and international waters of Vb east of 12° 00' W
Date	18.6.2010

COMMISSION REGULATION (EU) No 1173/2010**of 6 December 2010****establishing a prohibition of fishing for tusk in EU and international waters of V, VI and VII by vessels flying the flag of France**

THE EUROPEAN COMMISSION,

HAS ADOPTED THIS REGULATION:

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

*Article 1***Quota exhaustion**

Having regard to Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy ⁽¹⁾, and in particular Article 36(2) thereof,

The fishing quota allocated to the Member State referred to in the Annex to this Regulation for the stock referred to therein for 2010 shall be deemed to be exhausted from the date set out in that Annex.

Whereas:

*Article 2***Prohibitions**

(1) Council Regulation (EU) No 53/2010 of 14 January 2010 fixing for 2010 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in EU waters and, for EU vessels, in waters where catch limitations are required ⁽²⁾, lays down quotas for 2010.

Fishing activities 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. In particular it shall be prohibited to retain on board, relocate, tranship or land fish from that stock caught by those vessels after that date.

(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 2010.

*Article 3***Entry into force**

(3) It is therefore necessary to prohibit fishing activities for that stock,

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, 6 December 2010.

*For the Commission,
On behalf of the President,*

Lowri EVANS
Director-General for Maritime Affairs and Fisheries

⁽¹⁾ OJ L 343, 22.12.2009, p. 1.

⁽²⁾ OJ L 21, 26.1.2010, p. 1.

ANNEX

No	20/T&Q
Member State	France
Stock	USK/567EI.
Species	Tusk (<i>Brosme brosme</i>)
Zone	EU and international waters of V, VI and VII
Date	18.6.2010

COMMISSION REGULATION (EU) No 1174/2010**of 10 December 2010****establishing the standard import values for determining the entry price of certain fruit and vegetables**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ⁽¹⁾,

Having regard to Commission Regulation (EC) No 1580/2007 of 21 December 2007 laying down implementing rules for Council Regulations (EC) No 2200/96, (EC) No 2201/96 and (EC) No 1182/2007 in the fruit and vegetable sector ⁽²⁾, and in particular Article 138(1) thereof,

Whereas:

Regulation (EC) No 1580/2007 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 Annex XV, Part A thereto,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 138 of Regulation (EC) No 1580/2007 are fixed in the Annex hereto.

Article 2

This Regulation shall enter into force on 11 December 2010.

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

Done at Brussels, 10 December 2010.

*For the Commission,
On behalf of the President,*

Jean-Luc DEMARTY
*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 350, 31.12.2007, p. 1.

ANNEX

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	AL	64,0
	MA	73,3
	TR	100,3
	ZZ	79,2
0707 00 05	EG	150,8
	TR	78,4
	ZZ	114,6
0709 90 70	MA	97,0
	TR	105,1
	ZZ	101,1
0805 10 20	AR	43,0
	BR	50,0
	CL	87,6
	MA	63,6
	PE	58,9
	SZ	46,6
	TR	48,9
	ZA	43,5
	ZW	48,4
	ZZ	54,5
0805 20 10	MA	71,4
	TR	57,6
	ZZ	64,5
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	IL	72,6
	TR	70,1
	ZZ	71,4
0805 50 10	TR	54,4
	ZZ	54,4
0808 10 80	AR	74,9
	AU	187,9
	CA	105,7
	CL	84,2
	CN	95,3
	MK	26,7
	NZ	98,3
	US	106,2
	ZA	121,6
	ZZ	100,1
0808 20 50	CN	65,0
	US	112,9
	ZA	141,4
	ZZ	106,4

⁽¹⁾ Nomenclature of countries laid down by Commission Regulation (EC) No 1833/2006 (OJ L 354, 14.12.2006, p. 19). Code 'ZZ' stands for 'of other origin'.

COMMISSION REGULATION (EU) No 1175/2010**of 10 December 2010****on selling prices for cereals in response to the second individual invitations to tender within the tendering procedures opened by Regulation (EU) No 1017/2010**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ⁽¹⁾, and in particular Article 43(f), in conjunction with Article 4 thereof,

Whereas:

- (1) Commission Regulation (EU) No 1017/2010 ⁽²⁾ has opened the sales of cereals by tendering procedures, in accordance with the conditions provided for in Commission Regulation (EU) No 1272/2009 of 11 December 2009 laying down common detailed rules for the implementation of Council Regulation (EC) No 1234/2007 as regards buying-in and selling of agricultural products under public intervention ⁽³⁾.
- (2) In accordance with Article 46(1) of Regulation (EU) No 1272/2009 and Article 4 of Regulation (EU) No 1017/2010, in the light of the tenders received in response to individual invitations to tender, the Commission has to fix for each cereal and per Member State a minimum selling price or to decide not to fix a minimum selling price.
- (3) On the basis of the tenders received for the second individual invitations to tender, it has been decided that a

minimum selling price should be fixed for certain cereals and for certain Member States and no minimum selling price should be fixed for other cereals and other Member States.

- (4) In order to give a rapid signal to the market and to ensure efficient management of the measure, this Regulation should enter into force on the day of its publication in the *Official Journal of the European Union*.
- (5) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for the Common Organisation of Agricultural Markets,

HAS ADOPTED THIS REGULATION:

Article 1

For the second individual invitations to tender for selling of cereals within the tendering procedures opened by Regulation (EU) No 1017/2010, in respect of which the time limit for the submission of tenders expired on 8 December 2010, the decisions on the selling price per cereal and Member State are set out in the Annex to this Regulation.

Article 2

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

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

Done at Brussels, 10 December 2010.

*For the Commission,
On behalf of the President,*

Jean-Luc DEMARTY
*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 293, 11.11.2010, p. 41.

⁽³⁾ OJ L 349, 29.12.2009, p. 1.

ANNEX

Decisions on sales

(EUR/tonne)

Member State	The minimum selling price		
	Common wheat	Barley	Maize
	CN code 1001 90	CN code 1003 00	CN code 1005 90 00
Belgique/België	X	X	X
Bulgaria	X	X	X
Česká republika	214	175,01	X
Danmark	X	191,01	X
Deutschland	X	185	X
Eesti	X	175	X
Éire/Ireland	X	X	X
Elláda	X	X	X
España	X	X	X
France	X	—	X
Italia	X	X	X
Kýpros	X	X	X
Latvija	X	X	X
Lietuva	X	176,2	X
Luxembourg	X	X	X
Magyarország	X	174	X
Malta	X	X	X
Nederland	X	X	X
Österreich	X	184,65	X
Polska	X	X	X
Portugal	X	X	X
România	X	X	X
Slovenija	X	X	X
Slovensko	X	175,1	X
Suomi/Finland	194,57	174,5	X
Sverige	X	—	X
United Kingdom	X	199,08	X

(—) no minimum selling price fixed (all offers rejected)

(°) no offers

(X) no cereals available for sales

#) not applicable

COMMISSION REGULATION (EU) No 1176/2010**of 10 December 2010****determining the extent to which the import licence applications submitted in November 2010 for certain milk products under certain tariff quotas opened by Regulation (EC) No 2535/2001 can be accepted**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ⁽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:

Import licence applications lodged from 20 to 30 November 2010 for certain tariff 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 No 1255/1999 as regards the import arrangements for

milk and milk products and opening tariff quotas ⁽³⁾ relate to quantities greater than those available. The extent to which licences may be issued should therefore be determined by establishing the allocation coefficient to be applied to the quantities requested,

HAS ADOPTED THIS REGULATION:

Article 1

For import licence applications lodged from 20 to 30 November 2010 for the tariff quotas referred to in parts I.A, I.F, I.H, I.I, and I.J of Annex I to Regulation (EC) No 2535/2001, licences shall be issued for the quantities requested, multiplied by the allocation coefficient(s) set out in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on 11 December 2010.

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

Done at Brussels, 10 December 2010.

*For the Commission,
On behalf of the President,*

Jean-Luc DEMARTY
*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 238, 1.9.2006, p. 13.

⁽³⁾ OJ L 341, 22.12.2001, p. 29.

ANNEX

I.A

Tariff quota number	Allocation coefficient
09.4590	—
09.4599	—
09.4591	—
09.4592	—
09.4593	—
09.4594	—
09.4595	100 %
09.4596	100 %

‘—’: No application for a licence has been sent to the Commission.

I.F

Products originating in Switzerland

Tariff quota number	Allocation coefficient
09.4155	50,00 %

I.H

Products originating in Norway

Tariff quota number	Allocation coefficient
09.4179	100 %

I.I

Products originating in Iceland

Tariff quota number	Allocation coefficient
09.4205	100 %
09.4206	100 %

I.J

Products originating in the Republic of Moldova

Tariff quota number	Allocation coefficient
09.4210	—

‘—’: No application for a licence has been sent to the Commission.

DIRECTIVES

COMMISSION DIRECTIVE 2010/91/EU

of 10 December 2010

amending Council Directive 91/414/EEC to include metosulam as active substance and amending Decision 2008/934/EC

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market ⁽¹⁾, and in particular Article 6(1) thereof,

Whereas:

of work referred to in Article 8(2) of that Directive but have not been included into its Annex I ⁽⁵⁾.

(1) Commission Regulations (EC) No 451/2000 ⁽²⁾ and 1490/2002 ⁽³⁾ lay down the detailed rules for the implementation of the third stage of the programme of work referred to in Article 8(2) of Directive 91/414/EEC and establish a list of active substances to be assessed, with a view to their possible inclusion in Annex I to Directive 91/414/EEC. That list included metosulam.

(2) In accordance with Article 11e of Regulation (EC) No 1490/2002 the applicant withdrew its support of the inclusion of that active substance in Annex I to Directive 91/414/EEC within two months from receipt of the draft assessment report. Consequently, Commission Decision 2008/934/EC of 5 December 2008 concerning the non-inclusion of certain active substances in Annex I to Council Directive 91/414/EEC and the withdrawal of authorisations for plant protection products containing these substances ⁽⁴⁾ was adopted on the non-inclusion of metosulam.

(3) Pursuant to Article 6(2) of Directive 91/414/EEC the original notifier (hereinafter “the applicant”) submitted a new application requesting the accelerated procedure to be applied, as provided for in Articles 14 to 19 of Commission Regulation (EC) No 33/2008 of 17 January 2008 laying down detailed rules for the application of Council Directive 91/414/EEC as regards a regular and an accelerated procedure for the assessment of active substances which were part of the programme

(4) The application was submitted to France, which had been designated rapporteur Member State by Regulation (EC) No 451/2000. The time period for the accelerated procedure was respected. The specification of the active substance and the supported uses are the same as were the subject of Decision 2008/934/EC. That application also complies with the remaining substantive and procedural requirements of Article 15 of Regulation (EC) No 33/2008.

(5) France evaluated the additional data submitted by the applicant and prepared an additional report. It communicated that report to the European Food Safety Authority (hereinafter ‘the Authority’) and to the Commission on 7 August 2009. The Authority communicated the additional report to the other Member States and the applicant for comments and forwarded the comments it had received to the Commission. In accordance with Article 20(1) of Regulation (EC) No 33/2008 and at the request of the Commission, the Authority presented its conclusion on metosulam to the Commission on 23 April 2010 ⁽⁶⁾. The draft assessment report, the additional report and the conclusion of the Authority were reviewed by the Member States and the Commission within the Standing Committee on the Food Chain and Animal Health and finalised on 28 October 2010 in the format of the Commission review report for metosulam.

(6) It has appeared from the various examinations made that plant protection products containing metosulam may be expected to satisfy, in general, the requirements laid down in Article 5(1) (a) and (b) of Directive 91/414/EEC, in particular with regard to the uses which have been examined and detailed in the Commission review report. It is therefore appropriate to include metosulam in Annex I, in order to ensure that in all Member States the authorisations of plant protection products containing this active substance can be granted in accordance with the provisions of that Directive.

⁽¹⁾ OJ L 230, 19.8.1991, p. 1.

⁽²⁾ OJ L 55, 29.2.2000, p. 25.

⁽³⁾ OJ L 224, 21.8.2002, p. 23.

⁽⁴⁾ OJ L 333, 11.12.2008, p. 11.

⁽⁵⁾ OJ L 15, 18.1.2008, p. 5.

⁽⁶⁾ European Food Safety Authority; Conclusion on the peer review of the pesticide risk assessment of the active substance metosulam. EFSA Journal 2010; 8(5):1592. [67 pp.]. doi:10.2903/j.efsa.2010.1592. Available online: www.efsa.europa.eu

- (7) Without prejudice to that conclusion, it is appropriate to obtain further information on certain specific points. Article 6(1) of Directive 91/414/EEC provides that inclusion of a substance in Annex I may be subject to conditions. Therefore, it is appropriate to require that the applicant submit further information to confirm the results of the risk assessment on the basis of most recent scientific knowledge as regards the potential pH dependence of soil adsorption, groundwater leaching and surface water exposure for metabolites M01 and M02, potential genotoxicity of one impurity and on the specification of the active substance as manufactured.
- (8) A reasonable period should be allowed to elapse before an active substance is included in Annex I in order to permit Member States and the interested parties to prepare themselves to meet the new requirements which will result from the inclusion.
- (9) Without prejudice to the obligations defined by Directive 91/414/EEC as a consequence of including an active substance in Annex I, Member States should be allowed a period of six months after inclusion to review existing authorisations of plant protection products containing metosulam to ensure that the requirements laid down by Directive 91/414/EEC, in particular in its Article 13 and the relevant conditions set out in Annex I, are satisfied. Member States should vary, replace or withdraw, as appropriate, existing authorisations, in accordance with the provisions of Directive 91/414/EEC. By derogation from the above deadline, a longer period should be provided for the submission and assessment of the complete Annex III dossier of each plant protection product for each intended use in accordance with the uniform principles laid down in Directive 91/414/EEC.
- (10) The experience gained from previous inclusions in Annex I to Directive 91/414/EEC of active substances assessed in the framework of Commission Regulation (EEC) No 3600/92 of 11 December 1992 laying down the detailed rules for the implementation of the first stage of the programme of work referred to in Article 8(2) of Council Directive 91/414/EEC concerning the placing of plant protection products on the market⁽¹⁾ has shown that difficulties can arise in interpreting the duties of holders of existing authorisations in relation to access to data. In order to avoid further difficulties it therefore appears necessary to clarify the duties of the Member States, especially the duty to verify that the holder of an authorisation demonstrates access to a dossier satisfying the requirements of Annex II to that Directive. However, this clarification does not impose any new obligations on Member States or holders of authorisations compared to the directives which have been adopted until now amending Annex I.
- (11) It is therefore appropriate to amend Directive 91/414/EEC accordingly.
- (12) Decision 2008/934/EC provides for the non-inclusion of metosulam and the withdrawal of authorisations for plant protection products containing that substance by 31 December 2011. It is necessary to delete the line concerning metosulam in the Annex to that Decision.
- (13) It is therefore appropriate to amend Decision 2008/934/EC accordingly.
- (14) The measures provided for in this Directive are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Annex I to Directive 91/414/EEC is amended as set out in the Annex to this Directive.

Article 2

The line concerning metosulam in the Annex to Decision 2008/934/EC is deleted.

Article 3

Member States shall adopt and publish by 31st October 2011 at the latest the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

They shall apply those provisions from 1 November 2011.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

Article 4

1. Member States shall in accordance with Directive 91/414/EEC, where necessary, amend or withdraw existing authorisations for plant protection products containing metosulam as an active substance by 1 November 2011. By that date they shall in particular verify that the conditions in Annex I to that Directive relating to metosulam are met, with the exception of those identified in part B of the entry concerning that active substance, and that the holder of the authorisation has, or has access to, a dossier satisfying the requirements of Annex II to that Directive in accordance with the conditions of Article 13 of that Directive.

⁽¹⁾ OJ L 366, 15.12.1992, p. 10.

