

Official Journal

of the European Union

L 326



English edition

Legislation

Volume 54

8 December 2011

Contents

I *Legislative acts*

REGULATIONS

- ★ **Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency ⁽¹⁾ 1**
- ★ **Regulation (EU) No 1228/2011 of the European Parliament and of the Council of 16 November 2011 repealing Regulation (EEC) No 429/73 of the Council making special provisions for imports into the Community of certain goods coming under Regulation (EEC) No 1059/69 and originating in Turkey 17**
- ★ **Regulation (EU) No 1229/2011 of the European Parliament and of the Council of 16 November 2011 repealing certain obsolete Council acts in the field of the common agricultural policy 18**
- ★ **Regulation (EU) No 1230/2011 of the European Parliament and of the Council of 16 November 2011 on repealing certain obsolete Council acts in the field of common commercial policy 21**
- ★ **Regulation (EU) No 1231/2011 of the European Parliament and of the Council of 16 November 2011 amending Council Regulation (EC) No 378/2007 as regards the rules for the implementation of voluntary modulation of direct payments under the common agricultural policy ... 24**
- ★ **Regulation (EU) No 1232/2011 of the European Parliament and of the Council of 16 November 2011 amending Council Regulation (EC) No 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items 26**

Price: EUR 7

(Continued overleaf)

⁽¹⁾ Text with EEA relevance

EN

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

The titles of all other acts are printed in bold type and preceded by an asterisk.

★ Regulation (EU) No 1233/2011 of the European Parliament and of the Council of 16 November 2011 on the application of certain guidelines in the field of officially supported export credits and repealing Council Decisions 2001/76/EC and 2001/77/EC 45

DIRECTIVES

★ Directive 2011/89/EU of the European Parliament and of the Council of 16 November 2011 amending Directives 98/78/EC, 2002/87/EC, 2006/48/EC and 2009/138/EC as regards the supplementary supervision of financial entities in a financial conglomerate ⁽¹⁾ 113



⁽¹⁾ Text with EEA relevance

I

(Legislative acts)

REGULATIONS

REGULATION (EU) No 1227/2011 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**of 25 October 2011****on wholesale energy market integrity and transparency****(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on Functioning of European Union, and in particular Article 194(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

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

After consulting the Committee of the Regions of the European Union,

Acting in accordance with the ordinary legislative procedure ⁽²⁾,

Whereas:

(1) It is important to ensure that consumers and other market participants can have confidence in the integrity of electricity and gas markets, that prices set on wholesale energy markets reflect a fair and competitive interplay between supply and demand, and that no profits can be drawn from market abuse.

(2) The goal of increased integrity and transparency of wholesale energy markets should be to foster open and fair competition in wholesale energy markets for the benefit of final consumers of energy.

(3) The advice of the Committee of European Securities Regulators and the European Regulators Group for Electricity and Gas confirmed that the scope of existing legislation might not properly address market integrity issues on the electricity and gas markets and recommended the consideration of an appropriate legislative framework tailored to the energy sector which prevents market abuse and takes sector-specific conditions into account which are not covered by other directives and regulations.

(4) Wholesale energy markets are increasingly interlinked across the Union. Market abuse in one Member State often affects not only wholesale prices for electricity and natural gas across national borders, but also retail prices to consumers and micro-enterprises. Therefore the concern to ensure the integrity of markets cannot be a matter only for individual Member States. Strong cross-border market monitoring is essential for the completion of a fully functioning, interconnected and integrated internal energy market.

(5) Wholesale energy markets encompass both commodity markets and derivative markets, which are of vital importance to the energy and financial markets, and price formation in both sectors is interlinked. They include, inter alia, regulated markets, multilateral trading facilities and over-the-counter (OTC) transactions and bilateral contracts, direct or through brokers.

(6) To date, energy market monitoring practices have been Member State and sector-specific. Depending on the overall market framework and regulatory situation, this can result in trading activities being subject to multiple jurisdictions with monitoring carried out by several different authorities, possibly located in different Member States. This can result in a lack of clarity as to where responsibility rests and even to a situation where no such monitoring exists.

⁽¹⁾ OJ C 132, 3.5.2011, p. 108.

⁽²⁾ Position of the European Parliament of 14 September 2011 (not yet published in the Official Journal) and Decision of the Council of 10 October 2011.

- (7) Behaviour which undermines the integrity of the energy market is currently not clearly prohibited on some of the most important energy markets. In order to protect final consumers and guarantee affordable energy prices for European citizens, it is essential to prohibit such behaviour.
- (8) Derivative trading, which may be either physically or financially settled, and commodity trading are used together on wholesale energy markets. It is therefore important that the definitions of insider trading and market manipulation, which constitute market abuse, be compatible between derivatives and commodity markets. This Regulation should in principle apply to all transactions concluded but at the same time should take into account the specific characteristics of the wholesale energy markets.
- (9) Retail contracts which cover the supply of electricity or natural gas to final customers are not susceptible to market manipulation in the same way as wholesale contracts which are easily bought and sold. None the less, the consumption decisions of the largest energy users can also affect prices on wholesale energy markets, with effects across national borders. Therefore it is appropriate to consider the supply contracts of such large users in the context of ensuring the integrity of wholesale energy markets.
- (10) Taking account of the results of the examination set out in the Commission Communication of 21 December 2010 entitled 'Towards an enhanced market oversight framework for the EU Emissions Trading Scheme', the Commission should consider bringing forward a legislative proposal to tackle the identified shortcomings in the transparency, integrity and supervision of the European carbon market in an appropriate time-frame.
- (11) Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity⁽¹⁾ and Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks⁽²⁾ recognise that equal access to information on the physical status and efficiency of the system is necessary to enable all market participants to assess the overall demand and supply situation and identify the reasons for fluctuations in the wholesale price.
- (12) The use or attempted use of inside information to trade either on one's own account or on the account of a third party should be clearly prohibited. Use of inside information can also consist in trading in wholesale energy products by persons who know, or ought to know, that the information they possess is inside information. Information regarding the market participant's own plans and strategies for trading should not be considered as inside information. Information which is required to be made public in accordance with Regulation (EC) No 714/2009 or (EC) No 715/2009, including guidelines and network codes adopted pursuant to those Regulations, may serve, if it is price-sensitive information, as the basis of market participants' decisions to enter into transactions in wholesale energy products and therefore could constitute inside information until it has been made public.
- (13) Manipulation on wholesale energy markets involves actions undertaken by persons that artificially cause prices to be at a level not justified by market forces of supply and demand, including actual availability of production, storage or transportation capacity, and demand. Forms of market manipulation include placing and withdrawal of false orders; spreading of false or misleading information or rumours through the media, including the internet, or by any other means; deliberately providing false information to undertakings which provide price assessments or market reports with the effect of misleading market participants acting on the basis of those price assessments or market reports; and deliberately making it appear that the availability of electricity generation capacity or natural gas availability, or the availability of transmission capacity is other than the capacity which is actually technically available where such information affects or is likely to affect the price of wholesale energy products. Manipulation and its effects may occur across borders, between electricity and gas markets and across financial and commodity markets, including the emission allowances markets.
- (14) Examples of market manipulation and attempts to manipulate the market include conduct by a person, or persons acting in collaboration, to secure a decisive position over the supply of, or demand for, a wholesale energy product which has, or could have, the effect of fixing, directly or indirectly, prices or creating other unfair trading conditions; and the offering, buying or selling of wholesale energy products with the purpose, intention or effect of misleading market participants acting on the basis of reference prices. However, accepted market practices such as those applying in the financial services area, which are currently defined by Article 1(5) 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)⁽³⁾ and which may be adapted if that Directive is amended, could be a legitimate way for market participants to secure a favourable price for a wholesale energy product.

⁽¹⁾ OJ L 211, 14.8.2009, p. 15.

⁽²⁾ OJ L 211, 14.8.2009, p. 36.

⁽³⁾ OJ L 96, 12.4.2003, p. 16.

- (15) The disclosure of inside information in relation to a wholesale energy product by journalists acting in their professional capacity should be assessed taking into account the rules governing their profession and the rules governing the freedom of the press, unless those persons derive, directly or indirectly, an advantage or profits from the dissemination of the information in question or when disclosure is made with the intention of misleading the market as to the supply of, demand for, or price of wholesale energy products.
- (16) As financial markets develop, the concepts of market abuse applying to those markets will be adapted. In order to ensure the necessary flexibility to respond quickly to these developments therefore, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of technical updating of the definitions of inside information and market manipulation for the purpose of ensuring coherence with other relevant Union legislation in the fields of financial services and energy. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission should, when preparing and drawing up delegated acts, ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and the Council.
- (17) Efficient market monitoring at Union level is vital for detecting and deterring market abuse on wholesale energy markets. The Agency for the Cooperation of Energy Regulators established by Regulation (EC) No 713/2009 of the European Parliament and of the Council⁽¹⁾ ('the Agency') is best placed to carry out such monitoring as it has both a Union-wide view of electricity and gas markets, and the necessary expertise in the operation of electricity and gas markets and systems in the Union. National regulatory authorities, which have a comprehensive understanding of developments on energy markets in their Member State, should have an important role in ensuring efficient market monitoring at national level. Close cooperation and coordination between the Agency and national authorities is therefore necessary to ensure proper monitoring and transparency of energy markets. The collection of data by the Agency is without prejudice to the right of national authorities to collect additional data for national purposes.
- (18) Efficient market monitoring requires regular and timely access to records of transactions as well as access to structural data on capacity and use of facilities for production, storage, consumption or transmission of electricity or natural gas. For this reason market participants, including transmission system operators, suppliers, traders, producers, brokers and large users, who trade wholesale energy products should be required to provide that information to the Agency. The Agency may for its part establish strong links with major organised market places.
- (19) In order to ensure uniform conditions for the implementation of the provisions on data collection, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers⁽²⁾. Reporting obligations should be kept to a minimum and not create unnecessary costs or administrative burdens for market participants. The uniform rules on the reporting of information should therefore undergo an *ex-ante* cost-benefit analysis, should avoid double reporting, and should take account of reporting frameworks developed under other relevant legislation. Furthermore, the required information or parts thereof should be collected from other persons and existing sources where possible. Where a market participant or a third party acting on its behalf, a trade reporting system, an organised market, a trade-matching system, or other person professionally arranging transactions has fulfilled its reporting obligations to a competent authority in accordance with Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments⁽³⁾ or applicable Union legislation on derivative transactions, central counterparties and trade repositories, its reporting obligation should be considered fulfilled also under this Regulation, but only to the extent that all the information required under this Regulation has been reported.
- (20) It is important that the Commission and the Agency work closely together in implementing this Regulation and consult appropriately with the European Networks of Transmission System Operators for Electricity and for Gas and the European Securities and Markets Authority established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council⁽⁴⁾ (ESMA), with national regulatory authorities, competent financial authorities and other Member State authorities such as national competition authorities, and with stakeholders such as organised market places (e.g. energy exchanges) and market participants.

⁽¹⁾ OJ L 211, 14.8.2009, p. 1.

⁽²⁾ OJ L 55, 28.2.2011, p. 13.

⁽³⁾ OJ L 145, 30.4.2004, p. 1.

⁽⁴⁾ OJ L 331, 15.12.2010, p. 84.