2. By way of derogation from paragraph 1, for each authorised plant protection product containing metosulam as either the only active substance or as one of several active substances all of which were listed in Annex I to Directive 91/414/EEC by 30 April 2011 at the latest, Member States shall re-evaluate the product in accordance with the uniform principles provided for in Annex VI to Directive 91/414/EEC, on the basis of a dossier satisfying the requirements of Annex III to that Directive and taking into account part B of the entry in Annex I to that Directive concerning metosulam. On the basis of that evaluation, they shall determine whether the product satisfies the conditions set out in Article 4(1)(b), (c), (d) and (e) of Directive 91/414/EEC.

Following that determination Member States shall:

- (a) in the case of a product containing metosulam as the only active substance, where necessary, amend or withdraw the authorisation by 30 April 2015 at the latest; or
- (b) in the case of a product containing metosulam as one of several active substances, where necessary, amend or

withdraw the authorisation by 30 April 2015 or by the date fixed for such an amendment or withdrawal in the respective Directive or Directives which added the relevant substance or substances to Annex I to Directive 91/414/EEC, whichever is the latest.

Article 5

This Directive shall enter into force on 1 May 2011.

Article 6

This Directive is addressed to the Member States.

Done at Brussels, 10 December 2010.

For the Commission

The President

José Manuel BARROSO

ANNEX

The following entry shall be added at the end of the table in Annex I to Directive 91/414/EEC:

No	Common Name, Identification Numbers	IUPAC Name	Purity ⁽¹⁾	Entry into force	Expiration of inclusion	Specific provisions
'317	Metosulam CAS No: 139528-85-1 CIPAC No: 707	2',6'-dichloro-5,7-dimethoxy-3'-methyl[1,2,4]triazolo[1,5-a]pyrimidine-2-sulfon-anilide	≥ 980 g/kg	1 May 2011	30 April 2021	PART A Only uses as herbicide may be authorised. PART B For the implementation of the uniform principles of Annex VI, the conclusions of the review report on metosulam, and in particular Appendices I and II thereof, as finalised in the Standing Committee on the Food Chain and Animal Health on 28 October 2010 shall be taken into account. In this overall assessment Member States shall pay particular attention to: — the protection of groundwater when the active substance is applied in regions with vulnerable soil and/or climatic conditions; — the risk to aquatic organisms; — the risk to non-target plants in the off-field area. Conditions of use shall include risk mitigation measures, where appropriate. The Member States concerned shall ensure that the applicant submits to the Commission, by 30 October 2011, further information on the specification of the active substance as manufactured. The Member States concerned shall ensure that the applicant submits to the Commission, by 30 April 2013, confirmatory information as regards: — potential pH dependence of soil adsorption, groundwater leaching and surface water exposure for metabolites M01 and M02; — potential genotoxicity of one impurity.'

⁽¹⁾ Further details on identity and specification of active substance are provided in the review report.

DECISIONS

COUNCIL DECISION 2010/765/CFSP

of 2 December 2010

on EU action to counter the illicit trade of small arms and light weapons (SALW) by air

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 26(2) thereof,

Whereas:

- (1) On 13 December 2003, the Council adopted a European Security Strategy identifying five key challenges to be faced by the Union: terrorism, the proliferation of weapons of mass destruction, regional conflicts, State failure and organised crime. The consequences of the illicit manufacture, transfer and circulation of small arms and light weapons (SALW) and their excessive accumulation and uncontrolled spread are central to four of these five challenges.
- (2) On 15-16 December 2005, the Council adopted the EU Strategy to combat the illicit accumulation and trafficking of SALW and their ammunition (EU SALW Strategy). The EU SALW Strategy promotes the development of a policy for actively combating illicit network trafficking in SALW (illicit brokers and carriers) using the Union's air, sea and land space, by devising alert and cooperation mechanisms.
- (3) The Action Plan of the EU SALW Strategy also underlines the need to improve the impact of missions of crisis management by including in their mandate measures aiming at the establishment of border controls (or control of the air, land and sea space of the conflict zone) and disarmament.
- (4) The EU Council Working Party on Global Disarmament and Arms Controls (CODUN) and the EU Joint Situation Centre (SitCen) have, since 2007, developed an EU initiative to hinder illicit trafficking of SALW by air transport, by enhancing the exchange, among Member States, of relevant information on suspected air-carriers. In establishing such a system of exchange of information, CODUN and SitCen have been collaborating with the Stockholm International Peace and Research Institute

(SIPRI) and its Countering Illicit Trafficking – Mechanism Assessment Project (CIT – MAP). Within the framework of this initiative, CODUN recently agreed to consider ways to render this EU initiative more operational and effective, by ensuring the timely updating and processing of relevant information.

- (5) The risk posed to international security by the illicit trade of SALW via air was also recognised by other international and regional organisations. The OSCE Forum on Security and cooperation held a special session in 2007 devoted to this topic and the OSCE Parliamentary Assembly adopted in 2008 a resolution calling for the completion, adoption and implementation of an OSCE Best Practice Guide on the illicit air transportation of SALW. Similarly, Participating States in the Wassenaar Arrangement adopted in 2007 'Best practices to prevent destabilising transfers of SALW through air transport'. In addition, numerous UN Security Council Sanctions Committee Group of Expert reports on West Africa and the Great Lakes region have repeatedly documented the key role played by air cargo companies involved in illicit SALW trafficking.
- (6) The action foreseen in this Decision does not pursue any objectives related to the improvement of air transport safety,

HAS ADOPTED THIS DECISION:

Article 1

1. With a view to the implementation of the EU Strategy to combat the illicit accumulation and trafficking of SALW and their ammunition (EU SALW Strategy), the Union shall pursue the following objectives:
 - (a) improving tools and techniques, at the disposal of relevant crisis management missions, international and third countries' national authorities and Member States, to effectively screen and target suspect air cargo aircrafts likely to be involved in illicit trade of SALW via air within, from or to third States;

(b) increasing awareness and technical expertise on the part of relevant international and national personnel, of 'best practices' in the areas of monitoring, detection and risk management analysis against air cargo carriers suspected of SALW trafficking via air within, from or to third States.

2. In order to achieve the objectives referred to in paragraph 1, the Union shall undertake the following measures:

(a) the development and field testing of a pilot air trafficking risk management dedicated software for relevant crisis management missions, and international and national authorities, including a regularly updated database on, inter alia, air companies, aircraft, registration numbers and transportation routings;

(b) the development and field testing of a secure pilot risk management and information dissemination system;

(c) the development and publication of a manual and accompanying training material, as well as the provision of technical assistance to facilitate the use and adaptation of the pilot software and of the secure risk management and information system, including through the organisation of regional seminars to train relevant crisis management missions, and international and national authorities.

A detailed description of the project is set out in the Annex.

Article 2

1. The High Representative of the Union for Foreign Affairs and Security Policy (HR) shall be responsible for the implementation of this Decision.

2. The technical implementation of the projects referred to in Article 1(2) shall be carried out by SIPRI.

3. SIPRI shall perform its task under the responsibility of the HR. For this purpose, the HR shall enter into the necessary arrangements with SIPRI.

Article 3

1. The financial reference amount for the implementation of the project referred to in Article 1(2) shall be EUR 900 000.

2. The expenditure financed by the amount set out in paragraph 1 shall be managed in accordance with the procedures and rules applicable to the general budget of the Union.

3. The Commission shall supervise the proper management of the expenditure referred to in paragraph 1. For this purpose, it shall conclude a financing agreement with SIPRI. The agreement shall stipulate that SIPRI is to ensure the visibility of the EU contribution, appropriate to its size.

4. The Commission shall endeavour to conclude the financing agreement referred to in paragraph 3 as soon as possible after the entry into force of this Decision. It shall inform the Council of any difficulties in that process and of the date of conclusion of the financing agreement.

Article 4

The HR shall report to the Council on the implementation of this Decision on the basis of regular bi-monthly reports prepared by SIPRI. These reports shall form the basis for the evaluation carried out by the Council. The Commission shall provide information on the financial aspects of the project's implementation referred to in Article 1(2).

Article 5

1. This Decision shall enter into force on the day of its adoption.

2. This Decision shall expire 24 months after the date of conclusion of the financing agreement referred to in Article 3(3), or 6 months after the date of adoption of this Decision if no financing agreement has been concluded within that period.

Article 6

This Decision shall be published in the *Official Journal of the European Union*.

Done at Brussels, 2 December 2010.

For the Council

The President

M. WATHELET

ANNEX

1. General Framework

This Decision builds on the CODUN initiative to address the threats posed by the trafficking of SALW and other destabilising commodities via air. Within the context of the CODUN initiative, this Decision follows on from projects undertaken by the Council in collaboration with SitCen, the Club of Budapest and SIPRI. This Decision provides for software, pilot implementation systems, training and outreach programmes, for relevant crisis management missions, as well as international and national authorities, in order to better monitor, update and disseminate information on suspect air cargo actors operating in Africa and from other regions. In the implementation of this Decision, good coordination with other relevant projects financed in the framework of Community programmes and other Council Decisions, should be ensured in order to increase the impact of the Union's action in preventing the illicit trade of SALW.

2. Objectives

The projects described below will address three areas identified by CODUN and other stakeholders involved in the EU initiative to combat SALW trafficking via air:

- (a) the need to develop a secure system for providing updates on companies and aircrafts which routinely reregister assets and relocate businesses in their efforts to avoid detection;
- (b) the provision of risk-management software and training to allow relevant crisis management missions, and international and national authorities to more effectively monitor and screen an increasing number of air cargo actors suspected of involvement in SALW trafficking or the movement of other destabilising commodity flows via air;
- (c) the need to provide training and technical support to, and raise awareness in multilateral organisations, missions, regional bodies and states in Africa and other regions in order to strengthen their ability to monitor and detect actors involved in SALW trafficking or the movement of other destabilising commodities via air.

3. Project description**3.1. *Project 1: Creating a software package and implementing a pilot project to monitor, update and disseminate information on air cargo actors suspected of illicit SALW trafficking*****3.1.1. Project objective**

The project aims at improving tools and techniques at the disposal of relevant crisis management missions, international and third countries' national authorities, and Member States, to effectively screen and target suspect air cargo aircrafts likely to be involved in the illicit trade of SALW via air, within, from or to third States.

3.1.2. Project description

In the framework of this project, the following activities will be undertaken:

- (a) the development of an air trafficking risk management software package for multilateral organisations, missions and selected third countries;
- (b) the development of a secure pilot risk management and information dissemination package system;
- (c) the field testing of the software package in consultation with the HR and relevant Council bodies;
- (d) the field testing of the information dissemination package system in consultation with the HR and relevant Council bodies;
- (e) the development of a manual and accompanying training material to facilitate the use and adoption of the systems described in points (a) and (b) by relevant crisis management missions, international and third countries' national authorities, and Member States;
- (f) the presentation of the final software and associated manual and training material in a concluding workshop where relevant stakeholders will be invited to participate (up to 80 people).

The project will be implemented over an appropriate time period which takes into consideration the need to consult and coordinate with the various stakeholders, under the control of the HR. The project will be implemented in six phases.

Preparatory Phase

SIPRI, in consultation with relevant Council bodies and under the control of the HR, will develop a software package, risk management tools, as well as an information and disaggregated data dissemination package system, using relevant information technology (IT) options.

Data Input Phase

Using open source information only, the project will input data from the relevant sources to build comprehensive databases, capable of providing sufficient information to support accurate risk management, detection and profiling tools.

Assessment Phase

SIPRI, in consultation with relevant Council bodies and under the control of the HR, will undertake an assessment of various sites, regions, organisations and missions where the pilot package using open-source data may be field tested under optimum conditions.

Field Testing phase

SIPRI, in consultation with relevant Council bodies and under the control of the HR, will undertake a field testing phase in conjunction with partners identified in the assessment phase.

Evaluation and adapting phase

Following field testing, SIPRI will evaluate and adapt the software to take into account the experience and lessons learned from the field testing phase. This will result in a final product to be made available with the agreement of the various stakeholders.

Presentation phase

The final version of the software and of the training material will be presented in a dedicated event to relevant stakeholders (up to 80 people) who were involved in its development and were identified as final users of the software.

3.1.3. Project results

The project will:

- (a) strengthen the ability of relevant crisis management missions, international and third countries' national authorities, and Member States, to monitor the activities of air cargo actors suspected of SALW trafficking via air;
- (b) provide the tools and pilot systems necessary to increase the number of interdictions of suspected illicit SALW shipments, shipped via air by multilateral organisations, missions and states in Africa and other regions;
- (c) increase the ability of Member States to securely share information on air cargo actors through disaggregated data techniques and other profiling mechanisms.

3.1.4. Project beneficiaries

The beneficiaries of the project will be relevant personnel from crisis management missions and national and international authorities. The selection of specific beneficiaries to test the pilot software package will take into account variables such as the presence of European or multilateral crisis management missions in the field, the need to maximise resources, the availability of assistance at local level, political will and the capacity of local and national authorities to counter the illicit trade of SALW via air. SIPRI will propose a shortlist of beneficiaries which will then be endorsed by the HR in consultation with the competent Council bodies.

3.2. *Project 2: Strengthening awareness of monitoring, detection and risk management practices against air cargo carriers engaged in SALW trafficking via air and other destabilising commodity flows through publications, training and outreach*

3.2.1. Project objective

The project aims at increasing the awareness and technical expertise of relevant international and national personnel of 'best practices' in the areas of monitoring, detection and risk management analysis against air cargo carriers suspected of SALW trafficking via air.

3.2.2. Project description

In the framework of this project, the following activities will be undertaken:

- (a) the development and publication a manual and accompanying training material to be disseminated to up to 250 individuals working for multilateral organisations, missions or states;

- (b) through the organisation of up to three regional seminars, the training of, and outreach to, between 80-100 personnel working for specific departments or cells within crisis management missions, and international and third countries' national authorities, with a multiplier effect envisaged through the provision of 'train the trainer' material;
- (c) the processing of results and evaluations received from the training and outreach activities, and development on this basis of a 'best practices' model for information-sharing on this subject among relevant international and national personnel;
- (d) the presentation of the results of the 'best practices' model in a final concluding workshop where relevant stakeholders (up to 80 people) will be invited to participate.

3.2.3. Project results

The project will:

- (a) increase awareness on the part of personnel serving in multilateral organisations, missions and states of 'best practices' in the areas of monitoring, detection and risk management analysis against air cargo carriers suspected of SALW trafficking via air and other destabilising commodity flows;
- (b) contribute to the standardisation of 'best practices' in this field through the publication and dissemination of a manual on monitoring, detection and risk management analysis techniques;
- (c) pilot the establishment of 'best practices' of information coordination through training and outreach activities for personnel working for specific departments or cells within multilateral organisations, missions or states.

3.2.4. Project beneficiaries

The beneficiaries of the project will be relevant personnel from crisis management missions and national and international authorities. The selection of specific beneficiaries to benefit from the training will be made on the basis of a shortlist of beneficiaries proposed by SIPRI, to be endorsed by the HR in consultation with the competent Council bodies.

4. Locations

Locations for project 3.1 field testing and the concluding workshop, as well as the training, outreach activities and concluding workshop of project 3.2, will be determined taking into account the wish to maximise resources, minimise carbon footprint and the available assistance at local level. SIPRI will propose a shortlist of recommended locations to be endorsed by the HR in consultation with the competent Council bodies.

5. Duration

The total estimated duration of the projects will be 24 months.

6. Implementing entity

The technical implementation of this Decision will be entrusted to SIPRI. SIPRI will ensure the visibility of the EU contribution and will perform its task under the responsibility of the HR.

7. Reporting

SIPRI will prepare regular reports on a bi-monthly basis and after the completion of each of the activities described. The reports should be submitted to the HR no later than 6 weeks after the completion of relevant activities.