- (21) A European register of market participants, based on national registers, should be established to enhance the overall transparency and integrity of wholesale energy markets. One year after the establishment of that register, the Commission should assess in cooperation with the Agency, in line with the reports submitted by the Agency to the Commission, and with the national regulatory authorities, the functioning and the usefulness of the European register of market participants. If deemed appropriate based on that assessment, the Commission should consider presenting further instruments to enhance the overall transparency and integrity of wholesale energy markets and to ensure a Union-wide level playing field for market participants.
- (22) In order to facilitate efficient monitoring of all aspects of trading in wholesale energy products, the Agency should establish mechanisms to give access to the information which it receives on transactions on wholesale energy markets to other relevant authorities, in particular to ESMA, national regulatory authorities, competent financial authorities of the Member States, national competition authorities, and other relevant authorities.
- (23) The Agency should ensure the operational security and protection of the data which it receives, prevent unauthorised access to the information kept by the Agency, and establish procedures to ensure that the data it collects are not misused by persons with an authorised access to them. The Agency should also ascertain whether those authorities which have access to the data held by the Agency are able to maintain an equally high level of security and are bound by appropriate confidentiality arrangements. The operational security of the IT systems used for processing and transmitting the data therefore also needs to be ensured. For setting up an IT system that ensures the highest possible level of data confidentiality, the Agency should be encouraged to work closely with the European Network and Information Security Agency (ENISA). These rules should also apply to other authorities that are entitled to access to the data for the purpose of this Regulation.
- (24) This Regulation respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union as referred to in Article 6 of the Treaty on European Union and the constitutional traditions in the Member States and should be applied in accordance with the right to freedom of expression and information recognised in Article 11 of the Charter.
- (25) Where information is not, or no longer, sensitive from a commercial or security viewpoint, the Agency should be able to make that information available to market participants and the wider public with a view to contributing to enhanced market knowledge. Such transparency will help build confidence in the market and foster the development of knowledge about the functioning of wholesale energy markets. The Agency should establish and make publicly available rules on how it will make that information available in a fair and transparent manner.
- (26) National regulatory authorities should be responsible for ensuring that this Regulation is enforced in the Member States. To this end they should have the necessary investigatory powers to allow them to carry out that task efficiently. These powers should be exercised in conformity with national law and may be subject to appropriate oversight.
- (27) The Agency should ensure that this Regulation is applied in a coordinated way across the Union, coherent with the application of Directive 2003/6/EC. To that effect, the Agency should publish non-binding guidance on the application of the definitions set out in this Regulation, as appropriate. That guidance should address, inter alia, the issue of accepted market practices. Furthermore, since market abuse on wholesale energy markets often affects more than one Member State, the Agency should have an important role in ensuring that investigations are carried out in an efficient and coherent way. To achieve this, the Agency should be able to request cooperation and to coordinate the operation of investigatory groups comprised of representatives of the concerned national regulatory authorities and, where appropriate, other authorities including national competition authorities.
- (28) The Agency should be provided with the appropriate financial and human resources, in order to adequately fulfil the additional tasks assigned to it under this Regulation. For this purpose, the procedure for the establishment, implementation and control of its budget as set out in Articles 23 and 24 of Regulation (EC) No 713/2009 should take due account of these tasks. The budgetary authority should ensure that the best standards of efficiency are met.
- (29) National regulatory authorities, competent financial authorities of the Member States and, where appropriate, national competition authorities should cooperate to ensure a coordinated approach to tackling market abuse on wholesale energy markets which encompasses both commodity markets and derivatives markets. That cooperation should include the mutual exchange of information regarding suspicions that acts which are likely to constitute a breach of this Regulation, Directive 2003/6/EC, or competition law are being or have been carried out on wholesale energy markets. Furthermore, that cooperation should contribute to a coherent and consistent approach to investigations and judicial proceedings.

(30) It is important that the obligation of professional secrecy applies to those who receive confidential information in accordance with this Regulation. The Agency, national regulatory authorities, competent financial authorities of the Member States and national competition authorities should ensure the confidentiality, integrity and protection of the information which they receive.

(31) It is important that the penalties for breaches of this Regulation are proportionate, effective and dissuasive, and reflect the gravity of the infringements, the damage caused to consumers and the potential gains from trading on the basis of inside information and market manipulation. The application of these penalties should be carried out in accordance with national law. Recognising the interactions between trading in electricity and natural gas derivative products and trading in actual electricity and natural gas, the penalties for breaches of this Regulation should be in line with the penalties adopted by the Member States in implementing Directive 2003/6/EC. Taking account of the consultation on the Commission Communication of 12 December 2010 entitled 'Reinforcing sanctioning regimes in the financial services sector', the Commission should consider presenting proposals to harmonise minimum standards for the penalties systems of Member States in an appropriate time-frame. This Regulation affects neither national rules on the standard of proof nor obligations of national regulatory authorities and courts of the Member States to ascertain the relevant facts of a case, provided that such rules and obligations are compatible with general principles of Union law.

(32) Since the objective of this Regulation, namely the provision of a harmonised framework to ensure wholesale energy market transparency and integrity, cannot be sufficiently achieved by the Member States and can therefore 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 Regulation does not go beyond what is necessary in order to achieve that objective,

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter, scope and relationship with other Union legislation

1. This Regulation establishes rules prohibiting abusive practices affecting wholesale energy markets which are coherent with the rules applicable in financial markets and with the proper functioning of those wholesale energy markets whilst taking into account their specific characteristics. It provides for the monitoring of wholesale energy markets by the Agency for the Cooperation of Energy Regulators ('the Agency') in close collaboration with national regulatory authorities and taking into account the interactions between the Emissions Trading Scheme and wholesale energy markets.

2. This Regulation applies to trading in wholesale energy products. Articles 3 and 5 of this Regulation shall not apply to wholesale energy products which are financial instruments and to which Article 9 of Directive 2003/6/EC applies. This Regulation is without prejudice to Directives 2003/6/EC and 2004/39/EC as well as to the application of European competition law to the practices covered by this Regulation.

3. The Agency, national regulatory authorities, ESMA, competent financial authorities of the Member States and, where appropriate, national competition authorities shall cooperate to ensure that a coordinated approach is taken to the enforcement of the relevant rules where actions relate to one or more financial instruments to which Article 9 of Directive 2003/6/EC applies and also to one or more wholesale energy products to which Articles 3, 4 and 5 of this Regulation apply.

4. The Agency's Administrative Board shall ensure that the Agency carries out the tasks assigned to it under this Regulation in accordance with this Regulation and Regulation (EC) No 713/2009.

5. The Director of the Agency shall consult the Agency's Board of Regulators on all aspects of implementation of this Regulation and give due consideration to its advice and opinions.

Article 2

Definitions

For the purposes of this Regulation the following definitions shall apply:

- (1) 'inside information' means information of a precise nature which has not been made public, which relates, directly or indirectly, to one or more wholesale energy products and which, if it were made public, would be likely to significantly affect the prices of those wholesale energy products.

For the purposes of this definition, 'information' means:

- (a) information which is required to be made public in accordance with Regulations (EC) No 714/2009 and (EC) No 715/2009, including guidelines and network codes adopted pursuant to those Regulations;
- (b) information relating to the capacity and use of facilities for production, storage, consumption or transmission of electricity or natural gas or related to the capacity and use of LNG facilities, including planned or unplanned unavailability of these facilities;

- (c) information which is required to be disclosed in accordance with legal or regulatory provisions at Union or national level, market rules, and contracts or customs on the relevant wholesale energy market, in so far as this information is likely to have a significant effect on the prices of wholesale energy products; and
- (d) other information that a reasonable market participant would be likely to use as part of the basis of its decision to enter into a transaction relating to, or to issue an order to trade in, a wholesale energy product.

Information shall be deemed to be of a precise nature if it indicates a set of circumstances which exists or may reasonably be expected to come into existence, or an event which has occurred or may reasonably be expected to do so, and if it is specific enough to enable a conclusion to be drawn as to the possible effect of that set of circumstances or event on the prices of wholesale energy products;

(2) 'market manipulation' means:

- (a) entering into any transaction or issuing any order to trade in wholesale energy products which:
 - (i) gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of wholesale energy products;
 - (ii) secures or attempts to secure, by a person, or persons acting in collaboration, the price of one or several wholesale energy products at an artificial level, unless the person who entered into the transaction or issued the order to trade establishes that his reasons for doing so are legitimate and that that transaction or order to trade conforms to accepted market practices on the wholesale energy market concerned; or
 - (iii) employs or attempts to employ a fictitious device or any other form of deception or contrivance which gives, or is likely to give, false or misleading signals regarding the supply of, demand for, or price of wholesale energy products;

or

- (b) disseminating information through the media, including the internet, or by any other means, which gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of wholesale energy products, including the dissemination of rumours and false or misleading news, where the disseminating person knew, or ought to have known, that the information was false or misleading.

When information is disseminated for the purposes of journalism or artistic expression, such dissemination of information shall be assessed taking into account the rules governing the freedom of the press and freedom of expression in other media, unless:

- (i) those persons derive, directly or indirectly, an advantage or profits from the dissemination of the information in question; or
- (ii) the disclosure or dissemination is made with the intention of misleading the market as to the supply of, demand for, or price of wholesale energy products;

(3) 'attempt to manipulate the market' means:

- (a) entering into any transaction, issuing any order to trade or taking any other action relating to a wholesale energy product with the intention of:
 - (i) giving false or misleading signals as to the supply of, demand for, or price of wholesale energy products;
 - (ii) securing the price of one or several wholesale energy products at an artificial level, unless the person who entered into the transaction or issued the order to trade establishes that his reasons for doing so are legitimate and that that transaction or order to trade conforms to accepted market practices on the wholesale energy market concerned; or
 - (iii) employing a fictitious device or any other form of deception or contrivance which gives, or is likely to give, false or misleading signals regarding the supply of, demand for, or price of wholesale energy products;

or

- (b) disseminating information through the media, including the internet, or by any other means with the intention of giving false or misleading signals as to the supply of, demand for, or price of wholesale energy products;

(4) 'wholesale energy products' means the following contracts and derivatives, irrespective of where and how they are traded:

- (a) contracts for the supply of electricity or natural gas where delivery is in the Union;

- (b) derivatives relating to electricity or natural gas produced, traded or delivered in the Union;
- (c) contracts relating to the transportation of electricity or natural gas in the Union;
- (d) derivatives relating to the transportation of electricity or natural gas in the Union.

Contracts for the supply and distribution of electricity or natural gas for the use of final customers are not wholesale energy products. However, contracts for the supply and distribution of electricity or natural gas to final customers with a consumption capacity greater than the threshold set out in the second paragraph of point (5) shall be treated as wholesale energy products;

- (5) 'consumption capacity' means the consumption of a final customer of either electricity or natural gas at full use of that customer's production capacity. It comprises all consumption by that customer as a single economic entity, in so far as consumption takes place on markets with interrelated wholesale prices.

For the purposes of this definition, consumption at individual plants under the control of a single economic entity that have a consumption capacity of less than 600 GWh per year shall not be taken into account in so far as those plants do not exert a joint influence on wholesale energy market prices due to their being located in different relevant geographical markets;

- (6) 'wholesale energy market' means any market within the Union on which wholesale energy products are traded;
- (7) 'market participant' means any person, including transmission system operators, who enters into transactions, including the placing of orders to trade, in one or more wholesale energy markets;
- (8) 'person' means any natural or legal person;
- (9) 'competent financial authority' means a competent authority designated in accordance with the procedure laid down in Article 11 of Directive 2003/6/EC;
- (10) 'national regulatory authority' means a national regulatory authority designated in accordance with Article 35(1) of Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity⁽¹⁾ or Article 39(1) of Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas⁽²⁾;
- (11) 'transmission system operator' has the meaning set out in point 4 of Article 2 of Directive 2009/72/EC and in point 4 of Article 2 of Directive 2009/73/EC;

- (12) 'parent undertaking' means a parent undertaking within the meaning of Articles 1 and 2 of the Seventh Council Directive 83/349/EEC of 13 June 1983 based on Article 54(3)(g) of the Treaty on consolidated accounts⁽³⁾;

- (13) 'related undertaking' means either a subsidiary or other undertaking in which a participation is held, or an undertaking linked with another undertaking by a relationship within the meaning of Article 12(1) of Directive 83/349/EEC;

- (14) 'distribution of natural gas' has the meaning set out in point (5) of Article 2 of Directive 2009/73/EC;

- (15) 'distribution of electricity' has the meaning set out in point (5) of Article 2 of Directive 2009/72/EC.

Article 3

Prohibition of insider trading

1. Persons who possess inside information in relation to a wholesale energy product shall be prohibited from:

- (a) using that information by acquiring or disposing of, or by trying to acquire or dispose of, for their own account or for the account of a third party, either directly or indirectly, wholesale energy products to which that information relates;
- (b) disclosing that information to any other person unless such disclosure is made in the normal course of the exercise of their employment, profession or duties;
- (c) recommending or inducing another person, on the basis of inside information, to acquire or dispose of wholesale energy products to which that information relates.

2. The prohibition set out in paragraph 1 applies to the following persons who possess inside information in relation to a wholesale energy product:

- (a) members of the administrative, management or supervisory bodies of an undertaking;
- (b) persons with holdings in the capital of an undertaking;
- (c) persons with access to the information through the exercise of their employment, profession or duties;
- (d) persons who have acquired such information through criminal activity;
- (e) persons who know, or ought to know, that it is inside information.

⁽¹⁾ OJ L 211, 14.8.2009, p. 55.

⁽²⁾ OJ L 211, 14.8.2009, p. 94.

⁽³⁾ OJ L 193, 18.7.1983, p. 1.

3. Points (a) and (c) of paragraph 1 of this Article shall not apply to transmission system operators when purchasing electricity or natural gas in order to ensure the safe and secure operation of the system in accordance with their obligations under points (d) and (e) of Article 12 of Directive 2009/72/EC or points (a) and (c) of Article 13(1) of Directive 2009/73/EC.