COUNCIL DECISION 2010/766/CFSP

of 7 December 2010

amending Joint Action 2008/851/CFSP on a European Union military operation to contribute to the deterrence, prevention and repression of acts of piracy and armed robbery off the Somali coast

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 28 and Article 43(2) thereof,

Whereas:

(1) On 10 November 2008, the Council adopted Joint Action 2008/851/CFSP on a European Union military operation to contribute to the deterrence, prevention and repression of acts of piracy and armed robbery off the Somali coast ⁽¹⁾.

(2) On 8 December 2009 and on 30 July 2010 respectively, the Council adopted Decision 2009/907/CFSP ⁽²⁾ and Decision 2010/437/CFSP ⁽³⁾ amending Joint Action 2008/851/CFSP.

(3) Acts of piracy and armed robbery off the Somali coast continue to threaten shipping in the area and especially the delivery of food aid to the Somali population by the World Food Programme.

(4) On 23 November 2010, the United Nations Security Council adopted Resolution 1950 (2010).

(5) The European Union military operation referred to in Joint Action 2008/851/CFSP ('EU military operation') should be extended until 12 December 2012.

(6) The definition of persons likely to be transferred pursuant to Article 12 of Joint Action 2008/851/CFSP should be clarified in accordance with the provisions of the United Nations Convention on the Law of the Sea.

(7) In the light of experience from the first 2 years of the EU military operation, amendments to Joint Action 2008/851/CFSP are required in order to allow for the collection of physical characteristics and transmission of certain personal data, such as fingerprints, of suspected persons, with a view to facilitating their identification and

traceability and their possible prosecution. Such processing should be carried out in accordance with Article 6 of the Treaty on European Union.

(8) It is also necessary for practical reasons to provide for the possibility of exchanging classified information in the theatre of operations.

(9) Joint Action 2008/851/CFSP should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Joint Action 2008/851/CFSP is hereby amended as follows:

(1) in Article 2, point (e) is replaced by the following:

'(e) in view of prosecutions potentially being brought by the relevant States under the conditions in Article 12, arrest, detain and transfer persons suspected of intending, as referred to in Articles 101 and 103 of the United Nations Convention on the Law of the Sea, to commit, committing or having committed acts of piracy or armed robbery in the areas where it is present and seize the vessels of the pirates or armed robbers or the vessels caught following an act of piracy or an armed robbery and which are in the hands of the pirates or armed robbers, as well as the property on board;'

(2) in Article 2, the following points are added:

'(h) collect, in accordance with applicable law, data concerning persons referred to in point (e) related to characteristics likely to assist in their identification, including fingerprints;

(i) for the purpose of circulating the data via INTERPOL's channels and checking it against INTERPOL's databases, transmit to the National Central Bureau ('NCB') of the International Criminal Police Organisation – INTERPOL located in the Member State where the Operational Headquarters is stationed, in accordance with arrangements to be concluded between the EU Operation Commander and the Head of the NCB, the following data:

⁽¹⁾ OJ L 301, 12.11.2008, p. 33.

⁽²⁾ OJ L 322, 9.12.2009, p. 27.

⁽³⁾ OJ L 210, 11.8.2010, p. 33.

— personal data concerning persons referred to in point (e) related to characteristics likely to assist in their identification, including fingerprints, as well as the following particulars, with the exclusion of other personal data: surname, maiden name, given names and any alias or assumed name; date and place of birth, nationality, sex; place of residence, profession and whereabouts; driving licenses, identification documents and passport data. This personal data shall not be stored by Atalanta after its transmission to INTERPOL,

— data related to the equipment used by such persons.;

(3) in Article 12, paragraph 1 is replaced by the following:

‘1. On the basis of Somalia’s acceptance of the exercise of jurisdiction by Member States or by third States, on the one hand, and Article 105 of the United Nations Convention on the Law of the Sea, on the other hand, persons suspected of intending, as referred to in Articles 101 and 103 of the United Nations Convention on the Law of the Sea, to commit, committing or having committed acts of piracy or armed robbery in Somali territorial waters or on the high seas, who are arrested and detained, with a view to their prosecution, and property used to carry out such acts, shall be transferred:

— to the competent authorities of the Member State or of the third State participating in the operation, of which the vessel which took them captive flies the flag, or

— if that State cannot, or does not wish to, exercise its jurisdiction, to a Member State or any third State which

wishes to exercise its jurisdiction over the aforementioned persons and property.;

(4) in Article 15, the following paragraph is added:

‘3. The HR is hereby authorised to release to the United States-led Coalition Maritime Force (‘CMF’), through its Headquarters, as well as to third States not participating in CMF and to international organisations, which are present in the area of the EU military operation, classified EU information and documents generated for the purposes of the EU military operation at the level RESTREINT UE, on the basis of reciprocity, where such release at theatre level is necessary for operational reasons, in accordance with the Council’s security regulations and subject to arrangements between the HR and the competent authorities of the third parties referred to above.;

(5) in Article 16, paragraph 3 is replaced by the following:

‘3. The EU military operation shall terminate on 12 December 2012.’.

Article 2

This Decision shall enter into force on the date of its adoption.

Done at Brussels, 7 December 2010.

For the Council

The President

D. REYNERS

COMMISSION DECISION

of 9 December 2010

amending Decision C(2007) 2286 on the adoption of ERC Rules for the submission of proposals and the related evaluation, selection and award procedures for indirect actions under the Ideas Specific Programme of the Seventh Framework Programme (2007 to 2013)

(Text with EEA relevance)

(2010/767/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 1906/2006 of the European Parliament and of the Council of 18 December 2006 laying down the rules for the participation of undertakings, research centres and universities in actions under the Seventh Framework Programme and for the dissemination of research results (2007 to 2013) ⁽¹⁾, in particular Article 16(3) thereof,

Whereas:

- (1) By Decision C(2007) 2286 of 6 June 2007, the Commission adopted the rules for the submission of proposals to the European Research Council (ERC) and the related evaluation, selection and award procedures for indirect actions under the Ideas Specific Programme of the Seventh Framework Programme (2007 to 2013) ('ERC Rules').
- (2) By Decision C(2007) 4429 of 27 September 2007, the Commission amended those rules.
- (3) On the basis of the experiences gained during the first ERC calls of 2007, 2008 and 2009, and taking into account the changes introduced in the legislation of the European Union or expressly requested by the ERC Scientific Council, Decision C(2007) 2286 should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

The ERC Rules for the submission of proposals and the related evaluation, selection and award procedures for indirect actions

under the Ideas Specific Programme of the Seventh Framework Programme (2007 to 2013) adopted by Decision C(2007) 2286 are replaced by the rules in Annex.

Article 2

1. The ERC Rules for the submission of proposals and the related evaluation, selection and award procedures of indirect actions under the Ideas Specific Programme of the Seventh Framework Programme (2007 to 2013) shall apply to all ERC calls for proposals published from the date of entry into force of this Decision.

2. The provisions on the appointment and reimbursement of independent experts and Principal Investigators invited for an interview, as laid down in the model appointment letters adopted by the Commission as well as in section 3, and Annexes B, and C to the ERC Rules for the submission of proposals and the related evaluation, selection and award procedures of indirect actions under the Ideas Specific Programme of the Seventh Framework Programme (2007 to 2013) shall apply from the date of entry into force of this Decision.

Article 3

This Decision shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

Done at Brussels, 9 December 2010.

*For the Commission**The President*

José Manuel BARROSO

⁽¹⁾ OJ L 391, 30.12.2006, p. 1.

ANNEX

EUROPEAN RESEARCH COUNCIL

Rules for the submission of proposals and the related evaluation, selection and award procedures relevant to the Ideas Specific Programme of the Seventh Framework Programme (2007 to 2013)

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1. PREAMBLE – DEFINITION OF TERMS

The European Research Council (ERC) is established by the European Commission ⁽¹⁾ under the provisions of the Specific Programme 'Ideas' of the Seventh Framework Programme for research, technological development and demonstration ('Ideas Specific Programme') ⁽²⁾, as the means for implementing that Specific Programme.

The ERC consists of a Scientific Council, a Secretary-General and a dedicated implementation structure set up by the European Commission as the European Research Council Executive Agency ⁽³⁾; it is accountable to the Commission and operates under conditions of autonomy and integrity, guaranteed by the Commission.

For clarity, the following definition of terms applies to this document:

The term 'ERCEA' refers to the European Research Council Executive Agency.

The term 'FP7' refers to the 'Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007 to 2013)' ⁽⁴⁾.

The term 'Rules for Participation' refers to the 'Rules for the participation of undertakings, research centres and universities in actions under the Seventh Framework Programme and for the dissemination of research results (2007 to 2013)' ⁽⁵⁾.

The term 'Financial Regulation' refers to Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on 'the Financial Regulation applicable to the general budget of the European Communities' ⁽⁶⁾.

2. INTRODUCTION

The purpose of this document is to set out the rules applying to the submission and peer review evaluation of proposals, and to the award of grants to successful proposals. The rules set fundamental parameters which are designed to ensure that the procedures leading up to the award of grants are rigorous, fair, effective and appropriate. They have been defined in association with the ERC Scientific Council, the latter being responsible, inter alia, for establishing the Ideas work programme, the peer review evaluation methods and procedures applying for proposal peer review evaluation under the Ideas Specific Programme and for identifying the independent experts assisting to such peer review evaluation. They are adopted by the Commission in accordance with the Rules for Participation.

Section 1 describes the key principles applying to the process from submission to award: excellence, transparency, fairness and impartiality, efficiency and speed; as well as ethical considerations.

Section 2 describes the procedures for the submission of proposals and the way they are handled thereafter, including the assessment of eligibility.

Section 3 describes the peer review evaluation, including the way in which independent experts are selected and appointed, the treatment of potential and actual conflicts of interest, and the organisation of peer review evaluation. It describes also the way in which appeals and complaints will be handled, and the reporting of the peer review evaluation and award of grants.

Section 4 describes the preparation and award of grants.

2.1. Principles

The process from proposal submission to the award of grants rests on a number of well-established principles:

— *Excellence*. Projects selected for funding must demonstrate a high scientific and/or technical quality.

⁽¹⁾ OJ L 57, 24.2.2007, p. 14.

⁽²⁾ OJ L 400, 30.12.2006, p. 243.

⁽³⁾ OJ L 9, 12.1.2008, p. 15.

⁽⁴⁾ OJ L 412, 30.12.2006, p. 1.

⁽⁵⁾ OJ L 391, 30.12.2006, p. 1.

⁽⁶⁾ OJ L 248, 16.9.2002, p. 1.

- *Transparency.* Funding and award decisions must be based on clearly described rules and procedures, and applicant legal entities and principal investigators should receive adequate feedback on the outcome of the peer review evaluation of their proposals.
- *Fairness and impartiality.* All proposals shall be treated consistently and in the same way. They must be evaluated impartially on their merits, irrespective of their origin or the identity of the submitting entity, the principal investigator or any team member.
- *Confidentiality.* All proposals and related data, knowledge and documents communicated to the ERCEA must be treated in confidence.
- *Efficiency and speed.* Peer review evaluation, award and grant preparation should be as rapid as possible, commensurate with maintaining the quality of the peer review evaluation, and respecting the legal framework.
- *Ethical and security considerations.* Any proposal which contravenes fundamental ethical principles, or which fails to comply with the relevant security procedures may be excluded from the process of peer review evaluation, selection and award at any time.

2.2. Submission of proposals

2.2.1. Calls for proposals

Proposals are submitted in response to calls for proposals ('calls') ⁽¹⁾. The content and timing of calls are set out in the Ideas work programme, and are published in the *Official Journal of the European Union* ('call text') on Commission website(s) ⁽²⁾, as well as on the ERC website, which will provide hyperlinks to the Commission website(s).

Calls for frontier research projects may specify an indicative budget for the entire call or give indicative budgets for specific areas of research within the frame of the call that will be evaluated by separate Panels of independent experts.

A call will also specify whether a single or two-stage submission and/or a single or two-step peer review evaluation procedure is to be followed. In the case of a two-stage submission, only those whose proposals were positively evaluated in a first stage are invited to submit complete proposals in a second stage.

2.2.2. Pre-registration

Due to the bottom-up approach of the Ideas Specific Programme, the ERC expects a large number of proposals in all fields of research. To enable the ERC to provide the required resources and expertise for the ERC peer review evaluation process, a call may foresee a pre-registration.

Pre-registration may entail a statement of the intended subject matter and the envisaged research objectives of the proposal.

Where calls foresee a pre-registration, the potential applicant shall request before the pre-registration deadline the login and the password for the Electronic Proposal Submission Service IT system (currently EPSS, referred to as the 'electronic submission system' in the text), needed to submit a proposal. Deadline(s) for pre-registration may be set a few weeks in advance of the call deadline(s) for the submission of proposals. Pre-registration and submission are two different phases. If the call foresees a pre-registration but the applicant does not pre-register, the submission of a proposal by that applicant will not be accepted by the electronic submission system.

Where calls do not foresee a pre-registration, the potential applicant shall still register and request a password for the EPSS in order to be able to submit the proposal, before the call deadline.

In exceptional cases, the potential applicant may request permission from the ERCEA to submit on paper as provided by Annex A to this Decision.

2.2.3. Submission

Proposals, and where appropriate pre-registrations, are submitted electronically via the web-based electronic submission system operated by the Commission (currently EPSS).

Proposals for 'frontier' research actions will – pursuant to the provisions of the Ideas work programme – involve a Principal Investigator (PI) – a specified individual with scientific responsibility for the project. Proposals are submitted by the PI empowered by the proposed host institution, which is formally the applicant legal entity and to which the grant will be awarded ⁽³⁾. Throughout the submission and peer review evaluation process the PI will be the main channel for communication between the ERCEA and the applicant legal entity.

⁽¹⁾ With the possible exception of coordination and support actions referred to in Article 14 of the Rules for Participation.

⁽²⁾ http://cordis.europa.eu/home_en.html <http://ec.europa.eu/research/participants/portal> <http://erc.europa.eu>

⁽³⁾ Exceptionally, the PI may himself/herself act as the applicant legal entity.

The preparation and uploading of all the proposal data and the agreement to the conditions of use of the electronic submission system and terms of the peer review evaluation must take place prior to the attempt to submit a proposal.

The electronic submission system will carry out a number of basic verification checks. Only upon completion of these checks will the electronic submission system allow the applicant to submit. These checks do not replace the formal eligibility checks described in section 2.2.6 and cannot assure that the contents of these files respond to the requirements of the call. Submission is deemed to take place at the moment the PI initiates the final submission process, as indicated by the electronic submission system, and not at any point prior to this.

Proposals sent on removable electronic storage medium (e.g. CD-ROM or any similar electronic device), by e-mail or by fax will not be regarded as having been submitted, and will not be evaluated. In exceptional cases, if a PI has no means of accessing the electronic submission system, he/she may request permission from the ERCEA to submit on paper. The procedures related to such a request and formalities on paper submission are laid down in Annex A to these Rules.

A procedure for the withdrawal of a proposal will be given in the relevant Guide for Applicants. A withdrawn proposal will not subsequently be considered for peer review evaluation or selection.

If more than one submission of the same proposal is received, only the most recent eligible version is evaluated.

Proposals shall be kept under secure conditions at all times. When no longer needed, all copies other than those required for archiving and/or auditing purposes shall be destroyed.

2.2.4. Assistance for submission

The Guide for Applicants explains in detail how PIs, team members or applicant legal entities can seek assistance or information on any matter related to a call. Contact details are provided for National Contact Points, ERCEA and ERC help desks. A dedicated help desk is provided for issues related to the electronic submission system.

2.2.5. Reception

The date and time of receipt of the last version of submitted proposals are recorded. After the call deadline, an acknowledgement of receipt is sent by e-mail containing:

- Proposal title and unique proposal identifier (proposal number);
- Identifier of the call to which the proposal was addressed;
- Date and time of receipt (which is set to the time of the call deadline, for proposals submitted electronically).

Subsequent to submission, the ERCEA only makes contact with the PI and/or applicant legal entity if this is necessary to clarify questions such as eligibility or to verify administrative or legal data contained in the proposal⁽¹⁾. However, in a two-stage procedure and for retained applications only, the PI empowered by the applicant legal entity may, under conditions specified in the call, be invited to submit a further proposal or further information on the original proposal, and/or to attend an interview.

2.2.6. Eligibility check

Proposals must fulfil all of the eligibility criteria if they are to be retained for peer review evaluation. These criteria are rigorously applied. In the case of two-stage proposal submission, each stage is subject to an eligibility check. All proposals submitted under a call will be subject to checking against the following eligibility criteria:

- Receipt of proposal before the deadline (date and time established in the call);

⁽¹⁾ The operator of the electronic submission may contact the proposer to clarify or resolve technical problems related to the submission.

- Completeness of the proposal, i.e. the presence of all requested parts and forms ⁽¹⁾;
- Scope of the call: the content of the proposal must relate to the objectives, to the topics and to the funding scheme set out in the call, as defined in the Ideas work programme. A proposal will only be deemed ineligible on grounds of 'scope' in clear-cut cases ⁽²⁾;
- All additional eligibility criteria applying to the call that are specified in the Ideas work programme and in the call fiche.

If it becomes clear before, during or after the peer review evaluation phase, that one or more of the eligibility criteria has not been met, the proposal is declared ineligible and is withdrawn from any further examination. Where there is a doubt on the eligibility of a proposal, the peer review evaluation may proceed pending a final decision on eligibility. The fact that a proposal is evaluated in such circumstances does not constitute proof of its eligibility.

If the question of eligibility is not clear-cut and a more comprehensive review of the case is deemed necessary, an eligibility review committee may be convened. The committee's role is to ensure a coherent legal interpretation of such cases and equal treatment of the applicant legal entities and PIs involved in the proposal ⁽³⁾.

Those PIs whose proposals are found to be ineligible will be informed of the grounds for such a decision.

3. PEER REVIEW EVALUATION

3.1.1. *Role of independent experts*

Proposals are subject to a review by independent experts (peer reviewers) to ensure that only those of the highest quality are selected for funding. An independent expert is an expert who is external to the ERC and the Commission ⁽⁴⁾, is working in a personal capacity and, in performing his/her work, does not represent any organisation or scientific community.

For the purposes of the peer review evaluation, five types of independent experts are distinguished:

1. *Chair-persons of the ERC peer review evaluation Panels*: organise the work within their Panel, chair Panel meetings, and attend a final consolidation meeting. They may also perform individual evaluation of proposals, usually remotely, in preparation for the panel meetings.
2. *Members of the ERC peer review evaluation Panels*: assist in the preparation of Panel meetings, attend those meetings and may also contribute in the individual evaluation of proposals, usually remotely.
3. *Panel evaluators*: independent experts who are requested to assist in the individual evaluation of proposals. Usually, they do not participate in Panel meetings.
4. *Referees*: independent experts who perform individual assessments of proposals, only remotely, and are not compensated for the tasks they perform.
5. *Independent observers*: independent experts who are requested to examine the peer review evaluation process from the point of view of its working and execution. They do not perform assessments of the proposals under evaluation. They may attend any meeting within the peer review evaluation process.

⁽¹⁾ The completeness of the information contained in the proposal will be for the independent experts to evaluate. The eligibility checks only concern the presence of the appropriate parts and forms of the proposal and the validity of the requested supplementary documents.

⁽²⁾ Proposals are normally evaluated against the criteria for the funding scheme for which they are submitted. However, for instance in cases where the funding scheme was chosen erroneously the ERCEA may decide to evaluate a proposal against the criteria of a different funding scheme. This may only be done if it is clear that the proposal does not correspond, or corresponds poorly, to the originally chosen funding scheme, and if a more appropriate funding scheme is open in the call in question.

⁽³⁾ This committee is composed of ERCEA staff, and where necessary other Commission staff having the requisite expertise in legal matters and/or information systems. It examines the proposal and the circumstances surrounding its submission and provides specialist advice to support the decision on whether or not to reject the proposal on eligibility grounds. The committee may decide to contact the PI and the applicant legal entity in order to clarify a particular issue.

⁽⁴⁾ Staff from relevant specialised EU agencies are regarded as external experts.

3.1.2. Appointment of experts ⁽¹⁾

The ERC Scientific Council is responsible for proposing independent experts for the peer review evaluation of frontier research projects ⁽²⁾ pursuant to Article 17(2) of the Rules for Participation, and monitoring of indirect actions implementation within the meaning of Article 27(1) of the Rules for Participation. The ERC Scientific Council may rely on its members and on information provided by Panel members or by the ERCEA to identify the independent experts. Based on this proposal the ERCEA will appoint them formally ⁽³⁾.

Independent experts are required to have skills and knowledge appropriate to the areas of activity in which they are asked to assist. They must have a high level of professional experience in the public or private sector in scientific research, scholarship, or scientific management. Other skills may also be required (e.g. mentoring and education of young scientists; management or evaluation of projects; technology transfer and innovation; international cooperation in science and technology). For the appointment of independent experts dealing with classified information, the appropriate security clearance shall be required.

The ERCEA has also recourse to the list of experts resulting from calls for applications published in the *Official Journal of the European Union*, as well as other experts with the necessary qualifications, identified for example, through consultation with national research funding agencies and similar organisations. Experts may come from countries other than the Member States or countries associated to FP7.

In assembling pools of experts, the ERCEA seeks to ensure the highest level of scientific and technical expertise, in areas appropriate to the call, considering also other criteria, such as:

- A reasonable inclusion of women and men from across the EU and associated countries as well as third countries ⁽⁴⁾;
- Regular rotation of experts, consistent with the need for continuity. On average, a turnover of at least a quarter of the experts used in each research area per calendar year is expected.

Experts must also have the appropriate language skills required for the proposals to be evaluated.

The names of the independent experts assigned to individual proposals are not made public. However, the list of independent experts that have assisted in the evaluation of proposals received under a call related to the Ideas Specific Programme will be published yearly on Commission website(s). In addition the list of Panel members will be published on the ERC website.

Any direct or indirect contact about the peer review evaluation of a call between the PI and/or applicant legal entity submitting a proposal under the same call and any independent expert involved in that peer review evaluation is strictly forbidden. Any such contact may result in the decision of the ERCEA to exclude the proposal concerned from the call in question.

3.1.2.1. Exclusion of independent experts at the request of an applicant

Applicants may be allowed by the relevant Guide for Applicants to make a request that a specific person ⁽⁵⁾ would not act as peer reviewer in the evaluation of their proposal. In such cases, applicants will be asked to specify the reasons for their request ⁽⁶⁾. Under such circumstances, if the person identified is an independent expert participating in the evaluation of the proposals for the call in question, he/she may be excluded from the evaluation of the proposal concerned, as long as the ERCEA remains in the position to have the proposal evaluated.

3.1.3. Terms of appointment, Code of conduct and Conflict of interest

This section addresses the way in which independent experts are appointed by the ERCEA to assist in the peer review evaluation of proposals submitted under the Ideas Specific Programme. The same procedure may be applied *mutatis mutandis* by the ERCEA for the appointment of experts for the tasks within the meaning of Article 27(1) of the Rules for Participation.

The ERCEA issues an appointment letter to be signed by the independent expert, based on the models approved by the Commission. The appointment letter sets the framework of the relationship between an independent expert and the ERCEA under which he or she may be called to provide expertise to assist the ERC.

⁽¹⁾ Article 17(2) of the Rules for Participation.

⁽²⁾ The selection by the Scientific Council may not necessarily be required for the appointment of peer reviewers of coordination and support actions.

⁽³⁾ According to the Rules for Participation and/or Commission Decision C(2008) 5694 of 8 October 2008 delegating powers to the ERCEA.

⁽⁴⁾ The European Union pursues a gender balance and equal opportunities policy in the field of research. To that extent, Commission Decision 2000/407/EC of 19 June 2000 'on gender balance within the committees and experts groups established by it'. In the same context, Article 17(2) of the Rules for Participation provides that 'appropriate measures shall be taken to ensure reasonable gender balance when appointing groups of independent experts'.

⁽⁵⁾ The relevant Guide for Applicants could allow for up to a maximum of three people who may be indicated by the applicant.

⁽⁶⁾ Reasons have to be based on clear grounds such as direct scientific rivalry, professional hostility, or similar situation which would impair or put in doubt the objectivity of the potential evaluator.

This appointment letter presents the General Conditions applying to independent experts, in particular, it establishes a Code of conduct for independent experts in peer review evaluations, annexed to the appointment letter, the essential provisions regarding confidentiality, conflict of interest and specifies the treatment of personal data.

The appointment will be effective upon the signature of the appointment letter by the independent expert and the ERCEA.

Assignments of tasks for Panel Chairs, Panel Members, Panel evaluators and Independent observers are entitled to financial compensation. In that case the appointment letter will provide the general conditions for compensation.

For referees, the assignments of tasks are not eligible for financial compensation.

In the context of each task assignment, all independent experts are required to confirm that they have no conflict of interest (disqualifying or potential) for each proposal that they examine. If an independent expert identifies a conflict of interest relating to a proposal, the course of action depends on whether it is a disqualifying or a potential conflict of interest.

Circumstances in which 'disqualifying' and 'potential' conflicts of interest may exist are described in the Code of Conduct.

Independent experts may not participate in the evaluation of proposals to a call to which he/she has himself/herself submitted a proposal.

When a disqualifying conflict of interest exists an independent expert must not influence the peer review evaluation of the proposal concerned. In particular an independent expert shall then neither assist in the individual assessment (usually remote), nor speak and vote in any Panel discussion related to this proposal. In such a case the independent expert shall leave the room (or electronic forum) when the Panel discusses the individual case of the proposal where such a conflict exists.

When a potential conflict of interest exists, the ERCEA will consider the circumstances of the case and make a decision. It may be decided whether to allow the independent expert to take part in the peer review evaluation of the proposal concerned (the expert must then sign a declaration to that effect) or to exclude him/her in the same manner as for a disqualifying conflict.

An expert must declare any known conflicts of interest before a peer review evaluation session.

If a hitherto unsuspected conflict becomes apparent during the course of the peer review evaluation, the independent expert must announce the fact immediately to a responsible official. If the conflict is finally found to be a disqualifying one, the independent expert must abstain from further peer review evaluation involving the proposal concerned. Any comments and scores made earlier by that independent expert will be discounted. If necessary, the independent expert will be replaced.

If an independent expert knowingly conceals a disqualifying or potential conflict of interest, and this is discovered during the peer review evaluation session, the independent expert will be immediately excluded, and the sanctions foreseen in the appointment letter will apply. Any peer review evaluation session results in which he or she has participated will be declared null and void, and the proposal(s) concerned will be re-evaluated.

By analogy with article 265a(3) of the Implementing Rules to the Financial Regulation ⁽¹⁾, a breach of the Code of Conduct or other serious misconduct by the independent expert may be qualified as grave professional misconduct and may lead to the exclusion of this independent expert from the list of independent experts to be appointed by the ERCEA. Pursuant to such exclusion, the independent expert will be removed from the database and barred from re-registering for the duration of the exclusion.

3.1.4. *Independent observers*

Independent experts may be appointed as observers to examine the peer review evaluation process from the point of view of its working and execution. The remit of observers covers the entire peer review evaluation session, including any remote assessments. In the remote case, observers have access to all communications between the ERCEA and the peer reviewers and may make contact with some or all peer reviewers to poll their opinions on the conduct of the peer review evaluation. Observers have access to any meetings that are part of the peer review evaluation session.

The ERCEA concludes an appointment letter with each independent observer. The model approved by the Commission will be used for the appointment of independent observers. The specific Code of conduct for observers of the peer review evaluation process is provided in the model approved by the Commission.

The ERCEA will inform the Programme committee of the choice of experts as observers, and their terms of reference.

⁽¹⁾ OJ L 357, 31.12.2002, p. 1.

The task of the observers is to look at the operation of peer review evaluation sessions from the point of view of their working and not the outcome, unless the outcome of the peer review evaluations is a direct result of the operational aspects. For this reason, it is not necessary that the observers have expertise in the area of the proposals being evaluated. Indeed, it is considered advantageous to avoid having observers with too intimate a knowledge of the particular S & T area in order to avoid conflicts between their opinions on the outcome of the peer review evaluations and the functioning of the sessions. In any case, they will not express views on the proposals under examination or the independent experts' opinions on the proposals.

The role of the observers is to give independent advice on the conduct of the peer review evaluation sessions, ways in which the procedures could be improved and the way in which the independent experts apply the evaluation criteria. The observers verify that the procedures set out or referred to in these rules are adhered to and report to the programme management on ways in which the process could be improved.

Observers are required to respect the same confidentiality obligations as independent experts and to sign *appointment letters* including confidentiality agreements. They are not permitted to divulge details of the proposals, the independent experts assigned to examining the proposals, nor the discussions in the peer review evaluation Panels.

The observers report their findings to the ERC. The observers are also encouraged to enter into informal discussions with the ERCEA officials involved in the peer review evaluation sessions and to make observations on any possible improvements that could be put into practice immediately.

The ERCEA will inform the programme committee of the observers' findings and may make available publicly a summary of their report.

Carrying out observation of peer review evaluation is subject to the *maxima* indicated in the specific assignment. The maxima indicated in the assignment may be extended by written amendment.

3.1.5. Peer review evaluation criteria

The evaluation criteria, including any proposal scoring and associated weights and thresholds, are set out in the Ideas work programme, based on principles set out in the Ideas Specific Programme and in the Rules for participation ⁽¹⁾. The manner in which they will be applied may be further explained in the Guide for Applicants ⁽²⁾.

Special procedures are applied for proposals with ethically sensitive issues (see Annex B), or which require further scrutiny with regard to security considerations (see Annex D).

3.1.6. Organisation of the peer review evaluation

The ERC Scientific Council establishes the peer review evaluation methodology, which may vary in detail for different calls, and oversees the peer review evaluation process and establishes rules of procedure for ERC Panels published on the ERC website (Guide for ERC Peer Reviewers). The ERC Scientific Council may also delegate its members to be present during the Panel meetings as observers. However, Scientific Council members shall not influence, under any circumstances, the outcome of the Panel meeting they attend.

The peer review evaluation is organised on the basis of the principles set out in section 2.1 above, to ensure a consistent, rigorous, quality-based assessment of proposals against the criteria set out in the Ideas work programme.

Where a call specifies a two-step evaluation procedure, only those proposals that pass the first step, based on the evaluation against a limited set of criteria, shall go forward for further peer review evaluation ⁽³⁾.

3.1.6.1. Peer review evaluation of frontier research projects

The peer review evaluation is carried out by means of Panels of independent scientists and scholars. Panels may be assisted by panel evaluators and specialist referees, who perform the peer review evaluation fully or partially at their home or place of work ('remote evaluation'). Panels are established to span the spectrum of research areas covered by the call, each Panel having responsibility for a particular set of research fields.

⁽¹⁾ Article 15 Rules for participation.

⁽²⁾ Proposals are normally evaluated against the criteria for the funding scheme for which they are submitted. However, for instance in cases where the funding scheme was chosen erroneously the ERCEA may decide to evaluate a proposal against the criteria of a different funding scheme. This may only be done if it is clear that the proposal does not correspond, or corresponds poorly, to the originally chosen funding scheme, and if a more appropriate funding scheme is open in the call in question.

⁽³⁾ In accordance with Article 16.1 of the Rules for Participation.