4. This Article shall not apply to:

(a) transactions conducted in the discharge of an obligation that has become due to acquire or dispose of wholesale energy products where that obligation results from an agreement concluded, or an order to trade placed, before the person concerned came into possession of inside information;

(b) transactions entered into by electricity and natural gas producers, operators of natural gas storage facilities or operators of LNG import facilities the sole purpose of which is to cover the immediate physical loss resulting from unplanned outages, where not to do so would result in the market participant not being able to meet existing contractual obligations or where such action is undertaken in agreement with the transmission system operator(s) concerned in order to ensure safe and secure operation of the system. In such a situation, the relevant information relating to the transactions shall be reported to the Agency and the national regulatory authority. This reporting obligation is without prejudice to the obligation set out in Article 4(1);

(c) market participants acting under national emergency rules, where national authorities have intervened in order to secure the supply of electricity or natural gas and market mechanisms have been suspended in a Member State or parts thereof. In this case the authority competent for emergency planning shall ensure publication in accordance with Article 4.

5. Where the person who possesses inside information in relation to a wholesale energy product is a legal person, the prohibitions laid down in paragraph 1 shall also apply to the natural persons who take part in the decision to carry out the transaction for the account of the legal person concerned.

6. When information is disseminated for the purposes of journalism or artistic expression such dissemination of information shall be assessed taking into account the rules governing the freedom of the press and freedom of expression in other media, unless:

(a) those persons derive, directly or indirectly, an advantage or profits from the dissemination of the information in question; or

(b) the disclosure or dissemination is made with the intention of misleading the market as to the supply of, demand for, or price of wholesale energy products.

Article 4

Obligation to publish inside information

1. Market participants shall publicly disclose in an effective and timely manner inside information which they possess in respect of business or facilities which the market participant concerned, or its parent undertaking or related undertaking, owns or controls or for whose operational matters that market participant or undertaking is responsible, either in whole or in part. Such disclosure shall include information relevant to the capacity and use of facilities for production, storage, consumption or transmission of electricity or natural gas or related to the capacity and use of LNG facilities, including planned or unplanned unavailability of these facilities.

2. A market participant may under its own responsibility exceptionally delay the public disclosure of inside information so as not to prejudice its legitimate interests provided that such omission is not likely to mislead the public and provided that the market participant is able to ensure the confidentiality of that information and does not make decisions relating to trading in wholesale energy products based upon that information. In such a situation the market participant shall without delay provide that information, together with a justification for the delay of the public disclosure, to the Agency and the relevant national regulatory authority having regard to Article 8(5).

3. Whenever a market participant or a person employed by, or acting on behalf of, a market participant discloses inside information in relation to a wholesale energy product in the normal exercise of his employment, profession or duties as referred to in point (b) of Article 3(1), that market participant or person shall ensure simultaneous, complete and effective public disclosure of that information. In the event of a non-intentional disclosure the market participant shall ensure complete and effective public disclosure of the information as soon as possible following the non-intentional disclosure. This paragraph shall not apply if the person receiving the information has a duty of confidentiality, regardless of whether such duty derives from law, regulation, articles of association or a contract.

4. The publication of inside information, including in aggregated form, in accordance with Regulation (EC) No 714/2009 or (EC) No 715/2009, or guidelines and network codes adopted pursuant to those Regulations constitutes simultaneous, complete and effective public disclosure.

5. Where an exemption from the obligation to publish certain data has been granted to a transmission system operator, in accordance with Regulation (EC) No 714/2009 or (EC) No 715/2009, that operator is thereby also exempted from the obligation set out in paragraph 1 of this Article in respect of that data.

6. Paragraphs 1 and 2 are without prejudice to the obligations of market participants under Directives 2009/72/EC and 2009/73/EC, and Regulations (EC) No 714/2009 and (EC) No 715/2009, including guidelines and network codes adopted pursuant to those Directives and Regulations, in particular regarding the timing and method of publication of information.

7. Paragraphs 1 and 2 are without prejudice to the right of market participants to delay the disclosure of sensitive information relating to the protection of critical infrastructure as provided for in point (d) of Article 2 of Council Directive 2008/114/EC of 8 December 2008 on the identification and designation of European critical infrastructures and the assessment of the need to improve their protection⁽¹⁾, if it is classified in their country.

Article 5

Prohibition of market manipulation

Any engagement in, or attempt to engage in, market manipulation on wholesale energy markets shall be prohibited.

Article 6

Technical updating of definitions of inside information and market manipulation

1. The Commission shall be empowered to adopt delegated acts in accordance with Article 20 in order to:

(a) align the definitions set out in points (1), (2), (3) and (5) of Article 2 for the purpose of ensuring coherence with other relevant Union legislation in the fields of financial services and energy; and

(b) update those definitions for the sole purpose of taking into account future developments on wholesale energy markets.

2. The delegated acts referred to in paragraph 1 shall take into account at least:

(a) the specific functioning of wholesale energy markets, including the specificities of electricity and gas markets, and the interaction between commodity markets and derivative markets;

(b) the potential for manipulation across borders, between electricity and gas markets and across commodity markets and derivative markets;

(c) the potential impact on wholesale energy market prices of actual or planned production, consumption, use of transmission, or use of storage capacity; and

(d) network codes and framework guidelines adopted in accordance with Regulations (EC) No 714/2009 and (EC) No 715/2009.

Article 7

Market monitoring

1. The Agency shall monitor trading activity in wholesale energy products to detect and prevent trading based on inside information and market manipulation. It shall collect the data for assessing and monitoring wholesale energy markets as provided for in Article 8.

2. National regulatory authorities shall cooperate at regional level and with the Agency in carrying out the monitoring of wholesale energy markets referred to in paragraph 1. For this purpose national regulatory authorities shall have access to relevant information held by the Agency which it has collected in accordance with paragraph 1 of this Article, subject to Article 10(2). National regulatory authorities may also monitor trading activity in wholesale energy products at national level.

Member States may provide for their national competition authority or a market monitoring body established within that authority to carry out market monitoring with the national regulatory authority. In carrying out such market monitoring, the national competition authority or the market monitoring body shall have the same rights and obligations as the national regulatory authority pursuant to the first subparagraph of this paragraph, the second sentence of the second subparagraph of paragraph 3 of this Article, the second sentence of Article 4(2), the first sentence of Article 8(5), and Article 16.

3. The Agency shall at least on an annual basis submit a report to the Commission on its activities under this Regulation and make this report publicly available. In such reports the Agency shall assess the operation and transparency of different categories of market places and ways of trading and may make recommendations to the Commission as regards market rules, standards, and procedures which could improve market integrity and the functioning of the internal market. It may also evaluate whether any minimum requirements for organised markets could contribute to enhanced market transparency. Reports may be combined with the report referred to in Article 11(2) of Regulation (EC) No 713/2009.

The Agency may make recommendations to the Commission as to the records of transactions, including orders to trade, which it considers are necessary to effectively and efficiently monitor wholesale energy markets. Before making such recommendations, the Agency shall consult with interested parties, in particular with national regulatory authorities, competent financial authorities in the Member States, national competition authorities and ESMA.

All recommendations should be made available to the European Parliament, the Council and the Commission and to the public.

⁽¹⁾ OJ L 345, 23.12.2008, p. 75.

Article 8

Data collection

1. Market participants, or a person or authority listed in points (b) to (f) of paragraph 4 on their behalf, shall provide the Agency with a record of wholesale energy market transactions, including orders to trade. The information reported shall include the precise identification of the wholesale energy products bought and sold, the price and quantity agreed, the dates and times of execution, the parties to the transaction and the beneficiaries of the transaction and any other relevant information. While overall responsibility lies with market participants, once the required information is received from a person or authority listed in points (b) to (f) of paragraph 4, the reporting obligation on the market participant in question shall be considered to be fulfilled.

2. The Commission shall, by means of implementing acts:

- (a) draw up a list of the contracts and derivatives, including orders to trade, which are to be reported in accordance with paragraph 1 and appropriate *de minimis* thresholds for the reporting of transactions where appropriate;
- (b) adopt uniform rules on the reporting of information which is to be provided in accordance with paragraph 1;
- (c) lay down the timing and form in which that information is to be reported.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 21(2). They shall take account of existing reporting systems.

3. Persons referred to in points (a) to (d) of paragraph 4 who have reported transactions in accordance with Directive 2004/39/EC or applicable Union legislation on derivative transactions, central counterparties and trade repositories shall not be subject to double reporting obligations relating to those transactions.

Without prejudice to the first subparagraph of this paragraph, the implementing acts referred to in paragraph 2 may allow organised markets and trade matching or trade reporting systems to provide the Agency with records of wholesale energy transactions.

4. For the purposes of paragraph 1, information shall be provided by:

- (a) the market participant;
- (b) a third party acting on behalf of the market participant;
- (c) a trade reporting system;

(d) an organised market, a trade-matching system or other person professionally arranging transactions;

(e) a trade repository registered or recognised under applicable Union legislation on derivative transactions, central counterparties and trade repositories; or

(f) a competent authority which has received that information in accordance with Article 25(3) of Directive 2004/39/EC or ESMA when it has received that information in accordance with applicable Union legislation on derivative transactions, central counterparties and trade repositories.

5. Market participants shall provide the Agency and national regulatory authorities with information related to the capacity and use of facilities for production, storage, consumption or transmission of electricity or natural gas or related to the capacity and use of LNG facilities, including planned or unplanned unavailability of these facilities, for the purpose of monitoring trading in wholesale energy markets. The reporting obligations on market participants shall be minimised by collecting the required information or parts thereof from existing sources where possible.

6. The Commission shall, by means of implementing acts:

- (a) adopt uniform rules on the reporting of information to be provided in accordance with paragraph 5 and on appropriate thresholds for such reporting where appropriate;
- (b) lay down the timing and form in which that information is to be reported.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 21(2). They shall take account of existing reporting obligations under Regulations (EC) No 714/2009 and (EC) No 715/2009.

Article 9

Registration of market participants

1. Market participants entering into transactions which are required to be reported to the Agency in accordance with Article 8(1) shall register with the national regulatory authority in the Member State in which they are established or resident or, if they are not established or resident in the Union, in a Member State in which they are active.

A market participant shall register only with one national regulatory authority. Member States shall not require a market participant already registered in another Member State to register again.

The registration of market participants is without prejudice to obligations to comply with applicable trading and balancing rules.

2. Not later than 3 months after the date on which the Commission adopts the implementing acts set out in Article 8(2), national regulatory authorities shall establish national registers of market participants which they shall keep up to date. The register shall give each market participant a unique identifier and shall contain sufficient information to identify the market participant, including relevant details relating to its value added tax number, its place of establishment, the persons responsible for its operational and trading decisions, and the ultimate controller or beneficiary of the market participant's trading activities.

3. National regulatory authorities shall transmit the information in their national registers to the Agency in a format determined by the Agency. The Agency shall, in cooperation with those authorities, determine that format and shall publish it by 29 June 2012. Based on the information provided by national regulatory authorities, the Agency shall establish a European register of market participants. National regulatory authorities and other relevant authorities shall have access to the European register. Subject to Article 17, the Agency may decide to make the European register, or extracts thereof, publicly available provided that commercially sensitive information on individual market participants is not disclosed.

4. Market participants referred to in paragraph 1 of this Article shall submit the registration form to the national regulatory authority prior to entering into a transaction which is required to be reported to the Agency in accordance with Article 8(1).

5. Market participants referred to in paragraph 1 shall communicate promptly to the national regulatory authority any change which has taken place as regards the information provided in the registration form.

Article 10

Sharing of information between the Agency and other authorities

1. The Agency shall establish mechanisms to share information it receives in accordance with Article 7(1) and Article 8 with national regulatory authorities, competent financial authorities of the Member States, national competition authorities, ESMA and other relevant authorities. Before establishing such mechanisms, the Agency shall consult with those authorities.

2. The Agency shall give access to the mechanisms referred to in paragraph 1 only to authorities which have set up systems enabling the Agency to meet the requirements of Article 12(1).

3. Trade repositories registered or recognised under applicable Union legislation on derivative transactions, central counterparties and trade repositories shall make relevant

information regarding wholesale energy products and derivatives of emissions allowances collected by them available to the Agency.

ESMA shall transmit to the Agency reports of transactions in wholesale energy products received pursuant to Article 25(3) of Directive 2004/39/EC and under applicable Union legislation on derivative transactions, central counterparties and trade repositories. Competent authorities receiving reports of transactions in wholesale energy products received pursuant to Article 25(3) of Directive 2004/39/EC shall transmit those reports to the Agency.