Panels operate, according to the rules of procedure for ERC Panels mentioned above, under the chairmanship of a senior independent expert.

Any peer review evaluation may be organised in two subsequent steps. In such case, the outcome of the first step is the input for the second step. The sequence of events in a step is usually as follows:

Allocation of proposals to Panels: Each proposal is allocated to a Panel on the basis of the subject-matter of the proposal. Initial allocation will be based on indication provided by the applicant, the title and content of the proposal and/or information, possibly in the form of 'keywords', provided for in the proposal.

Individual assessment: Proposals are examined against the relevant criteria by at least 3 peer reviewers ⁽¹⁾, qualified in the scientific and/or technological fields related to the proposal, who prepare individual assessment reports (IARs).

Panel assessment: Panels have the duty to examine consistently proposals falling within their area of competence ⁽²⁾ and to operate in a coherent manner with other Panels, to ensure consistency of treatment of proposals across the range of Panels and the scientific/technological areas open in the call.

The judgement of a Panel on a proposal (including any scores given to the proposal for individual criteria or overall, and its position in the ranked list) is based on the individual assessments and discussion in the Panel, and is arrived at by majority vote. The outcome of the Panel assessment phase is a rank order list. In the final step of the peer review evaluation, the Panel identifies those proposals which are recommended for funding, according to the budget associated to the call.

Interviews: Where this is specified in the Ideas work programme, the Panel assessment may include interviews with the PI and/or the applicant legal entity. Travel and subsistence costs incurred in relation to interviews may be reimbursed by the ERCEA. The rules for reimbursement applicable to interviewees are specified in Annex C. Any interview will be conducted by at least three Panel members. Interviews may be conducted at the location of the peer review evaluation Panel meeting or, subject to technical feasibility, by electronic means (video link, teleconference or similar).

Cross-Panel Assessment (Assessment across Panels, domains, research fields, etc.): The cross-Panel assessment establishes a final recommended rank order of proposals retained for the call as a whole (across all fields of research open in the call), through a careful assessment of the quality of proposals across the different Panels. This assessment is carried out in a forum constituted by the Panel chairs or their delegated Panel members. The cross-Panel assessment pays particular attention to proposals of an interdisciplinary nature which cross the boundaries between different Panels, proposals in new and emerging fields and 'high-risk, high-gain' proposals.

If the Ideas work programme sets indicative budgets associated with each Panel, domain, research field, etc., the discussion may consider only those proposals outside the set of proposals that are sufficiently highly ranked as to fall within the indicative budget set for each Panel, domain, research field, etc.

The peer review evaluation results in an Evaluation Report (ER) for each proposal, including the results of a cross panel, where appropriate, stating the final recommendation of the panel on the proposal, along with the individual independent experts' assessments, as well as any recommendation made on the maximum amount of funding to be awarded.

3.1.6.2. Two-stage submission procedure for frontier research projects

The call will specify when a two stage submission procedure applies. In such cases, the evaluation criteria applicable to each stage will be set out in the Ideas work programme. The precise methodology for the peer review evaluation at the first and second stage may differ (for example in the use of panel evaluators, referees and/or interviews of the PI).

⁽¹⁾ This may include members of Panels other than the Panel(s) to which the proposal is assigned or referees.

⁽²⁾ This includes cross-panel or cross-domain interdisciplinary proposals which may be assigned for review to members of more than one Panel or additional referees.

PIs must submit first a reduced or outline proposal. This first-stage proposal is evaluated against the criteria for this stage set out in the call.

Following the evaluation of the first stage proposal, the Panel assessment may result, for the retained proposals, in the invitation for a second stage submission. Independently of any further cross-Panel assessment, Panels are empowered at this stage within their frame of competence to recommend proposals should proceed to the second stage.

Successful applicants after the first stage will be invited to submit a more detailed proposal or more complete and updated information on the original proposal by a specific deadline for the second stage. To uphold the principle of equal treatment, the Panel may recommend the exclusion from further evaluation for proposals submitted at the second stage which deviate substantially from the corresponding first-stage proposal.

The peer review evaluation process for the second stage follows the sequence described under 3.1.6.1.

3.1.6.3. Peer review evaluation of coordination and support actions

The peer review evaluation of coordination and support actions follows the same sequence as in 3.1.6.1. The Panel assessment may be the final phase before the ERCEA approves the final rank order list.

The sole exception to this procedure will be the case of coordination and support actions covered by Article 14 of the Rules for Participation, where independent experts are only appointed if the ERCEA deems it appropriate.

Further details on the peer review evaluation procedure of coordination and support actions will be set out in the Ideas work programme, in the call and the related Guide for Applicants.

3.1.7. Peer review evaluation results, selection and rejection of proposals

The ERC Scientific Council confirms the final rank order list of proposals recommended for funding by the peer review evaluation.

Based on the outcome of the peer review evaluation and the establishment of the final rank order list by the ERC Scientific Council, the ERCEA draws up the final list(s) of proposals for possible funding.

This results in:

- A list of proposals which are of sufficiently high quality to be retained for possible funding. This list is presented in a recommended rank order, establishing the priority for funding within the limits of the budget available for the call (the *retained list*). If the call establishes indicative budgets for particular Panels, domains, fields of research, etc., separate retained lists may be prepared for each such field.
- If the total recommended funding for retained proposals following peer review evaluation exceeds the budget available for the call, one (or – in the case of indicative budgets associated with separate Panels, domains, research fields, etc. – more) reserve list(s) of proposals may be established. The number of proposals kept in reserve is determined by the ERCEA in view of budgetary considerations, and is based on the likelihood that such proposals may eventually receive funding due to eventualities such as withdrawals of proposals, or availability of additional budget.
- A list of proposals which will not be retained for funding. This list includes those proposals found to be ineligible (whether before, during or after the peer review evaluation), proposals considered not to achieve the required threshold of quality, proposals which, because they fall below a certain ranking, cannot be funded because the available budget is insufficient, and proposals remaining from the reserve list, when the budget for a particular call has been used up.

The assessment of quality, and the recommended rank order for funding of proposals on the retained list, is based on the peer review evaluation of the proposal against all relevant criteria. However, whenever a call specifies a two-step peer review evaluation procedure and thus where a proposal is judged not to achieve a quality threshold set for a particular evaluation criterion in the call, the proposal may be recommended for ultimate rejection during the course of the peer review evaluation, without necessarily assessing it further against other applicable criteria.

Any proposal that contravenes fundamental ethical principles or which does not fulfil the conditions set out in the Ideas Specific Programme, the Ideas work programme or in the call shall not be selected⁽¹⁾. Proposals may be also rejected on ethical or security grounds following the procedures in Annex B and D respectively.

⁽¹⁾ Article 15.2 of the Rules for Participation.

Any potential PI or applicant legal entity to an indirect action under the Ideas Specific Programme who has committed an irregularity ⁽¹⁾ in the implementation of any other indirect action under the Framework Programmes may be excluded from the selection procedure at any time, with due regard being given to the principle of proportionality.

3.1.8. *Feedback*

Following the peer review evaluation, the ERCEA provides feedback to the PI and the applicant legal entity. All communication and feedback from the ERCEA to the PI and the applicant legal entity will be done via an ERCEA secured web-mail account. The Guide for Applicants will indicate the expected date of feedback.

(a) Following the peer review evaluation of first-step in a two-step peer review evaluation:

Those whose proposals are found to be ineligible will be informed of the grounds for such a decision. Ineligible proposals are not evaluated.

Those whose proposals which are not retained for the next step will receive feedback on the peer review evaluation in the form of an ER.

Finally, those whose proposals are retained for the next step will receive a notification, and may be invited to attend an interview.

(b) Following the peer review evaluation of first stage in a two-stage submission procedure:

Those whose proposals are found to be ineligible will be informed of the grounds for such a decision. Ineligible proposals are not evaluated.

Those whose proposals are not retained for the next stage will receive feedback on the peer review evaluation in the form of an ER.

Finally, those whose proposals are retained for the next stage will receive an invitation to submit a proposal to the second stage, and may be invited to attend an interview.

(c) Following the second peer review evaluation under the cases (a) and (b) above, and following the single peer review evaluation in the case of a single submission and single step evaluation:

Those whose proposals are found to be ineligible will be informed of the grounds for such a decision. Ineligible proposals are not evaluated.

Both the proposals above and below the quality threshold will receive feedback on the peer review evaluation in the form of an ER.

The ER provides the outcome of the peer review evaluation and contains, as appropriate, comments and scores overall and/or for individual criteria. For proposals on the retained list, where appropriate, the ER indicates any recommendation made on the maximum amount of funding to be awarded, and any other appropriate recommendations on the conduct of the project, and/or suggestions for improvements to the methodology and programme of the work.

For those proposals rejected after failing a quality threshold, the comments contained in the ER may only be complete for those criteria examined up to the point when the threshold was failed.

Those whose proposals are rejected because of ethical and security considerations will be informed of the grounds for such a decision.

3.1.9. *Assistance and redress procedures*

The ERCEA provides information on the procedure that must be followed by PIs and/or applicant legal entities to address any questions or request for redress ⁽²⁾ concerning the results of a particular peer review evaluation in relation to any ERC call.

As a minimum any question or request for redress should contain the name of the call, the proposal number (if any), the title of the proposal, and a description of the problems encountered.

⁽¹⁾ 'Irregularity' in the sense of Council Regulation (EC, Euratom) No 2988/95 (OJ L 312, 23.12.1995, p. 1).

⁽²⁾ The redress procedure does not replace the normal channels applying to all ERCEA and Commission actions, such as: the Secretariat-General of the Commission for breach of the code of good administration (relations with the public); the European Ombudsman for 'maladministration'; the Court of Justice of the European Union for a decision affecting a person or legal entity.

For issues regarding the eligibility check and/or the peer review evaluation process of a particular proposal, a redress procedure is set up to report on any shortcoming in the results of the eligibility check or in the way a proposal has been evaluated, likely to have jeopardised the decision whether or not to fund the proposal. A redress committee may be convened to examine the case in question. If the committee is required to consider eligibility issues, it may seek advice of the eligibility review committee (see section 2.2.6). The committee will bring together staff with the requisite scientific/technical and legal expertise. The committee itself, however, does not evaluate the proposal. Depending on the nature of the complaint, the committee may review the CVs of the independent experts, their individual comments, and the ER. The committee will not call into question the scientific judgement of appropriately qualified panels of experts.

In the light of its review, the committee will recommend a course of action to the ERCEA. Should the committee consider that there is evidence to support the complaint, it may suggest a partial or total re-evaluation of the proposal by independent experts.

Any requests for redress must be raised within 1 month of the date of the feedback released on the ERCEA secured web-mail account, as described at section 3.1.8. A detailed redress procedure is described in the Guide for Applicants. Non eligible requests will not be handled by the redress committee.

A reply will be sent to complainants within 3 weeks after the deadline applicable to redress requests, mentioned above. If a definitive reply cannot be given at that stage, the reply will indicate when such a reply will be provided.

3.1.10. Reporting and information on the peer review evaluation process

Following each peer review evaluation, a report is prepared by the ERCEA and made available to the ERC Scientific Council and the Ideas programme committee. The report gives statistical information on the proposals received (for example, number, priority themes covered, categories of applicant legal entities and budget requested), on the evaluation procedure and on the independent experts.

For communication purposes, the ERCEA may publish, after the end of the evaluation process and in any appropriate media, general information on the outcome of the peer review evaluation. Moreover, the ERCEA may publish information on the evaluated proposals which are above quality threshold as a result of the evaluation (or after step 2 in a two-step evaluation)⁽¹⁾ and for which individual consent for publication of the specific data is granted by the applicants⁽²⁾.

For purposes related to monitoring, study and evaluation foreseen by the Ideas Work programmes, the ERCEA may need that submitted proposals be processed by third parties⁽³⁾ in compliance with the requirements of Regulation (EC) No 45/2001 of the European Parliament and of the Council. Applicants⁽⁴⁾ are asked to give their free individual consent to the processing of proposals. The individual consent is not requested on a compulsory base and it is only provided on a voluntary base by the applicants. Refusal to give the individual consent does not affect the evaluation process.

4. AWARD DECISION AND PREPARATION OF GRANT AGREEMENTS

The grants are awarded to the applicant legal entities by the responsible authorising officer, within the available budget, on the basis of the final rank order list as drawn by the ERCEA in accordance with Section 3.1.7, by means of a formal grant agreement.

The grant agreements are concluded with the applicant legal entities subject to the internal financial and legal procedures⁽⁵⁾ and the verification of the requisites mentioned in this section.

During the preparation of the grant agreement, the PI and the applicant legal entity may be required to provide further information on the project and its envisaged management⁽⁶⁾. In cases where more than one participant is associated with the project, the PI or the applicant legal entity may be required to obtain such information and assurances from the other participants.

On the basis of the result of the evaluation process additional conditions⁽⁷⁾ for the conclusion of a grant agreement may be required for some proposals. Such conditions will be duly documented and communicated to the PI and the applicant legal entity concerned, in addition to the ER.

Grants may not be awarded to applicant legal entities who are, at the time of a grant award procedure, in one of the situations referred to in articles 93(1) (bankruptcy, etc.), 94 (false declarations, etc.) and 96(2)(a) (under exclusion from the contracts and grants financed by the European Union budget) of the Financial Regulation. They must certify that they are not in one of the situations listed above⁽⁸⁾.

Ethical issues shall also be further clarified at this stage, if necessary. For this purpose, the ERCEA will appoint independent experts to participate in the ethics review process. (See Annex B).

⁽¹⁾ On the basis of the final list drawn by the ERCEA in accordance with section 3.1.7.

⁽²⁾ This may include the names of PIs and applicant legal entities, the proposal title and acronym.

⁽³⁾ Contractors and/or beneficiaries of Coordination and Support Actions.

⁽⁴⁾ The PIs and/or the host institutions.

⁽⁵⁾ Including, if necessary, the completion of the procedure for consulting the programme committee provided for in the Ideas Specific Programme.

⁽⁶⁾ According to Article 16.4 of the Rules for Participation, and the Commission rules on the verification of the existence and legal status of participants, as well as their operational and financial capacities in indirect actions supported through the form of a grant under FP7, C(2007) 2466.

⁽⁷⁾ The additional conditions could refer to ethical evaluation requirements.

⁽⁸⁾ Article 114 of the Financial Regulation.

The grant preparation involves no negotiation of scientific/technical substance. A grant is subsequently awarded to the applicant legal entity on the basis of the proposal submitted and the funding recommended following the peer review evaluation, and subject to the agreement of the applicant legal entity with the PI.

If it proves impossible to reach agreement with the PI and the applicant legal entity or if one or both of them have not signed any required supplementary agreement within a reasonable deadline that may be imposed, grant preparations may be terminated.

Grant agreement preparation for proposals on the reserve list may begin once it is clear that sufficient budget has become available to fund one or more of these projects. Subject to budget availability, grant preparation will begin with the highest ranked proposal and continue in descending order of the final ranking.

5. ANNEXES

5.1. Annex A – Procedures for Proposal Submission on paper

In exceptional cases, if an applicant has absolutely no means of accessing the electronic proposal submission system and if it is impossible to arrange to do so, s/he may request permission from the ERCEA to submit on paper. Such a request, which must clearly explain the circumstances of the case, must be received by the ERCEA no later than 1 month before the call deadline.

Request for permissions to submit on paper shall be sent to the following address:

European Research Council Executive Agency
Head of 'Scientific Management Department'
COV2
B-1049 Brussels
Belgium

The ERCEA will reply to such a request within five working days of receipt. If derogation is granted, the ERCEA will send proposal forms for paper submission to the applicant concerned.

If the characteristics of a certain call mean that web-based submissions would be generally inappropriate, the ERCEA may decide at the outset to accept paper submissions. In such cases the possibility will be stated in the call for proposals, and proposal forms for paper submission will be made generally available.