The Agency and authorities responsible for overseeing trading in emissions allowances or derivatives relating to emissions allowances shall cooperate with each other and establish appropriate mechanisms to provide the Agency with access to records of transactions in such allowances and derivatives where those authorities collect information on such transactions.

Article 11

Data protection

This Regulation shall be without prejudice to the obligations of Member States relating to their processing of personal data under Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data⁽¹⁾ or the obligations of the Agency, when fulfilling its responsibilities, relating to its processing of personal data under Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data⁽²⁾.

Article 12

Operational reliability

1. The Agency shall ensure the confidentiality, integrity and protection of the information received pursuant to Article 4(2) and Articles 8 and 10. The Agency shall take all necessary measures to prevent any misuse of, and unauthorised access to, the information maintained in its systems.

National regulatory authorities, competent financial authorities of the Member States, national competition authorities, ESMA and other relevant authorities shall ensure the confidentiality, integrity and protection of the information which they receive pursuant to Articles 4(2), 7(2) or 8(5) or Article 10 and shall take steps to prevent any misuse of such information.

The Agency shall identify sources of operational risk and minimise them through the development of appropriate systems, controls and procedures.

⁽¹⁾ OJ L 281, 23.11.1995, p. 31.

⁽²⁾ OJ L 8, 12.1.2001, p. 1.

2. Subject to Article 17, the Agency may decide to make publicly available parts of the information which it possesses, provided that commercially sensitive information on individual market participants or individual transactions or individual market places are not disclosed and cannot be inferred.

The Agency shall make its commercially non-sensitive trade database available for scientific purposes, subject to confidentiality requirements.

Information shall be published or made available in the interest of improving transparency of wholesale energy markets and provided it is not likely to create any distortion in competition on those energy markets.

The Agency shall disseminate information in a fair manner according to transparent rules which it shall draw up and make publicly available.

Article 13

Implementation of prohibitions against market abuse

1. National regulatory authorities shall ensure that the prohibitions set out in Articles 3 and 5 and the obligation set out in Article 4 are applied.

Each Member State shall ensure that its national regulatory authorities have the investigatory and enforcement powers necessary for the exercise of that function by 29 June 2013. Those powers shall be exercised in a proportionate manner.

Those powers may be exercised:

- (a) directly;
- (b) in collaboration with other authorities; or
- (c) by application to the competent judicial authorities.

Where appropriate, the national regulatory authorities may exercise their investigatory powers in collaboration with organised markets, trade-matching systems or other persons professionally arranging transactions as referred to in point (d) of Article 8(4).

2. The investigatory and enforcement powers referred to in paragraph 1 shall be limited to the aim of the investigation. They shall be exercised in conformity with national law and include the right to:

- (a) have access to any relevant document in any form, and to receive a copy of it;
- (b) demand information from any relevant person, including those who are successively involved in the transmission of

orders or conduct of the operations concerned, as well as their principals, and, if necessary, the right to summon and hear any such person or principal;

- (c) carry out on-site inspections;
- (d) require existing telephone and existing data traffic records;
- (e) require the cessation of any practice that is contrary to this Regulation or delegated acts or implementing acts adopted on the basis thereof;
- (f) request a court to freeze or sequester assets;
- (g) request a court or any competent authority to impose a temporary prohibition of professional activity.

Article 14

Right of appeal

Member States shall ensure that suitable mechanisms exist at national level under which a party affected by a decision of the regulatory authority has a right of appeal to a body independent of the parties involved and of any government.

Article 15

Obligations of persons professionally arranging transactions

Any person professionally arranging transactions in wholesale energy products who reasonably suspects that a transaction might breach Article 3 or 5 shall notify the national regulatory authority without further delay.

Persons professionally arranging transactions in wholesale energy products shall establish and maintain effective arrangements and procedures to identify breaches of Article 3 or 5.

Article 16

Cooperation at Union and national level

1. The Agency shall aim to ensure that national regulatory authorities carry out their tasks under this Regulation in a coordinated and consistent way.

The Agency shall publish non-binding guidance on the application of the definitions set out in Article 2, as appropriate.

National regulatory authorities shall cooperate with the Agency and with each other, including at regional level, for the purpose of carrying out their duties in accordance with this Regulation.

National regulatory authorities, competent financial authorities and the national competition authority in a Member State may establish appropriate forms of cooperation in order to ensure effective and efficient investigation and enforcement and to contribute to a coherent and consistent approach to investigation, judicial proceedings and to the enforcement of this Regulation and relevant financial and competition law.

2. National regulatory authorities shall without delay inform the Agency in as specific a manner as possible where they have reasonable grounds to suspect that acts in breach of this Regulation are being, or have been, carried out either in that Member State or in another Member State.

Where a national regulatory authority suspects that acts which affect wholesale energy markets or the price of wholesale energy products in that Member State are being carried out in another Member State, it may request the Agency to take action in accordance with paragraph 4 of this Article and, if the acts affect financial instruments subject to Article 9 of Directive 2003/6/EC, in accordance with paragraph 3 of this Article.

3. In order to ensure a coordinated and consistent approach to market abuse on wholesale energy markets:

- (a) national regulatory authorities shall inform the competent financial authority of their Member State and the Agency where they have reasonable grounds to suspect that acts are being, or have been, carried out on wholesale energy markets which constitute market abuse within the meaning of Directive 2003/6/EC and which affect financial instruments subject to Article 9 of that Directive; for these purposes, national regulatory authorities may establish appropriate forms of cooperation with the competent financial authority in their Member State;
- (b) the Agency shall inform ESMA and the competent financial authority where it has reasonable grounds to suspect that acts are being, or have been, carried out on wholesale energy markets which constitute market abuse within the meaning of Directive 2003/6/EC and which affect financial instruments subject to Article 9 of that Directive;
- (c) the competent financial authority of a Member State shall inform ESMA and the Agency where it has reasonable grounds to suspect that acts in breach of Articles 3 and 5 are being, or have been, carried out on wholesale energy markets in another Member State;
- (d) national regulatory authorities shall inform the national competition authority of their Member State, the Commission and the Agency where they have reasonable grounds to suspect that acts are being, or have been, carried

out on wholesale energy market which are likely to constitute a breach of competition law.

4. In order to carry out its functions under paragraph 1, where, inter alia, on the basis of initial assessments or analysis, the Agency suspects that there has been a breach of this Regulation, it shall have the power:

- (a) to request one or more national regulatory authorities to supply any information related to the suspected breach;
- (b) to request one or more national regulatory authorities to commence an investigation of the suspected breach, and to take appropriate action to remedy any breach found. Any decision as regards the appropriate action to be taken to remedy any breach found shall be the responsibility of the national regulatory authority concerned;
- (c) where it considers that the possible breach has, or has had, a cross-border impact, to establish and coordinate an investigatory group consisting of representatives of concerned national regulatory authorities to investigate whether this Regulation has been breached and in which Member State the breach took place. Where appropriate, the Agency may also request the participation of representatives of the competent financial authority or other relevant authority of one or more Member States in the investigatory group.

5. A national regulatory authority receiving a request for information under point (a) of paragraph 4, or receiving a request to commence an investigation of a suspected breach under point (b) of paragraph 4, shall immediately take the necessary measures in order to comply with that request. If that national regulatory authority is not able to supply the required information immediately, it shall without further delay notify the Agency of the reasons.

By way of derogation from the first subparagraph, a national regulatory authority may refuse to act on a request where:

- (a) compliance might adversely affect the sovereignty or security of the Member State addressed;
- (b) judicial proceedings have already been initiated in respect of the same actions and against the same persons before the authorities of the Member State addressed; or
- (c) a final judgment has already been delivered in relation to such persons for the same actions in the Member State addressed.

In any such case, the national regulatory authority shall notify the Agency accordingly, providing as detailed information as possible on those proceedings or the judgment.

National regulatory authorities shall participate in an investigatory group convened in accordance with point (c) of paragraph 4, rendering all necessary assistance. The investigatory group shall be subject to coordination by the Agency.

6. The last sentence of Article 15(1) of Regulation (EC) No 713/2009 shall not apply to the Agency when carrying out its tasks under this Regulation.

Article 17

Professional secrecy

1. Any confidential information received, exchanged or transmitted pursuant to this Regulation shall be subject to the conditions of professional secrecy laid down in paragraphs 2, 3 and 4.

2. The obligation of professional secrecy shall apply to:

(a) persons who work or who have worked for the Agency;

(b) auditors and experts instructed by the Agency;

(c) persons who work or who have worked for the national regulatory authorities or for other relevant authorities;

(d) auditors and experts instructed by national regulatory authorities or by other relevant authorities who receive confidential information in accordance with this Regulation.

3. Confidential information received by the persons referred to in paragraph 2 in the course of their duties may not be divulged to any other person or authority, except in summary or aggregate form such that an individual market participant or market place cannot be identified, without prejudice to cases covered by criminal law, the other provisions of this Regulation or other relevant Union legislation.

4. Without prejudice to cases covered by criminal law, the Agency, national regulatory authorities, competent financial authorities of the Member States, ESMA, bodies or persons which receive confidential information pursuant to this Regulation may use it only in the performance of their duties and for the exercise of their functions. Other authorities, bodies or persons may use that information for the purpose for which it was provided to them or in the context of administrative or judicial proceedings specifically related to the exercise of those functions. The authority receiving the information may use it for other purposes, provided that the Agency, national regulatory authorities, competent financial authorities of the Member States, ESMA, bodies or persons communicating information consent thereto.

5. This Article shall not prevent an authority in a Member State from exchanging or transmitting, in accordance with

national law, confidential information provided that it has not been received from an authority of another Member State or from the Agency under this Regulation.

Article 18

Penalties

The Member States shall lay down the rules on penalties applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, dissuasive and proportionate, reflecting the nature, duration and seriousness of the infringement, the damage caused to consumers and the potential gains from trading on the basis of inside information and market manipulation.

The Member States shall notify those provisions to the Commission by 29 June 2013 at the latest and shall notify it without delay of any subsequent amendment affecting them.

Member States shall provide that the national regulatory authority may disclose to the public measures or penalties imposed for infringement of this Regulation unless such disclosure would cause disproportionate damage to the parties involved.

Article 19

International relations

In so far as is necessary to achieve the objectives set out in this Regulation and without prejudice to the respective competences of the Member States and the Union institutions, including the European External Action Service, the Agency may develop contacts and enter into administrative arrangements with supervisory authorities, international organisations and the administrations of third countries in particular with those impacting the Union energy wholesale market in order to promote the harmonisation of the regulatory framework. Those arrangements shall not create legal obligations in respect of the Union and its Member States nor shall they prevent Member States and their competent authorities from concluding bilateral or multilateral arrangements with those supervisory authorities, international organisations and the administrations of third countries.

Article 20

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 6 shall be conferred on the Commission for a period of 5 years from 28 December 2011. The Commission shall draw up a report in respect of the delegation of power not later than 9 months before the end of the 5-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than 3 months before the end of each period.

3. The delegation of power referred to in Article 6 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

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

5. A delegated act adopted pursuant to Article 6 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 months of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by 2 months at the initiative of the European Parliament or the Council.

Article 21

Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Article 22

Entry into force

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

Paragraph 1, the first subparagraph of paragraph 3, and paragraphs 4 and 5 of Article 8 shall apply with effect from 6 months after the date on which the Commission adopts the relevant implementing acts referred to in paragraphs 2 and 6 of that Article.

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

Done at Strasbourg, 25 October 2011.

For the European Parliament
The President
J. BUZEK

For the Council
The President
M. DOWGIELEWICZ

COMMISSION STATEMENT

The Commission considers that the thresholds for reporting transactions within the meaning of Article 8(2)(a) and information within the meaning of Article 8(6)(a) cannot be set through implementing acts.

Where appropriate the Commission will come forward with a legislative proposal to set such thresholds.

COUNCIL STATEMENT

The EU legislator has conferred on the Commission implementing powers in accordance with Article 291 TFEU in relation to measures foreseen in Article 8. That is legally binding for the Commission despite the declaration it made in respect to Article 8(2)(a) and Article 8(6)(a).

**REGULATION (EU) No 1228/2011 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 16 November 2011**

**repealing Regulation (EEC) No 429/73 of the Council making special provisions for imports into the
Community of certain goods coming under Regulation (EEC) No 1059/69 and originating in Turkey**

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 Article 207(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national
parliaments,

Acting in accordance with the ordinary legislative procedure ⁽¹⁾,

Whereas:

- (1) Improving the transparency of Union law is an essential
element of the better lawmaking strategy that the insti-
tutions of the Union are implementing. In that context it
is appropriate to remove from the legislation in force
those acts which no longer have real effect.
- (2) Regulation (EEC) No 429/73 of the Council ⁽²⁾ was
adopted in order to determine the reduced fixed
component of the import duties for processed agri-
cultural products originating in Turkey and imported in
the framework of the Additional Protocol to the
Agreement establishing an Association between the
European Economic Community and Turkey, signed on
23 November 1970.

(3) Decision No 1/95 of the EC-Turkey Association Council
of 22 December 1995 on implementing the final phase
of the Customs Union ⁽³⁾ lays down the rules for deter-
mining the customs duties for processed agricultural
products originating in Turkey and imported into the
European Union. Therefore Regulation (EEC) No 429/73
has become obsolete.

(4) For reasons of legal certainty and clarity, Regulation
(EEC) No 429/73 should therefore be repealed,

HAVE ADOPTED THIS REGULATION:

Article 1

1. Regulation (EEC) No 429/73 is repealed.
2. The repeal of the act referred to in paragraph 1 shall be
without prejudice to:
 - (a) the maintenance in force of Union acts adopted on the basis
of the act referred to in paragraph 1; and
 - (b) the continuing validity of amendments made by the act
referred to in paragraph 1 to other Union acts that are
not repealed by this Regulation.

Article 2

This Regulation shall enter into force on the third day following
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 Strasbourg, 16 November 2011.

For the European Parliament
The President
J. BUZEK

For the Council
The President
W. SZCZUKA

⁽¹⁾ Position of the European Parliament of 13 September 2011 (not yet
published in the Official Journal) and decision of the Council of
20 October 2011.

⁽²⁾ OJ L 59, 5.3.1973, p. 85.

⁽³⁾ OJ L 35, 13.2.1996, p. 1.

REGULATION (EU) No 1229/2011 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 16 November 2011
repealing certain obsolete Council acts in the field of the common agricultural policy

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 the first paragraph of Article 42 and Article 43(2) thereof,

Having regard to the 1979 Act of Accession, and in particular Article 60, Article 61(5) and Article 72(1) thereof,

Having regard to the 1985 Act of Accession, and in particular Article 234(3) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

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

Acting in accordance with the ordinary legislative procedure and the requirement for unanimity in the Council provided for in Article 234(3) of the 1985 Act of Accession ⁽²⁾,

Whereas:

- (1) Improving the transparency of Union law is an essential element of the better lawmaking strategy that the institutions of the Union are implementing. In that context it is appropriate to remove from the legislation in force those acts which no longer have real effect.
- (2) A number of regulations relating to the common agricultural policy have become obsolete, even though formally they are still in force.
- (3) Regulation (EEC) No 2052/69 of the Council of 17 October 1969 on the Community financing of expenditure arising from the implementation of the Food Aid Convention ⁽³⁾ has exhausted its effects since its content has been taken up by successive acts.

- (4) Regulation (EEC) No 1467/70 of the Council of 20 July 1970 fixing certain general rules governing intervention on the market in raw tobacco ⁽⁴⁾ has exhausted its effects as a result of successive reforms of the tobacco sector since 1992.
- (5) Regulation (EEC) No 3279/75 of the Council of 16 December 1975 on the standardization of the treatment applied by the individual Member States to imports from non-member countries of live trees and other plants, bulbs, roots and the like, cut flowers and ornamental foliage ⁽⁵⁾ has exhausted its effects since its content has been taken up by successive acts.
- (6) Council Regulation (EEC) No 1078/77 of 17 May 1977 introducing a system of premiums for the non-marketing of milk and milk products and for the conversion of dairy herds ⁽⁶⁾ introduced measures applicable until 1981 and has therefore exhausted its effects.
- (7) Council Regulation (EEC) No 1853/78 of 25 July 1978 adopting general rules in connection with special measures for castor seeds ⁽⁷⁾ introduced measures for the application of Council Regulation (EEC) No 2874/77 of 19 December 1977 laying down special measures in respect of castor seeds ⁽⁸⁾ whose validity ended on 30 September 1984, and has therefore exhausted its effects.
- (8) Council Regulation (EEC) No 2580/78 of 31 October 1978 extending the 1977/78 marketing year for olive oil, providing for special measures for this sector, and amending Regulation (EEC) No 878/77 as regards the exchange rates to be applied in agriculture ⁽⁹⁾ covered only the 1977/78 and 1978/79 marketing years and has therefore exhausted its effects.
- (9) Council Regulation (EEC) No 1/81 of 1 January 1981 laying down general rules for the system of accession compensatory amounts for cereals ⁽¹⁰⁾ was intended for application in the transitional period following the accession of Greece to the European Communities and has therefore exhausted its effects.
- (10) Council Regulation (EEC) No 1946/81 of 30 June 1981 restricting investment aids for milk production ⁽¹¹⁾ has exhausted its effects since its content has been taken up by successive acts.

⁽¹⁾ OJ C 107, 6.4.2011, p. 72.

⁽²⁾ Position of the European Parliament of 13 September 2011 (not yet published in the Official Journal) and decision of the Council of 20 October 2011.

⁽³⁾ OJ L 263, 21.10.1969, p. 6.

⁽⁴⁾ OJ L 164, 27.7.1970, p. 32.

⁽⁵⁾ OJ L 326, 18.12.1975, p. 1.

⁽⁶⁾ OJ L 131, 26.5.1977, p. 1.

⁽⁷⁾ OJ L 212, 2.8.1978, p. 1.

⁽⁸⁾ OJ L 332, 24.12.1977, p. 1.

⁽⁹⁾ OJ L 309, 1.11.1978, p. 13.

⁽¹⁰⁾ OJ L 1, 1.1.1981, p. 1.

⁽¹¹⁾ OJ L 197, 20.7.1981, p. 32.

- (11) Council Regulation (EEC) No 2989/82 of 9 November 1982 on the granting of aid for the consumption of butter in Denmark, Greece, Italy and Luxembourg ⁽¹⁾ introduced only temporary measures and has therefore exhausted its effects.
- (12) Council Regulation (EEC) No 3033/83 of 26 October 1983 abolishing the 'accession' compensatory amount applicable to liqueur wines ⁽²⁾ was intended for application in the transitional period following the accession of Greece to the European Communities and has therefore exhausted its effects.
- (13) Council Regulation (EEC) No 564/84 of 1 March 1984 on suspension of aids for investments in the field of milk production ⁽³⁾ covered only the year 1984 and has therefore exhausted its effects.
- (14) Council Regulation (EEC) No 2997/87 of 22 September 1987 laying down, in respect of hops, the amount of aid to producers for the 1986 harvest and providing for special measures for certain regions of production ⁽⁴⁾ introduced a special measure applicable until the year 1995 and has therefore exhausted its effects.
- (15) Council Regulation (EEC) No 1441/88 of 24 May 1988 amending Regulation (EEC) No 822/87 on the common organization of the market in wine ⁽⁵⁾ gave the Council power to adjust certain transitory provisions resulting from the accession of Portugal to the European Communities and has therefore exhausted its effects.
- (16) Council Regulation (EEC) No 1720/91 of 13 June 1991 amending Regulation (EC) No 136/66/EEC on the establishment of a common organization of the market in oils and fats ⁽⁶⁾ introduced several exceptional measures in the common organisation of the market in oils and fats, which were applicable until 30 June 1992 at the latest, and has therefore exhausted its effects.
- (17) Council Regulation (EEC) No 740/93 of 17 March 1993 setting Community compensation for definitive discontinuation of milk production in Portugal ⁽⁷⁾ introduced a special measure to be implemented until 1996 and has therefore exhausted its effects.
- (18) Council Regulation (EEC) No 741/93 of 17 March 1993 on application of the common intervention price for olive oil in Portugal ⁽⁸⁾ was intended for application in the transitional period following the accession of Portugal to the European Communities and has therefore exhausted its effects.
- (19) Council Regulation (EEC) No 744/93 of 17 March 1993 laying down general rules for applying the supplementary trade mechanism to deliveries in Portugal of products other than fruit and vegetables ⁽⁹⁾ concerned the applicability to Portugal of Council Regulation (EEC) No 3817/92 of 28 December 1992 laying down general rules for applying the supplementary trade mechanism to imports into Spain of products other than fruit and vegetables ⁽¹⁰⁾, which was subsequently repealed, and has therefore exhausted its effects.
- (20) Council Regulation (EC) No 2443/96 of 17 December 1996 providing for additional measures for direct support of producers' incomes or for the beef and veal sector ⁽¹¹⁾ covered only the year 1997 and has therefore exhausted its effects.
- (21) Council Regulation (EC) No 2200/97 of 30 October 1997 on the improvement of the Community production of apples, pears, peaches and nectarines ⁽¹²⁾ was intended to introduce a special premium for the 1997/1998 marketing year and has therefore exhausted its effects.
- (22) Council Regulation (EC) No 2330/98 of 22 October 1998 providing for an offer of compensation to certain producers of milk and milk products temporarily restricted in carrying out their trade ⁽¹³⁾ covered only a special temporary measure and has therefore exhausted its effects.
- (23) Council Regulation (EC) No 2800/98 of 15 December 1998 on transitional measures to be applied under the common agricultural policy with a view to the introduction of the euro ⁽¹⁴⁾ was meant to provide only for transitional measures and has therefore exhausted its effects.
- (24) Council Regulation (EC) No 2802/98 of 17 December 1998 on a programme to supply agricultural products to the Russian Federation ⁽¹⁵⁾ was intended to provide for a single, one-off measure and has therefore exhausted its effects.
- (25) Council Regulation (EC) No 660/1999 of 22 March 1999 amending Regulation (EEC) No 2075/92 and fixing the premiums and guarantee thresholds for leaf tobacco by variety group and Member State for the 1999, 2000 and 2001 harvests ⁽¹⁶⁾ covered only the 1999, 2000 and 2001 harvests and has therefore exhausted its effects.

⁽¹⁾ OJ L 314, 10.11.1982, p. 25.

⁽²⁾ OJ L 297, 29.10.1983, p. 1.

⁽³⁾ OJ L 61, 2.3.1984, p. 34.

⁽⁴⁾ OJ L 284, 7.10.1987, p. 19.

⁽⁵⁾ OJ L 132, 28.5.1988, p. 1.

⁽⁶⁾ OJ L 162, 26.6.1991, p. 27.

⁽⁷⁾ OJ L 77, 31.3.1993, p. 5.

⁽⁸⁾ OJ L 77, 31.3.1993, p. 7.

⁽⁹⁾ OJ L 77, 31.3.1993, p. 11.

⁽¹⁰⁾ OJ L 387, 31.12.1992, p. 12.

⁽¹¹⁾ OJ L 333, 21.12.1996, p. 2.

⁽¹²⁾ OJ L 303, 6.11.1997, p. 3.

⁽¹³⁾ OJ L 291, 30.10.1998, p. 4.

⁽¹⁴⁾ OJ L 349, 24.12.1998, p. 8.

⁽¹⁵⁾ OJ L 349, 24.12.1998, p. 12.

⁽¹⁶⁾ OJ L 83, 27.3.1999, p. 10.

(26) Council Regulation (EC) No 546/2002 of 25 March 2002 fixing the premiums and guarantee thresholds for leaf tobacco by variety group and Member State for the 2002, 2003 and 2004 harvests and amending Regulation (EEC) No 2075/92 ⁽¹⁾ covered only the 2002, 2003, 2004 and 2005 harvests and has therefore exhausted its effects.

(27) Council Regulation (EC) No 527/2003 of 17 March 2003 authorising the offer and delivery for direct human consumption of certain wines imported from Argentina which may have undergone oenological processes not provided for in Regulation (EC) No 1493/1999 ⁽²⁾ was intended to introduce a derogation applicable only until 31 December 2008 and has therefore exhausted its effects.

(28) For reasons of legal certainty and clarity, those obsolete Regulations should be repealed,

HAVE ADOPTED THIS REGULATION:

Article 1

1. Regulations (EEC) No 2052/69, (EEC) No 1467/70, (EEC) No 3279/75, (EEC) No 1078/77, (EEC) No 1853/78, (EEC)

No 2580/78, (EEC) No 1/81, (EEC) No 1946/81, (EEC) No 2989/82, (EEC) No 3033/83, (EEC) No 564/84, (EEC) No 2997/87, (EEC) No 1441/88, (EEC) No 1720/91, (EEC) No 740/93, (EEC) No 741/93, (EEC) No 744/93, (EC) No 2443/96, (EC) No 2200/97, (EC) No 2330/98, (EC) No 2800/98, (EC) No 2802/98, (EC) No 660/1999, (EC) No 546/2002 and (EC) No 527/2003 are repealed.