When paper submission is allowed, either by special or general derogation as described above, delivery of packages containing proposals on paper may be carried out using normal post, private courier service or by hand. Versions of proposals submitted on a removable electronic storage medium (e.g. CD-ROM or any similar electronic device), by e-mail or by fax will be excluded. Proposals submitted on paper must be submitted in a single package. If applicants wish to submit changes to a proposal or additional information, they must clearly indicate which parts of the proposal have changed and the changes/extra parts must be submitted and received before the call closure. Additional or amended proposal contents received after the call closure will not be treated or evaluated.

In case of proposal sent by post or by courier the evidence of the date of dispatch shall be constituted by the postmark or the date of the deposit slip. Packages containing proposals may be opened, on arrival, by the ERCEA ⁽¹⁾ for the purposes of registering the administrative details in databases and to permit the return of an acknowledgement of receipt.

5.2. Annex B – Ethics Review Procedures

Introduction

In order to implement Article 6 of FP7 and Article 15 of the Rules for Participation, the evaluation procedure includes an initial identification of ethical issues raised by the proposals followed by an ethics screening of proposals that raise ethical issues. When necessary, an ethics review of proposals may take place after the ethics screening and before any selection decision by the ERCEA in accordance to the set rules. The ethics screening and the ethics review (to be referred to jointly as Ethics Review Procedure in this Annex) are carried out by independent experts with the appropriate skills in ethics.

⁽¹⁾ Or any contractor retained for the purpose of providing administrative services for evaluation sessions.

The objective of the Ethics Review Procedure is to make sure that the European Union does not support research which would be contrary to fundamental ethical principles set out in the relevant EU rules and to examine whether the research complies with the rules relating to research ethics set out in the Decisions on FP7 and the Ideas Specific Programme. The opinions of the European Group on Ethics in Science and New technologies are and will be taken into account.

Proposals

Where appropriate and/or required by the call, proposals include an Ethics section which:

- Describes the potential ethical aspects of the proposed research regarding its objectives, the methodology and the potential implications of its results;
- Justifies the design of the research project from an ethical viewpoint;
- Explains how the ethical requirements set out in the work programme will be fulfilled;
- Indicates how the proposals meets the national legal and ethical requirements of the country where the research is planned to be performed;
- Indicates the timeframe for applying for opinion and/or for approval by any relevant authority at national level (such as the data protection authority, the clinical trials authority etc.).

To this end, applicants should complete the 'Ethical Issues Table' included in the Guide for Applicants.

The ERCEA may contact the applicant at any time during the process in order to obtain additional information pertinent to the ethical clearance.

General procedural modalities

Ethics screening procedures and organisation of the Ethics Review Panels

Internal pre-screening of proposals

The ERCEA Ethics team will pre-screen all proposals recommended for funding to identify those proposals that raise no ethical issues whatsoever and can be cleared for granting without the involvement of independent experts. All other proposals are submitted to further ethics scrutiny. This process is based on the 'Ethical Issues Table' and the proposals, as submitted by the applicants.

Submission to an Ethics Screening Panel

All proposals identified at pre-screening level as raising ethical issues are submitted to an Ethics Screening Panel composed of independent experts with the appropriate skills in ethics.

Panel experts identify those proposals in which the ethical issues are satisfactorily addressed, those that can be cleared provided satisfactory documentary information and/or approval at national level is given, and those that require further attention due to the importance of the ethical issues raised and that need to be submitted to Ethics Review ⁽¹⁾.

For each proposal screened, the experts prepare and sign an Ethics Screening report which includes a requirements section. These requirements become contractual obligations.

Submission to an Ethics Review Panel

Projects raising important ethical issues identified during the Ethics Screening are submitted to an Ethics Review Panel. Issues such as research interventions on human beings ⁽²⁾, research on human embryos and human embryonic stem cells, and non-human primates are automatically submitted ⁽³⁾ to ethical review.

The Ethics Review Panel checks the ethical issues raised by a proposal and identifies the ethical requirements to be met in order to clear the proposal from the ethical point of view. At this stage the Ethics Review Panel may identify proposals that raise severe ethical issues that may lead to exclusion of the project from the granting process.

Composition of the Ethics Screening and Ethics Review Panels

Ethics Panels are composed of independent experts from a variety of disciplines such as law, sociology, psychology, philosophy and ethics, medicine, molecular biology, chemistry, physics, engineering, veterinary sciences with a reasonable balance of scientific and non-scientific members.

⁽¹⁾ Following areas are under responsibility of DG RTD: human embryonic stem cells, non-human primates, human intervention, and proposals falling into these categories are automatically submitted to DG RTD for Ethics Review.

⁽²⁾ Such as clinical trials, and research involving invasive techniques on living persons (e.g. taking of tissue samples).

⁽³⁾ Proposals falling into these categories are automatically submitted to DG RTD for Ethics Review.

Duly qualified experts in ethics will be selected and appointed by the ERCEA among those experts identified and selected by the Commission for FP7, or those identified by the Scientific Council. The panels are geographical and gender balanced and their composition also depends on the nature of the proposals under review. For the purposes of the ethics clearance process, the model appointment letters approved by the Commission for independent experts will be used accordingly for the appointment of experts in ethics.

Representatives of civil society may be invited to Panel meetings.

The Ethics Review

Usually, in a first phase, independent experts review the proposals remotely. Then, in a second phase, the proposals are discussed within the duly appointed Ethics Review Panel, in view to adopt a consensus decision.

The Panel produces an Ethics Review report. The Ethics Review report includes a list of ethical issues, an account of the way the issues are handled by the PI and his/her team, requirements and recommendations of the Ethics Review Panel. The report is signed by the experts of the Ethics Review Panel. In case no consensus can be reached, the report reflects the opinion of the majority of the experts of the Ethics Review Panel.

The Ethics Screening and the Ethics Review reports

The PI and the applicant legal entity are informed of the outcome of the Ethics Review Procedure through either the Ethics Screening report or the Ethics Review report without disclosing the identity of the experts.

In the decision to fund a project the results of the Ethics Review Procedure will be taken into account. This may entail changes in the grant agreement and its annexes, or in extreme cases, termination of the grant agreement preparation.

National approvals and opinions of competent ethics committee

The ERCEA ascertains that the applicants have received appropriate approval from the national authority and/or favourable opinions from the competent ethics committee before the signature of the grant agreement. Where the approval of the national authority and/or a favourable opinion from a local ethical committee is/are not obtained before the start of the grant agreement, the grant agreement includes a special clause requiring that the relevant authorisation or opinion be obtained before the start of the corresponding research.

Ethics Follow-up and Audit

Proposals that undergo an Ethics Screening and/or an Ethics Review can be flagged by the experts as requiring an Ethics Follow-up/Audit (EFA). An EFA is conducted by experts specialised in ethical issues, not earlier than on the date of the first financial reporting period for the proposal. The objective of the EFA procedure is to assist the grant beneficiaries to deal with the ethical issues that are raised by their work and if necessary take corrective measures.

In extreme cases, the EFA process may result in a recommendation to the ERCEA to terminate a grant agreement. The organisation and implementation of the EFA procedure are the responsibility of the Ethics Review Sector of the Commission (DG RTD).

Specific procedural modalities for research activities involving human embryonic stem cells⁽¹⁾

When evaluating, and selecting proposals involving the use of human embryonic stem cells (hESC) and before preparing the related grant agreements, the ERCEA uses the following procedure:

The general scientific peer review procedure, as described at section 3 above applies. In addition, the scientific peer review independent experts assess whether:

- the project serves important research aims to advance scientific knowledge in basic research in Europe or to increase medical knowledge for the development of diagnostic, preventive or therapeutic methods to be applied to humans,
- the use of hESC is necessary in order to achieve the scientific objectives set forth in the proposal. In particular, applicants must document that appropriate validated alternatives (in particular, stem cells from other sources or origins) are not suitable and/or available to achieve the expected goals of the proposal. This latter provision does not apply to research comparing hESC with other human stem cells.

⁽¹⁾ Taking into account the statement of the Commission of 24 July 2006 (OJ L 412, 30.12.2006, p. 42).

Ethics Review procedure

Research proposals recommended for funding involving the use of hESC are submitted to the Commission (DG RTD) for the Ethics Review. The procedures applicable to Ethics Review by the Commission for proposals under FP7 involving the use of hESC are described in the model appointment letters approved by the Commission.

National approvals and opinions of competent ethics committee

The ERCEA ascertains that the applicants have received appropriate approval from the competent local or national authorities before the signature of the grant agreement.

Where the approval of the national authority and/or a favourable opinion from a local ethical committee cannot be obtained before the envisaged start of the project, the grant agreement may be concluded subject to the inclusion of a special clause requiring that the relevant authorisation or opinion be obtained before the start of the corresponding research activities.

During the preparation of the grant agreement, account is taken of the results of the Ethics Review. This may entail changes in the Description of the work set out in the grant agreement, or in certain cases termination of the grant agreement preparation.

For hESC proposals, after the Ethics Review has been performed, and in accordance with Article 6.9 of Council Decision 2006/972/EC ⁽¹⁾, the regulatory procedure laid down in Articles 5 and 7 of Council Decision 1999/468/EC shall apply for the approval of the funding and adoption of actions involving the use of hESC.

Additionally, the ERCEA will encourage that the PI ensures proper communication with the European hESC registry (<http://www.hescreg.eu/>). This is to ensure transparency as regards the hESC lines used, and a wide dissemination of the information available on these lines.

5.3. Annex C – Rules for reimbursement of travel, daily allowance and accommodation allowance for Principal Investigators invited for an interview ⁽²⁾

Article 1

1. These rules shall apply to:

- (a) Interviewees who have been invited by the ERCEA to attend an interview according to section 3.1.6.1.
- (b) Anyone responsible for accompanying a disabled person who has been invited by the ERCEA to attend a meeting in an interviewee capacity.

2. The authorising officers for commitments shall specifically try to ensure that interviews are organised in such a way as to enable interviewees to benefit from the most economical travel rates.

The authorising officers for payments shall scrutinise particularly closely any requests for reimbursement involving abnormally expensive flights. They shall have the right to carry out any checks that might be needed and to request any proof from the interviewees required for this purpose. They shall also have the right, where it appears to be justified, to restrict reimbursement to the rates normally applied to the usual journey from the interviewees' point of origin to the meeting place.

3. Where, taking into account any expenses incurred by disabled interviewees as a result of their disability or any person accompanying them, the allowances provided for in Article 3 appear to be clearly inadequate, the expenses shall be reimbursed at the request of the responsible authorising officer on presentation of supporting documents.

4. The ERCEA shall not be liable for any material, non-material or physical damage suffered by invited interviewees or those responsible for accompanying a disabled interviewees in the course of their journey to or stay in the place where the interview is held, unless such harm is directly attributable to the ERCEA.

In particular, invited interviewees who use their own means of transport for travelling to such interviews shall be entirely liable for any accidents that they might cause.

Article 2

1. All interviewees shall be entitled to the reimbursement of their travel expenses from the point of origin specified in their invitation (work or home address) to the place of the interview, by the most appropriate means of transport given the distance involved. In general, for journeys of less than 400 km (one way, according to official distance by rail) this shall be first-class rail travel, and for distances of more than 400 km economy class air travel.

If the journey by air involves a flight of 4 hours or more without stopovers the cost of a business class ticket shall be reimbursed.

⁽¹⁾ OJ L 400, 30.12.2006, p. 243.

⁽²⁾ The ERCEA may put in place an electronic submission system, which would be applicable to the paper forms and originals to be submitted in the framework of these rules for reimbursements.

2. The cost of travel by private car shall be reimbursed at the same rate as the first-class rail ticket.
3. If the route is not served by a train the cost of travel by private car shall be reimbursed at the rate of EUR 0,22 per km.
4. Taxi fares and parking expenses incurred at the place of origin (or departure airport) shall not be reimbursed.

Article 3

1. The daily allowance paid for each day of the interview is a flat rate to cover all expenditure at the place where the interview is held, including for example meals and local transport (bus, tram, metro, taxi, parking, motorway tolls, etc.), as well as travel and accident insurance.
2. The daily allowance shall be EUR 92.
3. If the point of origin cited in the invitation letter is 100 km or less from the place where the interview is held, the daily allowance shall be reduced by 50 %.
4. Interviewees who have to spend one or more nights at the place where the interview is held because the times of interviews are incompatible with the times of flights or trains ⁽¹⁾, shall also be entitled to an accommodation allowance. This allowance shall be EUR 100 per night. The number of nights may not exceed the number of interview days + 1.
5. An additional accommodation allowance and/or daily allowance may, exceptionally, be paid if prolonging the stay would enable the interviewee to obtain a reduction in the cost of transport worth more than the amount of these allowances.

Article 4

1. The reimbursement shall be made by the ERCEA upon submission of a request for reimbursement, duly completed and signed by the interviewee and by the ERCEA official responsible for certifying the interviewee's presence.

By signing the request for reimbursement the interviewees declare on their honour that the travel expenses and/or allowances claimed will not be met by another European Union institution or another organisation or person for the same journey or the same period, and that their claim corresponds to the costs actually incurred. Irregularities and/or false claims will lead to the application of administrative sanctions applied by analogy with Article 265a(3) of the Implementing Rules to the Financial Regulation.

2. Travel expenses shall be reimbursed on presentation of original supporting documents no later than 30 calendar days after the final day of the interview: tickets and invoices or, in case of online bookings, the printout of the electronic reservation and boarding cards for the outward journey. The documents supplied must show the class of travel used, the time of travel and the amount paid.

Unless the interviewee can provide a proper justification that is accepted by reasoned decision by the responsible authorising officer, failure to comply with the provisions of this paragraph shall absolve the ERCEA from any obligation to reimburse travel expenses or pay any allowances.

3. The ERCEA shall reimburse the interviewees' expenses within the period laid down in the rules implementing the Financial Regulation.
4. Travel expenses shall be reimbursed in Euro, where appropriate at the rate of exchange applying on the day of the interview.
5. The daily allowance and, where appropriate, the accommodation allowance, shall be paid in Euro at the flat rate applicable on the day of the interview. The daily allowance and accommodation allowance may be adjusted in line with changes in the cost of living in Brussels.
6. All reimbursements of travel expenses, daily allowances and/or accommodation allowances shall be made to one and the same bank account.

⁽¹⁾ As a general rule, interviewees cannot be required: to leave their point of origin or the place where the interview is held before 07.00 (station or other means of transport) or 08.00 (airport); to arrive at the place where the interview is held after 21.00 (airport) or 22.00 (station or other means of transport); to arrive at their point of origin after 23.00 (airport, station or other means of transport).

7. The authorising officer by delegation may, by reasoned decision and on presentation of supporting documents, authorise the reimbursement of expenses which interviewees have had to incur as a result of special instructions they have received in writing.

5.4. Annex D– Handling Security – Sensitive ERC actions

(A) Introduction

Special procedures will apply to security-related research, due to the sensitive nature of the subjects addressed, and the particular capability gaps that need to be addressed to protect Europe's citizens. ERC actions will be classified ⁽¹⁾ if they are considered as sensitive.

These procedures are described below. They will apply to ERC actions as appropriate when security-sensitive subjects are addressed.

(B) Identification of potential classified ERC Actions

A security-sensitive ERC action is an action that may need to handle classified information.

A 'security considerations' flag will be associated with a proposal:

- when the applicant declares a proposal as sensitive;
- if the expert evaluators or the ERCEA detect or suspect any of the following conditions:
 - Classified information is, or may be, used as background information,
 - Some foreground is planned to be classified,

Whenever a 'security considerations' flag is associated with a proposal, the circumstances of the planned work will be further scrutinised according to the procedure described in section C below.