2. The repeal of the acts referred to in paragraph 1 shall be without prejudice to:

(a) the maintenance in force of Union acts adopted on the basis of the acts referred to in paragraph 1; and

(b) the continuing validity of amendments made by the acts referred to in paragraph 1 to other Union acts that are not repealed by this Regulation.

Article 2

This Regulation shall enter into force on the third day following 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 Strasbourg, 16 November 2011.

For the European Parliament
The President
J. BUZEK

For the Council
The President
W. SZCZUKA

⁽¹⁾ OJ L 84, 28.3.2002, p. 4.

⁽²⁾ OJ L 78, 25.3.2003, p. 1.

**REGULATION (EU) No 1230/2011 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 16 November 2011**

on repealing certain obsolete Council acts in the field of common commercial policy

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 Article 207 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure ⁽¹⁾,

Whereas:

- (1) Improving the transparency of Union law is an essential element of the better lawmaking strategy that the institutions of the Union are implementing. In that context it is appropriate to remove from the legislation in force those acts which no longer have real effect.
- (2) A number of acts relating to the common commercial policy have become obsolete, even though formally they are still in force.
- (3) Council Regulation (EEC) No 1471/88 of 16 May 1988 concerning the arrangements applicable to imports of sweet potatoes and manioc starch intended for certain uses ⁽²⁾ has exhausted its effects since its content has been taken up by successive acts.
- (4) Council Regulation (EEC) No 478/92 of 25 February 1992 opening an annual Community tariff quota for dog or cat food, put up for retail sale and falling within CN code 2309 10 11 and an annual Community tariff quota for fish food falling within CN code ex 2309 90 41, originating in, and coming from, the Faroe Islands ⁽³⁾ was intended to open a tariff quota for the year 1992 and has therefore exhausted its effects.
- (5) Council Regulation (EEC) No 3125/92 of 26 October 1992 on the arrangements applicable to the importation into the Community of sheepmeat and goatmeat products originating in Bosnia-Herzegovina, Croatia, Slovenia, Montenegro, Serbia and the former Yugoslav

Republic of Macedonia ⁽⁴⁾ dealt with a temporary situation and has therefore exhausted its effects.

- (6) Council Regulation (EC) No 2184/96 of 28 October 1996 concerning imports into the Community of rice originating in and coming from Egypt ⁽⁵⁾ was meant to grant customs duty reductions resulting from an international agreement which was subsequently replaced by the agreement signed with Egypt on 28 October 2009 which entered into force on 1 June 2010 and has therefore exhausted its effects.
- (7) Council Regulation (EC) No 2398/96 of 12 December 1996 opening a tariff quota for turkey meat originating in and coming from Israel as provided for in the Association Agreement and the Interim Agreement between the European Community and the State of Israel ⁽⁶⁾ has exhausted its effects since it was based on the Association Agreement signed in 1995 which was subsequently replaced by the Association Agreement signed with Israel on 4 November 2009 which entered into force on the 1 January 2010 and which provided for new tariff rate quotas.
- (8) Council Regulation (EC) No 1722/1999 of 29 July 1999 on the import of bran, sharps and other residues of the sifting, milling or other working of certain cereals originating in Algeria, Morocco and Egypt and the import of durum wheat originating in Morocco ⁽⁷⁾ has exhausted its effects since it was meant as an interim instrument for the period prior to the entry into force of the Association Agreement signed with Algeria on 22 April 2002 which entered into force on 1 September 2005, the Association Agreement signed with Morocco on 26 February 1996 which entered into force on 1 March 2000 and whose agricultural annexes were modified by agreements which entered into force in 2003 and 2005, and the Association Agreement signed with Egypt on 28 October 2009 which entered into force on 1 June 2010.
- (9) Council Regulation (EC) No 2798/1999 of 17 December 1999 laying down general rules for the import of olive oil originating in Tunisia for the period 1 January 2000 to 31 December 2000 and repealing Regulation (EC) No 906/98 ⁽⁸⁾ introduced a measure applicable only in the year 2000 and has therefore exhausted its effects.

⁽¹⁾ Position of the European Parliament of 13 September 2011 (not yet published in the Official Journal) and decision of the Council of 20 October 2011.

⁽²⁾ OJ L 134, 31.5.1988, p. 1.

⁽³⁾ OJ L 55, 29.2.1992, p. 2.

⁽⁴⁾ OJ L 313, 30.10.1992, p. 3.

⁽⁵⁾ OJ L 292, 15.11.1996, p. 1.

⁽⁶⁾ OJ L 327, 18.12.1996, p. 7.

⁽⁷⁾ OJ L 203, 3.8.1999, p. 16.

⁽⁸⁾ OJ L 340, 31.12.1999, p. 1.

- (10) Council Regulation (EC) No 215/2000 of 24 January 2000 renewing for 2000 the measures laid down in Regulation (EC) No 1416/95 establishing certain concessions in the form of Community tariff quotas in 1995 for certain processed agricultural products ⁽¹⁾ covered only the year 2000 and has therefore exhausted its effects.
- (11) Council Decision 2004/910/EC of 26 April 2004 on the conclusion of the Agreements in the form of an Exchange of Letters between the European Community and, of the one part, Barbados, Belize, the Republic of the Congo, Fiji, the Cooperative Republic of Guyana, the Republic of Côte d'Ivoire, Jamaica, the Republic of Kenya, the Republic of Madagascar, the Republic of Malawi, the Republic of Mauritius, the Republic of Surinam, Saint Christopher and Nevis, the Kingdom of Swaziland, the United Republic of Tanzania, the Republic of Trinidad and Tobago, the Republic of Uganda, the Republic of Zambia and the Republic of Zimbabwe and, of the other part, the Republic of India on the guaranteed prices for cane sugar for the 2003/2004 and 2004/2005 delivery periods ⁽²⁾ had a temporary character and has therefore exhausted its effects.
- (12) Council Regulation (EC) No 1923/2004 of 25 October 2004 establishing certain concessions for the Swiss Confederation in the form of Community tariff quotas for certain processed agricultural products ⁽³⁾ introduced a measure applicable from 1 May to 31 December 2004 and has therefore exhausted its effects.
- (13) Council Decision 2007/317/EC of 16 April 2007 establishing the position to be adopted, on behalf of the Community, within the International Grains Council with respect to the extension of the Grains Trade Convention 1995 ⁽⁴⁾ has exhausted its effects since its content has been taken up by a subsequent act.
- (14) A number of acts concerning certain countries have become obsolete following the accession of those countries to the Union.
- (15) Council Decision 98/658/EC of 24 September 1998 on the conclusion of the Additional Protocol to the Interim Agreement on trade and trade-related matters between the European Community, the European Coal and Steel Community and the European Atomic Energy Community, of the one part, and the Republic of Slovenia, of the other part, and to the Europe Agreement between the European Communities and their Member States, of the one part, and the Republic of Slovenia, of the other part ⁽⁵⁾ has become obsolete following the accession of Slovenia to the Union.
- (16) Council Regulation (EC) No 278/2003 of 6 February 2003 adopting autonomous and transitional measures concerning the importation of certain processed agricultural products originating in Poland ⁽⁶⁾ has become obsolete following the accession of Poland to the Union.
- (17) Council Regulation (EC) No 999/2003 of 2 June 2003 adopting autonomous and transitional measures concerning the import of certain processed agricultural products originating in Hungary and the export of certain processed agricultural products to Hungary ⁽⁷⁾ has become obsolete following the accession of Hungary to the Union.
- (18) Council Regulation (EC) No 1039/2003 of 2 June 2003 adopting autonomous and transitional measures concerning the importation of certain processed agricultural products originating in Estonia and the exportation of certain agricultural products to Estonia ⁽⁸⁾ has become obsolete following the accession of Estonia to the Union.
- (19) Council Regulation (EC) No 1086/2003 of 18 June 2003 adopting autonomous and transitional measures concerning the importation of certain processed agricultural products originating in Slovenia and the exportation of certain processed agricultural products to Slovenia ⁽⁹⁾ has become obsolete following the accession of Slovenia to the Union.
- (20) Council Regulation (EC) No 1087/2003 of 18 June 2003 adopting autonomous and transitional measures concerning the importation of certain processed agricultural products originating in Latvia and the exportation of certain processed agricultural products to Latvia ⁽¹⁰⁾ has become obsolete following the accession of Latvia to the Union.
- (21) Council Regulation (EC) No 1088/2003 of 18 June 2003 adopting autonomous and transitional measures concerning the importation of certain processed agricultural products originating in Lithuania and the exportation of certain processed agricultural products to Lithuania ⁽¹¹⁾ has become obsolete following the accession of Lithuania to the Union.
- (22) Council Regulation (EC) No 1089/2003 of 18 June 2003 adopting autonomous and transitional measures concerning the importation of certain processed agricultural products originating in the Slovak Republic and the exportation of certain processed agricultural products to the Slovak Republic ⁽¹²⁾ has become obsolete following the accession of Slovakia to the Union.

⁽¹⁾ OJ L 24, 29.1.2000, p. 9.

⁽²⁾ OJ L 391, 31.12.2004, p. 1.

⁽³⁾ OJ L 331, 5.11.2004, p. 9.

⁽⁴⁾ OJ L 119, 9.5.2007, p. 30.

⁽⁵⁾ OJ L 314, 24.11.1998, p. 6.

⁽⁶⁾ OJ L 42, 15.2.2003, p. 1.

⁽⁷⁾ OJ L 146, 13.6.2003, p. 10.

⁽⁸⁾ OJ L 151, 19.6.2003, p. 1.

⁽⁹⁾ OJ L 163, 1.7.2003, p. 1.

⁽¹⁰⁾ OJ L 163, 1.7.2003, p. 19.

⁽¹¹⁾ OJ L 163, 1.7.2003, p. 38.

⁽¹²⁾ OJ L 163, 1.7.2003, p. 56.

(23) Council Regulation (EC) No 1090/2003 of 18 June 2003 adopting autonomous and transitional measures concerning the importation of certain processed agricultural products originating in the Czech Republic and the exportation of certain processed agricultural products to the Czech Republic ⁽¹⁾ has become obsolete following the accession of the Czech Republic to the Union.

(24) For reasons of legal certainty and clarity, those obsolete acts should be repealed,

HAVE ADOPTED THIS REGULATION:

Article 1

1. Regulations (EEC) No 1471/88, (EEC) No 478/92, (EEC) No 3125/92, (EC) No 2184/96, (EC) No 2398/96, (EC) No 1722/1999, (EC) No 2798/1999, (EC) No 215/2000, (EC) No 278/2003, (EC) No 999/2003, (EC) No 1039/2003, (EC) No 1086/2003, (EC) No 1087/2003, (EC) No 1088/2003, (EC)

No 1089/2003, (EC) No 1090/2003, (EC) No 1923/2004 and Decisions 98/658/EC, 2004/910/EC, 2007/317/EC are hereby repealed.

2. The repeal of the acts referred to in paragraph 1 shall be without prejudice to:

(a) the maintenance in force of Union acts adopted on the basis of the acts referred to in paragraph 1; and

(b) the continuing validity of amendments made by the acts referred to in paragraph 1 to other Union acts that are not repealed by this Regulation.

Article 2

This Regulation shall enter into force on the third day following 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 Strasbourg, 16 November 2011.

For the European Parliament

For the Council

J. BUZEK

For the Council

The President

W. SZCZUKA

⁽¹⁾ OJ L 163, 1.7.2003, p. 73.

**REGULATION (EU) No 1231/2011 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 16 November 2011**

**amending Council Regulation (EC) No 378/2007 as regards the rules for the implementation of
voluntary modulation of direct payments under the common agricultural policy**

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 Article 43(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national
parliaments,

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

Acting in accordance with the ordinary legislative procedure ⁽²⁾,

Whereas:

- (1) Council Regulation (EC) No 378/2007 of 27 March 2007 laying down rules for voluntary modulation of direct payments provided for in Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers ⁽³⁾ confers on the Commission powers to implement certain provisions of that Regulation.
- (2) As a consequence of the entry into force of the Treaty of Lisbon, the powers conferred on the Commission under Regulation (EC) No 378/2007 need to be aligned with Articles 290 and 291 of the Treaty on the Functioning of the European Union.
- (3) In order to ensure uniform conditions for the implementation of Regulation (EC) No 378/2007 in the Member States concerned, implementing powers should be conferred on the Commission.
- (4) The implementing powers relating to the adoption of specific provisions for the integration of voluntary modulation in the rural development programming and for the

financial management of voluntary modulation should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers ⁽⁴⁾.

- (5) The Commission should, by means of implementing acts and, given their special nature, acting without the application of Regulation (EU) No 182/2011, fix the net amounts resulting from the application of voluntary modulation.

- (6) Regulation (EC) No 378/2007 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 378/2007 is hereby amended as follows:

- (1) in Article 4(1), the introductory wording is replaced by the following:

‘1. The net amounts resulting from the application of voluntary modulation shall be fixed by the Commission, by means of implementing acts without the application of Article 6a, based on:’;

- (2) Article 6 is replaced by the following:

‘Article 6

1. The Commission shall, by means of implementing acts, adopt specific provisions for the integration of voluntary modulation in the rural development programming. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 6a(1).

2. The Commission shall, by means of implementing acts, adopt specific provisions for the financial management of voluntary modulation. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 6a(2).’;

⁽¹⁾ OJ C 132, 3.5.2011, p. 87.

⁽²⁾ Position of the European Parliament of 13 September 2011 (not yet published in the Official Journal) and decision of the Council of 20 October 2011.

⁽³⁾ OJ L 95, 5.4.2007, p. 1.

⁽⁴⁾ OJ L 55, 28.2.2011, p. 13.

(3) the following Article is added:

'Article 6a

1. The Commission shall be assisted by the Rural Development Committee established by Regulation (EC) No 1698/2005. That committee is a committee within the meaning of Regulation (EU) No 182/2011 (*).

Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

2. The Commission shall be assisted by the Committee on the agricultural funds established by Regulation (EC) No 1290/2005. That committee is a committee within the meaning of Regulation (EU) No 182/2011.

Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

(*) Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

Article 2

This Regulation shall enter into force on the 20th day following 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 Strasbourg, 16 November 2011.

For the European Parliament
The President
J. BUZEK

For the Council
The President
W. SZCZUKA

**REGULATION (EU) No 1232/2011 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 16 November 2011**

**amending Council Regulation (EC) No 428/2009 setting up a Community regime for the control of
exports, transfer, brokering and transit of dual-use items**

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 Article 207(2) thereof,

Having regard to the proposal from the European Commission,

Acting in accordance with the ordinary legislative procedure ⁽¹⁾,

Whereas:

- (1) 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 ⁽²⁾ requires dual-use items (including software and technology) to be subject to effective control when they are exported from or transit through the Union, or are delivered to a third country as a result of brokering services provided by a broker resident or established in the Union.
- (2) It is desirable to achieve uniform and consistent application of controls throughout the Union in order to avoid unfair competition among Union exporters, harmonise the scope of Union General Export Authorisations and conditions of their use among Union exporters and ensure efficiency and effectiveness of the security controls in the Union.
- (3) In its communication of 18 December 2006, the Commission put forward the idea of the creation of new Union General Export Authorisations in a bid to enhance the industry's competitiveness and establish a level playing field for all Union exporters when they export certain specific dual-use items to certain specific destinations while at the same time ensuring a high level of security and full compliance with international obligations.
- (4) Regulation (EC) No 428/2009 repealed Council Regulation (EC) No 1334/2000 of 22 June 2000 setting up a Community regime for the control of exports of dual-use items and technology ⁽³⁾ with effect from 27 August

2009. However, the relevant provisions of Regulation (EC) No 1334/2000 continue to apply for export authorisation applications made before that date.

- (5) In order to create new Union General Export Authorisations for the export of certain specific dual-use items to certain specific destinations, the relevant provisions of Regulation (EC) No 428/2009 need to be amended by adding new Annexes thereto.
- (6) The competent authorities of the Member State where the exporter is established should be provided with the possibility of prohibiting the use of the Union General Export Authorisations under the conditions set out in Regulation (EC) No 428/2009 as amended by this Regulation.
- (7) Since the entry into force of the Treaty of Lisbon, arms embargoes under the Union's common foreign and security policy are adopted by Council decisions. Pursuant to Article 9 of the Protocol (No 36) on transitional provisions, the legal effects of common positions adopted by the Council under Title V of the Treaty on European Union prior to the entry into force of the Treaty of Lisbon are to be preserved until they are repealed, annulled or amended in implementation of the Treaties.
- (8) Regulation (EC) No 428/2009 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 428/2009 is hereby amended as follows:

- (1) in Article 2, point 9 is replaced by the following:

“9. “Union General Export Authorisation” shall mean an export authorisation for exports to certain countries of destination available to all exporters who respect its conditions and requirements for use as listed in Annexes IIa to IIc.”;

⁽¹⁾ Position of the European Parliament of 27 September 2011 (not yet published in the Official Journal) and Council decision of 27 October 2011.

⁽²⁾ OJ L 134, 29.5.2009, p. 1.

⁽³⁾ OJ L 159, 30.6.2000, p. 1.

(2) in Article 4(2), the words 'decided by a common position or a joint action' are replaced by the words 'imposed by a decision or a common position';

(3) Article 9 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. Union General Export Authorisations for certain exports as set out in Annexes IIa to IIc are established by this Regulation.

The competent authorities of the Member State where the exporter is established can prohibit the exporter from using these authorisations if there is reasonable suspicion about his ability to comply with such authorisation or with a provision of the export control legislation.

The competent authorities of the Member States shall exchange information on exporters deprived of the right to use a Union General Export Authorisation, unless they determine that the exporter will not attempt to export dual-use items through another Member State. The system referred to in Article 19(4) shall be used for this purpose.;

(b) in paragraph 4, point (a) is replaced by the following:

'(a) exclude from their scope items listed in Annex IIg';

(c) in paragraph 4(c), the words 'decided by a common position or joint action' are replaced by the words 'imposed by a decision or a common position';

(4) in the first sentence of Article 11(1), the reference to 'Annex II' is replaced by a reference to 'Annex IIa';

(5) in Article 12(1)(b), the words 'a common position or joint action' are replaced by the words 'a decision or a common position';

(6) in Article 13, paragraph 6 is replaced by the following:

'6. All notifications required pursuant to this Article shall be made via secure electronic means including the system referred to in Article 19(4).';

(7) Article 19 is amended as follows:

(a) in paragraph 2(a), the words 'Community General Export Authorisations' are replaced by the words 'Union General Export Authorisations';

(b) paragraph 4 is replaced by the following:

'4. A secure and encrypted system for the exchange of information between Member States and, whenever appropriate, the Commission shall be set up by the Commission, in consultation with the Dual-Use Coordination Group set up pursuant to Article 23. The European Parliament shall be informed about the system's budget, development, provisional and final set-up and functioning, and network costs.;

(8) in Article 23, the following paragraph is added:

'3. The Commission shall submit an annual report to the European Parliament on the activities, examinations and consultations of the Dual-Use Coordination Group, which shall be subject to Article 4 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (*).

(*) OJ L 145, 31.5.2001, p. 43.;

(9) Article 25 is replaced by the following:

Article 25

1. Each Member State shall inform the Commission of the laws, regulations and administrative provisions adopted in implementation of this Regulation, including the measures referred to in Article 24. The Commission shall forward the information to the other Member States.

2. Every 3 years the Commission shall review the implementation of this Regulation and present a comprehensive implementation and impact assessment report to the European Parliament and the Council, which may include proposals for its amendment. Member States shall provide to the Commission all appropriate information for the preparation of the report.

3. Special sections of the report shall deal with:

(a) the Dual-Use Coordination Group and its activities. Information that the Commission provides on the Dual-Use Coordination Group's examinations and consultations shall be treated as confidential pursuant to Article 4 of Regulation (EC) No 1049/2001. Information shall in any case be considered to be confidential if its disclosure is likely to have a significantly adverse effect upon the supplier or the source of such information;

- (b) the implementation of Article 19(4), and shall report on the stage reached in the set-up of the secure and encrypted system for the exchange of information between Member States and the Commission;
- (c) the implementation of Article 15(1);
- (d) the implementation of Article 15(2);
- (e) comprehensive information provided on the measures taken by the Member States pursuant to Article 24 and notified to the Commission under paragraph 1 of this Article.

4. No later than 31 December 2013, the Commission shall submit to the European Parliament and to the Council a report evaluating the implementation of this Regulation with a specific focus on the implementation of Annex IIb, Union General Export Authorisation No EU002, accompanied by, if appropriate, a legislative proposal to amend this Regulation, in particular as regards the issue of low-value shipments.’;

(10) the following Article is inserted:

‘Article 25a

Without prejudice to the provisions on mutual administrative assistance agreements or protocols in customs matters concluded between the Union and third countries, the Council may authorise the Commission to negotiate with third countries agreements providing for the mutual recognition of export controls of dual-use items covered by this Regulation and in particular to eliminate authorisation requirements for re-exports within the territory of the Union. These negotiations shall be conducted in accordance with the procedures established in Article 207(3) of the Treaty on the Functioning of the European Union and the Treaty establishing the European Atomic Energy Community, as appropriate.’;

(11) Annex II is renumbered as Annex IIa and is amended as follows:

- (a) the title is replaced by the following:

‘UNION GENERAL EXPORT AUTHORISATION NO EU001
(referred to in Article 9(1) of this Regulation)

Exports to Australia, Canada, Japan, New Zealand, Norway, Switzerland, including Liechtenstein, and United States of America

Issuing authority: European Union’;

- (b) Part 1 is replaced by the following:

‘Part 1

This general export authorisation covers all dual-use items specified in any entry in Annex I to this Regulation, except those listed in Annex IIg.’;

- (c) Part 2 is deleted;

- (d) Part 3 is renumbered as Part 2 and is amended as follows:

- (i) in the first paragraph, the word ‘Community’ is replaced by the word ‘Union’;

- (ii) the word ‘Switzerland’ is replaced by the words ‘Switzerland, including Liechtenstein’;

- (iii) the words ‘the Community General Export Authorisation’ and ‘this Community General Export Authorisation’ are replaced by the words ‘this authorisation’;

- (iv) the words ‘decided by a common position or joint action’ are replaced by the words ‘imposed by a decision or a common position’;

- (12) Annexes IIb to IIg, as set out in the Annex to this Regulation, are inserted.

Article 2

This Regulation shall enter into force on the 30th day following 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 Strasbourg, 16 November 2011.

For the European Parliament
The President
J. BUZEK

For the Council
The President
W. SZCZUKA

ANNEX

'ANNEX IIb

UNION GENERAL EXPORT AUTHORISATION No EU002**(referred to in Article 9(1) of this Regulation)****Exports of certain dual-use items to certain destinations****Issuing authority: European Union****Part 1 – Items**

This general export authorisation covers the following dual-use items specified in Annex I to this Regulation:

- 1A001,
- 1A003,
- 1A004,
- 1C003b-c,
- 1C004,
- 1C005,
- 1C006,
- 1C008,
- 1C009,
- 2B008,
- 3A001a3,
- 3A001a6-12,
- 3A002c-f,
- 3C001,
- 3C002,
- 3C003,
- 3C004,
- 3C005,
- 3C006.

Part 2 – Destinations

This authorisation is valid throughout the Union for exports to the following destinations:

- Argentina,
- Croatia,
- Iceland,
- South Africa,
- South Korea,
- Turkey.

Part 3 – Conditions and requirements for use

1. This authorisation does not authorise the export of items where:
 - (1) the exporter has been informed by the competent authorities of the Member State in which he is established as defined in Article 9(6) of this Regulation that the items in question are or may be intended, in their entirety or in part:
 - (a) for use in connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or other nuclear explosive devices, or the development, production, maintenance or storage of missiles capable of delivering such weapons;
 - (b) for a military end-use as defined in Article 4(2) of this Regulation in a country subject to an arms embargo imposed by a decision or a common position adopted by the Council or a decision of the Organisation for Security and Cooperation in Europe or an arms embargo imposed by a binding resolution of the Security Council of the United Nations; or
 - (c) for use as parts or components of military items listed in national military lists that have been exported from the territory of the Member State concerned without authorisation or in breach of an authorisation prescribed by the national legislation of that Member State;
 - (2) the exporter, under his obligation to exercise due diligence, is aware that the items in question are intended, in their entirety or in part, for any of the uses referred to in subparagraph (1);
 - (3) the relevant items are exported to a customs-free zone or a free warehouse which is located in a destination covered by this authorisation.
2. Exporters must mention the EU reference number X002 and specify that the items are being exported under Union General Export Authorisation EU002 in box 44 of the Single Administrative Document.
3. Any exporter who uses this authorisation must notify the competent authorities of the Member State where he is established of the first use of this authorisation no later than 30 days after the date when the first export took place or, alternatively, and in accordance with a requirement by the competent authority of the Member State where the exporter is established, prior to the first use of this authorisation. Member States shall notify the Commission of the notification mechanism chosen for this authorisation. The Commission shall publish the information notified to it in the C series of the *Official Journal of the European Union*.

Reporting requirements attached to the use of this authorisation and additional information that the Member State from which the export is made might require on items exported under this authorisation are defined by Member States.