Proposals, if so requested in the relevant Guide for Applicants, must identify – if needed – the background required for carrying the ERC action and the classified foreground that will be produced by the action. In the case of a proposal involving classified information (background and/or foreground), a 'Security Aspect Letter' (SAL) ⁽²⁾ and its annexed 'Security Classification Guide' (SCG) ⁽³⁾ must be part of the proposal.

The SCG will cover:

- The level of classification of background and foreground information,
- Which participant will have access to what information,

In addition, the following documents will be requested:

- A copy of the 'Facility Security Clearances' (FSC) (or the FSC requests). The validity of the FSC will be checked by the Commission Security Directorate through the appropriate formal channel with the 'National Security Authorities' (NSAs) involved,
- Formal written authorization by the relevant security authorities to use the classified background information.

The SAL and the SCG, accompanied by supporting documents, will also be examined in the scrutiny procedure described below.

(C) Scrutiny of potential classified ERC Actions

After the scientific evaluation of proposals, they shall be ranked according to the evaluation results. A 'retained list' containing proposals recommended for possible funding, namely that have not been rejected, and for which funding is available, plus 'reserve-list(s)' are established by the ERCEA.

Any ERC action on the retained list and on the reserve list(s), which has the flag 'security considerations', will undergo a scrutiny procedure. This will be performed by an ad-hoc sub-committee: the 'Security Scrutiny Committee'.

⁽¹⁾ As defined in Commission Decision 2001/844/EC, ECSC, Euratom of 29 November 2001 amending its internal Rules of Procedure (OJ L 317, 3.12.2001, p. 1) regarding provisions of security and its successive amendments.

⁽²⁾ 'Security Aspects Letter (SAL)': 'a set of special contractual conditions, issued by the contracting authority, which forms an integral part of a classified contract involving access to or generation of EU classified information, and that identifies the security requirements or those elements of the classified contract requiring security protection', as defined in section 27 of Decision 2001/844/EC, ECSC, Euratom.

⁽³⁾ As defined in Decision 2001/844/EC, ECSC, Euratom.

This 'Security Scrutiny Committee' is composed by Member States representatives nominated in close liaison with the competent national security authorities, supported if appropriate by representatives of the relevant Programme Committee(s), in a configuration representing the countries of the proposal applicants. This Committee is chaired by a representative of the Commission.

This Committee will verify if all security aspects are properly taken into account by the applicants. Proposals will be scrutinised by Committee members from the same countries as the proposal applicants.

This process should reach a common position between the concerned national representatives resulting in one of the following recommendations:

- *Classification is not required:* Procedures for preparation of the ERC grant agreements can be started (though some recommendations for preparation may be issued, if relevant),
- *Classification is required:* specific recommendations for the preparation of the ERC grant agreement are given in the form of conditions to be met in the grant agreement. The ERC action will become a Classified Action ⁽¹⁾ and will be EU-classified at the level of the highest classification of the information used/produced by the ERC action as indicated in the SAL and its annexed SCG,
- *The proposal is too sensitive to be financed* because the applicants do not have the appropriate experience, skills or permissions to handle properly the classified information. In that case, the proposal may be rejected. If so, the ERCEA will explain the reasons of rejection, except when these reasons are themselves classified.

Based on this common position, the level of classification will be determined. As a result, the ERCEA, together with all the relevant NSAs, will then verify, during preparation and implementation of the grant agreement, that all the necessary procedures and actions are put in place in order to guarantee that classified information is dealt with in the appropriate way.

(D) Export & Transfer Licences

In addition, a proposal may also be considered as sensitive, independently of any security classification, if it plans to exchange material subject to transfer or export licensing.

In that context, applicants must comply with national laws and EU regulation ⁽²⁾. If export licences (or intra EU licences) are required for carrying the planned work, applicants must clarify the requirement to have such export or transfer licences and must provide a copy of export or transfer licences (or of the requests).

(E) International cooperation

Security concerns can not be invoked as a reason for the rejection of proposals for non-classified ERC actions that entail the participation of entities from a third country ⁽³⁾. The only exceptions to this will occur if:

- The topic was described in the work programme as not open to international cooperation: in that case any proposal containing international cooperation will be declared as ineligible,
- The 'security considerations' flag has been raised, in which case the proposal will be scrutinised according to the procedure described above,

⁽¹⁾ Treatment of confidential data is governed by all the relevant community legislation, including the Institutions' internal rules such as Decision 2001/844/EC amending its internal rules of procedure regarding provisions of security.

⁽²⁾ Council Regulation (EC) No 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items (OJ L 134, 29.5.2009, p. 1).

⁽³⁾ 'Third country' means any country that is neither an EU Member State nor a country associated to FP7.

IV

(Acts adopted before 1 December 2009 under the EC Treaty, the EU Treaty and the Euratom Treaty)

COMMISSION DECISION

of 26 April 2006

on state aid C 39/03 (ex NN 119/02) implemented by Greece for air carriers in respect of losses sustained from 11 to 14 September 2001

(notified under document C(2006) 1580)

(Only the Greek text is authentic)

(Text with EEA relevance)

(2010/768/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 88(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having called on interested parties to submit their comments pursuant to the provisions cited above ⁽¹⁾,

Whereas:

1. PROCEDURE

- (1) In accordance with Article 88(3) of the EC Treaty, in a letter to the European Commission dated 24 September 2002, registered as received on 26 September 2002 under No TREN(2002) A/66844, the Greek Ministry of Transport set out the details of a scheme to compensate for losses in the airline industry following the attacks of 11 September 2001.
- (2) Having been implemented before its formal approval by the Commission, this measure was registered as non-notified aid under No NN 119/2002. This was communicated by letter with acknowledgment of receipt sent by the Commission on 28 October 2002 (TREN(2002) D/17401).
- (3) By letter of 27 May 2003, the Commission notified Greece of its decision to initiate the procedure laid down in Article 88(2) of the Treaty in respect of this aid.

- (4) The Commission's decision to initiate the procedure was published in the *Official Journal of the European Union* ⁽²⁾. The Commission called on interested parties to submit their comments concerning the aid in question.
- (5) The Commission received no comments from interested parties.
- (6) The Commission received the initial comments from Greece regarding the initiation of the procedure by letter of 3 December 2003, registered as received on 10 December 2003 under No SG(2003) A/12211.
- (7) Greece stated that it would be sending further information. As this failed to materialise, by letter TREN(2004) D/4128 of 15 March 2004 the Commission offered the Greek authorities one last opportunity to provide the additional information within 15 days and notified them that, if they failed to do so, the Commission would take its decision on the basis of the information it already had. The Greek authorities did not reply to that letter.

2. DESCRIPTION OF THE NOTIFIED AID

Background

- (8) As a result of the terrorist attacks in the United States on 11 September 2001, some areas of airspace were closed for several days. This was notably the case with the airspace of the United States, which was completely closed from 11 to 14 September 2001 and was reopened only gradually starting on 15 September 2001. Other countries had to take similar measures for all or part of their territory.
- (9) For this reason, during that initial period airlines had to cancel flights using the airspace concerned. They also suffered losses owing to the disruption of other traffic and the fact that some passengers were unable to complete their journeys.

⁽¹⁾ OJ C 199, 23.8.2003, p. 3.

⁽²⁾ See footnote 1.

- (10) Given the magnitude and suddenness of the events and the costs they caused for airlines, the Member States had to consider exceptional compensation measures.

The scheme implemented by Greece

- (11) The scheme that is the subject of this Decision provided for the payment of compensation for losses sustained by airlines from 11 to 15 September 2001; in fact, the notified scheme also provided for the payment of compensation for costs incurred after that period.

- (12) In support of their scheme, the Greek authorities argued that the closure of airspace in the United States had direct consequences for the airlines even after 14 September 2001, since on 16 September 2001 an Olympic Airways flight to New York was cancelled preventively due to a lack of information regarding the possibility to land there. There was also compensation for costs incurred on 15 September 2001.

- (13) The eligible air carriers were the air carriers holding operating licences issued by the Greek authorities pursuant to Council Regulation (EEC) No 2407/92 of 23 July 1992 on licensing of air carriers⁽³⁾.

- (14) The Greek authorities indicated that they consulted all eligible air carriers; only three companies submitted compensation claims after all Greek air carriers were invited to do so by letters of 24 October and 5 December 2001 sent out by the local authorities. One of them, Axon Airlines, ceased operating on 3 December 2001, before the compensation was paid out in July 2002; Greece decided not to pay compensation to this air carrier because the objective was to enable air carriers to continue their activities and prevent the costs suffered following the attacks from affecting them excessively. The other air carriers that actually received payments were Olympic Airways, hereinafter referred to as 'OA', and Aegean Cronus, hereinafter referred to as 'AC'.

- (15) In their notification, the Greek authorities indicated that payments to these companies amounted to EUR 4 827 586 for OA and EUR 140 572 for AC, making up the total of EUR 4 968 158 notified on 24 September 2002. These amounts were financed, in accordance with the applicable Greek legislation, from the TASS and TAEA funds for airport development and modernisation.

- (16) The Greek authorities indicated that the companies received copies of the Commission's letter of

14 November 2001, which constituted the basis for compensation claims.

- (17) Greece defined the losses eligible for compensation as losses sustained by air carriers and directly related to the events; they included losses of passenger revenue, losses of revenue from carriage of freight, losses due to the destruction of consignments of products which did not reach their destinations, costs occasioned by route diversion and time spent by aircraft at other airports owing to the closure of airspace, and costs of accommodation for passengers or crews.

- (18) In the notification, the losses eligible for compensation were not limited to routes directly affected by the decision taken by some countries following the events to partially close the airspace; they in fact related to the entire networks of the air carriers and the compensation was payable for the total losses incurred across the entire network.

- (19) Greece provided the Commission with information of varying degrees of detail concerning each beneficiary.

Olympic Airways

- (20) In the notification, Greece informed the Commission that the total compensation was less than 4/365 of the undertaking's annual turnover. The compensation related not only to flights to the United States, Canada and Israel, but to the company's entire network.

- (21) The compensated costs of GRD 1 645 000 000 (EUR 4 827 586) were broken down as follows:

1. Revenue related to loss of passengers

These made up the rounded amount of GRD 1 390 000 000 (EUR 4 079 237), of which approximately GRD 1 234 500 000 (EUR 3 622 894) related to the period from 11 to 15 September 2001; approximately GRD 821 000 000 (EUR 2 409 393) was for losses sustained in the North Atlantic airspace; the balance of approximately GRD 413 000 000 (EUR 1 212 203) was for the rest of the company's network, mainly the domestic and European networks, but also the Middle East, Africa, Australia and Asia.

Moreover, about GRD 150 000 000 (EUR 440 206) was for losses sustained on 16 September 2001 across the North Atlantic network.

⁽³⁾ OJ L 240, 24.8.1992, p. 1.

It was indicated that the amount of the compensation was calculated by comparing traffic recorded during the specified period with that recorded by the company on the corresponding days in the previous week, with a correction for the variation noted during the corresponding period in 2000. The loss was calculated on the basis of the average fare for that period for each category of destination.

2. Other revenue lost and costs incurred

The main items were:

- (a) losses of revenue from carriage of freight: GRD 95 000 000 (EUR 278 797);
- (b) costs related to the destruction of products: GRD 6 000 000 (EUR 17 608);
- (c) various costs related to additional safety checks: GRD 19 000 000 (EUR 55 759);
- (d) costs related to the cancellation of flights while in flight, flight diversion and grounding of aircraft in foreign countries: GRD 17 384 737 (EUR 51 019);
- (e) extraordinary costs arising from 'ferry flights' ⁽⁴⁾: GRD 163 000 000 (EUR 478 357);
- (f) costs of accommodation or overtime: GRD 50 000 000 (EUR 146 735).

3. Deductions

The deductions referred to fuel savings and amounted to GRD 95 000 000 (EUR 278 797).

Aegean Cronus

- (22) Greece indicated to the Commission that the total compensation was calculated on the basis of similar but, of course, much smaller losses, since this company did not operate transatlantic flights. The compensation amounted to GRD 47 900 000 (EUR 140 572).
- (23) The Commission decided to open the formal assessment procedure due to its doubts concerning the conformity of such an aid scheme with the Treaty, not only because

the scheme exceeded the period specified in paragraph (35) of the Communication from the Commission to the European Parliament and the Council of 10 October 2001 entitled 'Repercussions of the terrorist attacks in the United States on the air transport industry' ⁽⁵⁾ (hereinafter referred to as 'the Communication of 10 October 2001'), but also and especially because of the absence of an exceptional occurrence and because of the change in the nature of losses eligible for compensation caused by extending the period beyond 14 September 2001.

3. OBSERVATIONS SUBMITTED BY INTERESTED PARTIES

- (24) No interested third party submitted comments within the deadline of 1 month.

4. COMMENTS SUBMITTED BY GREECE

- (25) The Greek authorities did not submit any additional comments to the Commission within the deadline of 1 month specified in the letter concerning the initiation of the procedure. Their letter of 23 July 2003, registered by the Commission on 28 July under No TREN (2003) A/26329, mentioned a reply to the decision of 27 May 2003 but it referred only to the removal of confidential information which should not be published. Nevertheless, after the Commission completed the first draft of the decision, Greece finally submitted a comment on 3 December 2003. The letter stated that Greece would be submitting further information; however, although on 15 March 2004 the Commission sent Greece a new invitation to provide its additional comments, Greece has sent the additional information promised.
- (26) In their letter of 3 December 2003, the Greek authorities detailed some of the amounts notified for OA, but in a different way than in the notification; for example, they specified which amounts referred to the period from 11 to 14 September 2001 inclusive and which amounts referred to the period after 14 September 2001. They did not mention anything relating to the amount notified for AC.

1. Losses sustained by OA from 11 to 14 September 2001 inclusive

- (27) Greece reported that OA incurred losses from 11 to 14 September 2001 due to the closure of United States, Canadian and Israeli airspace. For this reason, six transatlantic flights and one flight to Israel, all round-trip flights, were cancelled; based on the list of confirmed passengers for these flights and the average revenue per passenger, Greece stated that OA suffered a loss of GRD 654 650 000 (about EUR 1 921 203), deemed to be eligible for compensation.

⁽⁴⁾ The English expression used in the notification.

⁽⁵⁾ COM(2001) 574.

(28) The Greek authorities also reported two other costs incurred by OA during this period. The first cost was related to the extended grounding of an aircraft in Canada for the entire period in question; the cost amounted to GRD 12 967 457 (about EUR 38 056). The second cost was related to the return of a flight that had left Athens for the United States on 11 September 2001, giving rise to an additional cost of GRD 1 165 600 (EUR 3 421).

(29) The total costs presented by Greece for OA and relating to the period from 11 to 14 September 2001 thus amounted to GRD 668 783 057 (about EUR 1 962 680).

2. Losses sustained by OA after 14 September 2001

(30) Greece reported costs incurred by OA after 14 September 2001 in connection with three round-trip transatlantic flights on 15 and 16 September 2001 (one to the United States and two to Canada). Based on the list of confirmed passengers for these flights and the average revenue per passenger, Greece stated that OA suffered a loss of GRD 333 000 000, deemed to be eligible for compensation. Greece declared that this amount was equivalent to EUR 1 270 726; this is obviously a calculation error because applying the euro area entry rate for the drachma (1 euro = 340,75 drachma) actually gives an amount of about EUR 977 257.

(31) The flight to New York of 15 September 2001 was said to have been cancelled due to the lack of a landing slot; even though JFK Airport in New York reopened on 14 September 2001 at 23:00, Athens time, the strong demand for landing slots prevented OA from obtaining one. The Greek authorities indicated that they asked OA to provide confirmation of this situation, which was to be forwarded to the Commission. However, this failed to materialise, as the Commission did not receive any further correspondence on the matter.

(32) The flights to Canada on 15 and 16 September 2001 were said to have been cancelled due to the late return of the aircraft blocked in that country. Greece stated that OA did not have any other long-haul aircraft available on 15 September 2001, due to its other scheduled flights. For the flight of 16 September 2001, the late return of the abovementioned aircraft did not allow enough time for carrying out the technical checks and acquiring the landing slots for the new flight to Canada, which led OA to cancel the flight.

(33) The second type of costs incurred by OA and claimed were costs relating to the ferry flights provided by OA; there were three flights (one to the United States on

18 September 2001 and two others to Canada on 20 and 26 September 2001) which were carried out, according to the Greek authorities, as a result of the pressure exerted by the United States and Canada on OA to repatriate passengers from Athens to North America. The passengers in question had paid the normal fare, but the aeroplanes returned empty to Athens. The cost of the return flights, calculated on the basis of 'block hours' (the aircraft's flying times), were said to be GRD 166 051 680 (about EUR 487 312).

(34) The total costs presented by Greece for OA and relating to the period after 14 September 2001 thus amounted to GRD 499 051 680 (around EUR 1 464 569). All the explanations provided by Greece in the letter of 3 December 2003 thus seek to justify a compensation, for all the periods in question, of GRD 1 167 834 737 (about EUR 3 427 249).

5. ASSESSMENT OF THE AID

Existence of aid

(35) Pursuant to Article 87(1) of the Treaty, except where derogations provide otherwise, any aid granted by a Member State or through state resources which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods, in so far as it affects trade between Member States, is incompatible with the common market.

(36) Grants for air carriers represent allocations of state resources in favour of those companies and therefore constitute a clear economic advantage for them.

(37) This measure for the air transport industry had a selective character. Moreover, the air carriers receiving aid under this scheme were explicitly identified.

(38) In the air services market, which has been liberalised since 1 January 1993 when Regulation (EEC) No 2407/92, Council Regulation (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes⁽⁶⁾ and Council Regulation (EEC) No 2409/92 of 23 July 1992 on fares and rates for air services⁽⁷⁾ entered into force, air carriers in one of the Member States are in competition with other relevant companies in other Member States. In this case, the air carriers eligible under the notification are actively operating in the Community market. The subsidies granted to them and the advantage they gained in this way affect trade between Member States and are likely to affect competition.

⁽⁶⁾ OJ L 240, 24.8.1992, p. 8.

⁽⁷⁾ OJ L 240, 24.8.1992, p. 15.

- (39) The measures constitute state aid and are compatible with the Treaty only if they are covered by one of the applicable derogations.

Legal basis for the assessment of the aid

- (40) The derogations provided for in Article 87(2)(a) and (c) do not apply because this case does not involve social aid for individual consumers or aid for certain regions of the Federal Republic of Germany.
- (41) Since this case is neither aid facilitating the development of certain regions nor aid facilitating the economic development of regions where the standard of living is abnormally low or where there is serious under-employment, nor aid facilitating the development of certain economic activities or regions, the derogations provided for in subparagraphs (a) and (c) of Article 87(3) do not apply.
- (42) Finally, the derogations provided for in Article 87(3)(b) and (d), which aim respectively to promote an important project of common European interest or allow the remedying of a serious disturbance in the economy of a Member States and to promote culture and cultural heritage values, are not relevant in this case.
- (43) Pursuant to Article 87(2)(b) of the Treaty, aid compatible with the common market is: 'aid to make good the damage caused by natural disasters or exceptional occurrences'. In its Communication of 10 October 2001, the Commission considered that the events of 11 September 2001 could be regarded as exceptional occurrences within the meaning of Article 87(2)(b) of the Treaty.
- (44) In paragraph (35) of its Communication of 10 October 2001, the Commission explained the conditions that it deemed to be necessary for compensation related to those events to comply with the conditions of Article 87(2)(b):

'The Commission considers that the costs arising directly from the closure of American airspace between 11 and 14 September 2001 are a direct consequence of the events of 11 September 2001. They may therefore give rise to compensation by Member States in accordance with Article 87(2)(b) of the Treaty on the following conditions:

- compensation is paid in a non-discriminatory manner to all airlines in a given Member State;

- it concerns only the costs incurred during the days 11 to 14 September 2001 following the grounding of air traffic decided by the American authorities;

- the amount of compensation is calculated accurately and objectively by comparing the traffic recorded by each airline during the 4 days in question with that recorded by the same airline in the preceding week, adjusted to take account of the development in the corresponding period of 2000. The maximum amount of compensation, which must take account in particular both of the actual costs incurred and those avoided, is equal to the loss of revenue duly recorded during these 4 days. It must of course be less than four 365ths of the airline's turnover.'

Compatibility under Article 87(2)(b) of the Treaty

- (45) The Commission notes that, even though only three air carriers formally applied for compensation for the costs incurred, all air carriers holding a public transport licence issued by the Member State in question are eligible under this scheme. The exclusion of one of them, Axon Airlines, because it had ceased operating when the letters notifying this scheme were sent out to the air carriers and, *a fortiori*, when the aid was paid, does not make the scheme discriminatory. The measure is therefore clearly non-discriminatory. However, the Commission notes that in their reply the Greek authorities limited themselves to providing information on costs incurred and compensation received by OA, without offering any information on AC.

Olympic Airways

- (46) The compensation described above relates mainly to the period from 11 to 14 September 2001, specified in the Commission's Communication of 10 October 2001 and taken into account in its previous decisions in this area⁽⁸⁾; however, the compensation also refers to the day of 15 September 2001 and even beyond.

The period from 11 to 14 September 2001:

- (47) In its Communication of 10 October 2001, the Commission approved the principle of compensation for direct repercussions of the closure of airspace decided by the American authorities. The practical details for applying the Commission's Communication were laid down in the Commission's letter to the Member States of 14 November 2001; the letter referred in particular to the direct relationship that has to be established between 'the grounding of all traffic on American territory and the disruptions caused in the

⁽⁸⁾ See footnotes 9 and 10.

European sky'; in this respect, the measure, as described by the Greek authorities in their response to the initiation of the procedure, provides for limited compensation for routes or networks affected by the closure of airspace such as the airspace of North America (United States and Canada) and that of Israel. This principle was applied in previous decisions⁽⁹⁾ adopted by the Commission in this respect.

(48) Therefore, with regard to the period from 11 to 14 September 2001 and the losses sustained in that period, which were directly related to the closure of airspace, the measure complies with the limitations specified by the Commission and especially with the requirement that the cost eligible for compensation be directly related to the closure of airspace.

(49) The method of calculating the operating losses eligible for compensation is based on the method that was laid down in the Commission's Communication and whose technical calculation rules were specified in the Commission's letter to the Member States of 14 November 2001; the loss of revenue sustained during the 4 days taken into account was determined on the basis of the passenger bookings on the cancelled flights. As regards the unit value of the loss suffered per passenger, in their reply the Greek authorities indicated that it represented the effective loss sustained by OA, amounting to GRD 654 650 000 (about EUR 1 921 203).

The additional costs eligible for compensation and relating to the extended grounding of an aircraft in Canada during the period in question, amounting to GRD 12 967 457 (about EUR 38 056) and the cost of returning to Athens a flight initially bound for the United States (on 11 September 2001), generating an additional cost of GRD 1 165 600 (EUR 3 421), were calculated using the same approach.

The ceiling of 4/365 of turnover applied by the Member State is in line with that specified by the Commission.

The Commission considers therefore that this calculation is within the maximum limit equal to the net loss of revenues recorded during those 4 days, as specified in its Communication.

(50) Consequently, the Commission comes to the conclusion that the measures introduced by Greece in favour of OA due to the closure of airspace from 11 to 14 September 2001, amounting to GRD 668 783 057 (about EUR

1 962 680), comply with the rules laid down in its Communication of 10 October 2001; they are therefore assessed as compatible with the EC Treaty within the meaning of Article 87(2)(b).

The period after 14 September 2001:

(51) Although the Commission, in paragraph (35) of its Communication of 10 October 2001, acknowledged the closure of airspace in the United States as an 'exceptional occurrence' and compensation for losses arising from that closure as compatible, it did not agree to give similar consideration to other losses indirectly related to the closure. This is especially the case with losses sustained by air carriers after the reopening of airspace on 15 September 2001.

(52) The Commission explained in its Communication of 10 October 2001 that losses eligible for compensation must be 'incurred ... following the grounding of air traffic decided ...'.

(53) The Commission notes at the same time that after 14 September 2001 the situation was not one in which air traffic was grounded but one in which the air carriers concerned faced constraints in operating their air routes.

(54) This is the case with the measures introduced by Greece in favour of OA and concerning mainly three transatlantic round-trip flights (one to the United States and two to Canada) that did not take place on 15 and 16 September 2001, representing a loss to OA of GRD 333 000 000 (about EUR 977 257).

(55) As regards the lack of landing slots in New York, Greece confirmed that JFK Airport was completely reopened on 14 September 2001 at 23:00, Athens time, and that only the strong demand for landing slots prevented OA from obtaining one. The Commission has not received any other information concerning the reasons for failing to obtain a landing slot while other companies were able to do so. In any event, the general impossibility of flying to the United States did not apply any longer.

(56) At the same time, the cancellation of the flights to Canada on 15 and 16 September 2001 was the result of choices made by OA, either because the company did not have any other long-haul aircraft available and preferred to operate other scheduled flights or because OA could not complete the technical checks and the acquisition of landing slots in due time and therefore had to cancel the flights.

⁽⁹⁾ See the similar decisions concerning France (N 806/2001 of 30 January 2002), United Kingdom (N 854/2001 of 12 March 2002) and Germany (N 269/2002 of 2 July 2002), which can be consulted at: http://europa.eu.int/comm/secretariat_general/sgb/state_aids/transport.htm

(57) As regards the ferry flights carried out by OA to the United States on 18 September 2001 and to Canada on 20 and 26 September 2001, costing GRD 166 051 680 (about EUR 487 312), the Greek authorities themselves indicated that the flights were carried out due to the pressure exercised by the United States and Canada on OA to return passengers from Athens to North America. This was therefore OA's decision, relating to flights carried out much later than the airspace closure period. This action automatically excludes any financing from a Member State. If the flights were really commissioned by third countries, it is for OA to obtain a refund from them, if the company considers that it can achieve this.

(58) As it has consistently stated in other decisions⁽¹⁰⁾, the Commission cannot regard the indirect repercussions of the attacks of 11 September 2001, such as the difficulties encountered in operating air routes from 15 September 2001 onwards, in the same way as the direct repercussions, namely the complete closure of certain areas of the airspace until 14 September 2001 and the impossibility of operating the air routes using those areas. The indirect consequences of the attacks have affected many sectors of the global economy for a long time, some for longer than others, but by comparison with other economic or political crises these difficulties, damaging as they are, do not constitute exceptional occurrences and therefore cannot allow the application of Article 87(2)(b) of the Treaty.

(59) The Commission therefore concludes that the scheme does not comply with the Treaty as regards the part relating to dates after 14 September 2001, especially the costs presented by Greece for OA for the period after 14 September 2001 and amounting to GRD 499 051 680 (about EUR 1 464 569), not only because the period specified in paragraph (35) of the Communication of 10 October 2001 was exceeded, but also and especially because of the absence of an exceptional occurrence and the change in the nature of the loss eligible for compensation caused by exceeding the period. This operating aid cannot be authorised under other Treaty provisions. The aid for the period after 14 September 2001 is therefore incompatible with the Treaty. The Commission notes in this respect that the total amount presented by the Greek authorities in their reply of 3 December 2003 is different from and less than that notified initially and probably paid. Therefore, any aid granted to OA in excess of the above-mentioned amount of GRD 668 783 057 (about EUR 1 962 680) is incompatible with the Treaty and must be recovered.

(60) In support of their notification, the Greek authorities cite the conclusions of the Transport Council of 16 October 2001, but the Commission notes that these are only political guidelines and are not legally binding when assessing the compatibility of aid with the Treaty. Furthermore, even though in paragraph (7) of these conclusions the Council called on the Commission, for the period after 14 September 2001, to examine 'on a case-by-case basis the compensation which could be granted on the basis of objective criteria to make up for restrictions imposed to European airlines by the country of destination', it also indicated that 'any aid or compensation may not lead to distortion of competition between operators'. In the context of assessing the equal treatment of operators, which it has to ensure, the Commission notes that no other proposal concerning the days following 14 September 2001 has been accepted for air carriers in other Member States.

Aegean Cronus

(61) As regards AC, the Commission notes that Greece has never tried to provide even the slightest information justifying the payment. The Commission therefore has not received, despite its requests, any information enabling it to confirm the compatibility of this aid with the Treaty. Moreover, the Commission notes that in their notification the Greek authorities indicated that the company did not operate transatlantic flights; the Commission therefore finds it unlikely that the above-mentioned necessary direct relationship between the cost eligible for compensation and the closure of airspace, provided for in the Communication of 10 October 2001, can be substantiated in the case of AC. The Commission therefore comes to the conclusion that this aid is incompatible with the Treaty and requests its repayment.

6. CONCLUSIONS

(62) In consequence of the above, the Commission finds that Greece has illegally implemented the aid scheme in question in breach of Article 88(3) and concludes that the measure is partially incompatible with the Treaty, particularly with Article 87(2)(b), as interpreted in the Communication of 10 October 2001,

HAS ADOPTED THIS DECISION:

Article 1

The state aid implemented by Greece in favour of Olympic Airways for losses sustained by this air carrier due to the partial closure of airspace after the attacks of 11 September 2001 is compatible with the common market as regards the compensation paid for the days from 11 to 14 September 2001, up to the maximum amount of GRD 668 783 057 (about EUR 1 962 680).

⁽¹⁰⁾ See the Commission's negative decision 2003/196/EC of 11 December 2002 on state aid C 42/02 (ex N 286/02) planned by France in favour of French air carriers and extending beyond 14 September 2001 the compensation initially approved by decision N 806/2001 (OJ L 77, 24.3.2003, p. 61). See also the partially negative decision 2003/637/EC of 31 April 2003 on state aid C 65/02 (ex N 262/02) planned by Austria in favour of Austrian air carriers (OJ L 222, 5.9.2003, p. 33).

Article 2

The state aid implemented by Greece in favour of Olympic Airways for losses sustained by this air carrier due to the partial closure of airspace after the attacks of 11 September 2001 is incompatible with the common market as regards the compensation paid for the period following 14 September 2001. According to the notification submitted by Greece, this compensation amounts to GRD 976 216 943 (about EUR 2 864 907).

Article 3

The state aid implemented by Greece in favour of Aegean Cronus for losses sustained by this air carrier due to the partial closure of airspace after the attacks of 11 September 2001 is incompatible with the common market. According to the notification submitted by Greece, this compensation amounts to GRD 47 900 000 (about EUR 140 572).

Article 4

1. Greece shall take all necessary measures to recover from the beneficiaries the aid referred to in Articles 2 and 3, which was unlawfully made available to them.

2. Recovery shall be effected without delay and in accordance with the procedures of national law provided that they allow the immediate and effective execution of the decision. The aid to be recovered shall include interest from the date on which it was at the disposal of the beneficiaries until the date of its recovery. Interest shall be calculated on the basis of the reference rate used for calculating the grant equivalent of regional aid.

Article 5

Within 2 months of the date on which this Decision is notified, Greece shall inform the Commission of the measures taken to comply with it.

Article 6

This Decision is addressed to the Hellenic Republic.

Done at Brussels, 26 April 2006.

For the Commission

Jacques BARROT

Vice-President

2010/767/EU:

★ **Commission Decision of 9 December 2010 amending Decision C(2007) 2286 on the adoption of ERC Rules for the submission of proposals and the related evaluation, selection and award procedures for indirect actions under the Ideas Specific Programme of the Seventh Framework Programme (2007 to 2013) ⁽¹⁾** 51

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2010/768/EC:

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⁽¹⁾ Text with EEA relevance

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