A Member State may require the exporters established in that Member State to register prior to the first use of this authorisation. Registration shall be automatic and acknowledged by the competent authorities to the exporter without delay and in any case within 10 working days of receipt, subject to Article 9(1) of this Regulation.

Where applicable the requirements set out in the second and third paragraphs shall be based on those defined for the use of national general export authorisations granted by those Member States which provide for such authorisations.

ANNEX IIc

UNION GENERAL EXPORT AUTHORISATION No EU003**(referred to in Article 9(1) of this Regulation)****Export after repair/replacement****Issuing authority: European Union****Part 1 — Items**

1. This general export authorisation covers all dual-use items specified in any entry in Annex I to this Regulation except those listed in paragraph 2 where:
 - (a) the items were reimported into the customs territory of the European Union for the purpose of maintenance, repair or replacement, and are exported or re-exported to the country of consignment without any changes to their original characteristics within a period of 5 years after the date when the original export authorisation has been granted; or
 - (b) the items are exported to the country of consignment in exchange for items of the same quality and number which were reimported into the customs territory of the European Union for maintenance, repair or replacement within a period of 5 years after the date when the original export authorisation has been granted.
2. Items excluded:
 - (a) all items listed in Annex IIg;
 - (b) all items in Sections D and E set out in Annex I to this Regulation;
 - (c) the following items specified in Annex I to this Regulation:
 - 1A002a,
 - 1C012a,
 - 1C227,
 - 1C228,
 - 1C229,
 - 1C230,
 - 1C231,
 - 1C236,
 - 1C237,
 - 1C240,
 - 1C350,
 - 1C450,
 - 5A001b5,
 - 5A002a2 to 5A002a9,
 - 5B002 Equipment as follows:
 - a. equipment specially designed for the “development” or “production” of equipment specified by 5A002a2 to 5A002a9;

b. measuring equipment specially designed to evaluate and validate the “information security” functions of equipment specified by 5A002a2 to 5A002a9,

- 6A001a2a1,
- 6A001a2a5,
- 6A002a1c,
- 6A008l3,
- 8A001b,
- 8A001d,
- 9A011.

Part 2 — Destinations

This authorisation is valid throughout the Union for exports to the following destinations:

Albania	Mexico
Argentina	Montenegro
Bosnia and Herzegovina	Morocco
Brazil	Russia
Chile	Serbia
China (including Hong Kong and Macao)	Singapore
Croatia	South Africa
former Yugoslav Republic of Macedonia, the	South Korea
French Overseas Territories	Tunisia
Iceland	Turkey
India	Ukraine
Kazakhstan	United Arab Emirates

Part 3 — Conditions and requirements for use

1. This authorisation can only be used when the initial export has taken place under a Union General Export Authorisation or an initial export authorisation has been granted by the competent authorities of the Member State where the original exporter was established for the export of the items which have subsequently been reimported into the customs territory of the European Union for the purposes of maintenance, repair or replacement. This authorisation is valid only for exports to the original end-user.
2. This authorisation does not authorise the export of items where:
 - (1) the exporter has been informed by the competent authorities of the Member State in which he is established as defined in Article 9(6) of this Regulation that the items in question are or may be intended, in their entirety or in part,
 - (a) for use in connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or other nuclear explosive devices or the development, production, maintenance or storage of missiles capable of delivering such weapons;
 - (b) for a military end-use as defined in Article 4(2) of this Regulation where the purchasing country or country of destination is subject to an arms embargo imposed by a decision or a common position adopted by the Council or a decision of the Organisation for Security and Cooperation in Europe or an arms embargo imposed by a binding resolution of the Security Council of the United Nations; or

- (c) for use as parts or components of military items listed in the national military list that have been exported from the territory of the Member State concerned without authorisation or in breach of an authorisation prescribed by the national legislation of that Member State;
 - (2) the exporter is aware that the items in question are intended, in their entirety or in part, for any of the uses referred to in subparagraph (1);
 - (3) the relevant items are exported to a customs-free zone or a free warehouse which is located in a destination covered by this authorisation;
 - (4) the initial authorisation has been annulled, suspended, modified or revoked;
 - (5) the exporter, under his obligation to exercise due diligence, is aware that the end-use of the items in question is different from that specified in the original export authorisation.
3. On exportation of any of the items pursuant to this authorisation, exporters must:
- (1) mention the reference number of the initial export authorisation in the export declaration to customs together with the name of the Member State that granted the authorisation, the EU reference number X002 and specify that the items are being exported under Union General Export Authorisation EU003 in box 44 of the Single Administrative Document;
 - (2) provide customs officers, if so requested, with documentary evidence of the date of importation of the items into the Union, of any maintenance, repair or replacement of the items carried out in the Union and of the fact that the items are being returned to the end-user and the country from which they were imported into the Union.
4. Any exporter who uses this authorisation must notify the competent authorities of the Member State where he is established of the first use of this authorisation no later than 30 days after the date when the first export took place or, alternatively, and in accordance with a requirement by the competent authority of the Member State where the exporter is established, prior to the first use of this authorisation. Member States shall notify the Commission of the notification mechanism chosen for this authorisation. The Commission shall publish the information notified to it in the C series of the *Official Journal of the European Union*.
- Reporting requirements attached to the use of this authorisation and additional information that the Member State from which the export is made might require on items exported under this authorisation are defined by Member States.
- A Member State may require the exporter established in that Member State to register prior to the first use of this authorisation. Registration shall be automatic and acknowledged by the competent authorities to the exporter without delay and in any case within 10 working days of receipt, subject to Article 9(1) of this Regulation.
- Where applicable the requirements set out in the second and third subparagraphs shall be based on those defined for the use of national general export authorisations granted by those Member States which provide for such authorisations.
5. This authorisation covers items for “repair”, “replacement” and “maintenance”. This may involve coincidental improvement on the original goods, e.g. resulting from the use of modern spare parts or from use of a later built standard for reliability or safety reasons, provided that this does not result in any enhancement to the functional capability of the items or provide the items with new or additional functions.
-

ANNEX II*d***UNION GENERAL EXPORT AUTHORISATION No EU004****(referred to in Article 9(1) of this Regulation)****Temporary export for exhibition or fair****Issuing authority: European Union****Part 1 – Items**

This general export authorisation covers all dual-use items specified in any entry in Annex I to this Regulation except:

- (a) all items listed in Annex IIg;
- (b) all items in Section D set out in Annex I to this Regulation (this does not include software necessary to the proper functioning of the equipment for the purpose of the demonstration);
- (c) all items in Section E set out in Annex I to this Regulation;
- (d) the following items specified in Annex I to this Regulation:
 - 1A002a,
 - 1C002.b.4,
 - 1C010,
 - 1C012.a,
 - 1C227,
 - 1C228,
 - 1C229,
 - 1C230,
 - 1C231,
 - 1C236,
 - 1C237,
 - 1C240,
 - 1C350,
 - 1C450,
 - 5A001b5,
 - 5A002a2 to 5A002a9,
 - 5B002 Equipment as follows:
 - a. equipment specially designed for the “development” or “production” of equipment specified by 5A002a2 to 5A002a9;
 - b. measuring equipment specially designed to evaluate and validate the “information security” functions of equipment specified by 5A002a2 to 5A002a9,
 - 6A001,
 - 6A002a,
 - 6A008l3,
 - 8A001b,
 - 8A001d,
 - 9A011.

Part 2 – Destinations

This authorisation is valid throughout the Union for exports to the following destinations:

Albania, Argentina, Bosnia and Herzegovina, Brazil, Chile, China (including Hong Kong and Macao), Croatia, the former Yugoslav Republic of Macedonia, French Overseas Territories, Iceland, India, Kazakhstan, Mexico, Montenegro, Morocco, Russia, Serbia, Singapore, South Africa, South Korea, Tunisia, Turkey, Ukraine, and United Arab Emirates.

Part 3 – Conditions and requirements for use

1. This authorisation authorises the export of items listed in Part 1 on condition that the export concerns temporary export for exhibition or fair as defined in point 6 and that the items are reimported within a period of 120 days after the initial export, complete and without modification, into the customs territory of the European Union.
2. The competent authority of the Member State where the exporter is established as defined in Article 9(6) of this Regulation may, at the exporter's request, waive the requirement that the items are to be reimported as stated in paragraph 1. To waive the requirement, the procedure for individual authorisations laid down in Articles 9(2) and 14(1) of this Regulation shall apply accordingly.
3. This authorisation does not authorise the export of items where:
 - (1) the exporter has been informed by the competent authorities of the Member State in which he is established that the items in question are or may be intended, in their entirety or in part:
 - (a) for use in connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or other nuclear explosive devices, or the development, production, maintenance or storage of missiles capable of delivering such weapons;
 - (b) for a military end-use as defined in Article 4(2) of this Regulation where the purchasing country or country of destination is subject to an arms embargo imposed by a decision or a common position adopted by the Council or a decision of the Organisation for Security and Cooperation in Europe or an arms embargo imposed by a binding resolution of the Security Council of the United Nations; or
 - (c) for use as parts or components of military items listed in the national military list that have been exported from the territory of the Member State concerned without authorisation or in breach of an authorisation prescribed by the national legislation of that Member State;
 - (2) the exporter is aware that the items in question are intended, in their entirety or in part, for any of the uses referred to in subparagraph (1);
 - (3) the relevant items are exported to a customs-free zone or a free warehouse which is located in a destination covered by this authorisation;
 - (4) the exporter has been informed by a competent authority of the Member State in which he is established, or is otherwise aware (e.g. from information received from the manufacturer), that the items in question have been classified by the competent authority as having a protective national security classification marking, equivalent to or above *CONFIDENTIEL UE/EU CONFIDENTIAL*;
 - (5) their return, in their original state, without the removal, copying or dissemination of any component or software, cannot be guaranteed by the exporter, or where a transfer of technology is connected with a presentation;
 - (6) the relevant items are to be exported for a private presentation or demonstration (e.g. in in-house showrooms);
 - (7) the relevant items are to be merged into any production process;
 - (8) the relevant items are to be used for their intended purpose, except to the minimum extent required for effective demonstration, but without making specific test outputs available to third parties;
 - (9) the export is to take place as a result of a commercial transaction, in particular as regards the sale, rental or lease of the relevant items;

- (10) the relevant items are to be stored at an exhibition or fair only for the purpose of sale, rent or lease, without being presented or demonstrated;
 - (11) the exporter makes any arrangement which would prevent him from keeping the relevant items under his control during the whole period of the temporary export.
4. Exporters must mention the EU reference number X002 and specify that the items are being exported under Union General Export Authorisation EU004 in box 44 of the Single Administrative Document.
 5. Any exporter who uses this authorisation must notify the competent authorities of the Member State where he is established of the first use of this authorisation no later than 30 days after the date when the first export took place or, alternatively, and in accordance with a requirement by the competent authority of the Member State where the exporter is established, prior to the first use of this authorisation. Member States shall notify the Commission of the notification mechanism chosen for this authorisation. The Commission shall publish the information notified to it in the C series of the *Official Journal of the European Union*.

Reporting requirements attached to the use of this authorisation and additional information that the Member State from which the export is made might require on items exported under this authorisation are defined by Member States.

A Member State may require exporters established in that Member State to register prior to the first use of this authorisation. Registration shall be automatic and acknowledged by the competent authorities to the exporter without delay and in any case within 10 working days of receipt, subject to Article 9(1) of this Regulation.

Where applicable the requirements set out in the second and third subparagraphs shall be based on those defined for the use of national general export authorisations granted by those Member States which provide for such authorisations.

6. For the purpose of this authorisation, “exhibition or fair” means commercial events of a specific duration at which several exhibitors make demonstrations of their products to trade visitors or to the general public.
-

ANNEX IIe

UNION GENERAL EXPORT AUTHORISATION NO EU005**(referred to in Article 9(1) of this Regulation)****Telecommunications****Issuing authority: European Union****Part 1 – Items**

This general export authorisation covers the following dual-use items specified in Annex I to this Regulation:

(a) the following items of Category 5, Part I:

- (i) items, including specially designed or developed components and accessories therefore specified in 5A001b2 and 5A001c and d;
- (ii) items specified in 5B001 and 5D001, where test, inspection and production equipment is concerned and software for items mentioned under (i);

(b) technology controlled by 5E001a, where required for the installation, operation, maintenance or repair of items specified under (a) and intended for the same end-user.

Part 2 – Destinations

This authorisation is valid throughout the Union for exports to the following destinations:

Argentina, China (including Hong Kong and Macao), Croatia, India, Russia, South Africa, South Korea, Turkey, and Ukraine.

Part 3 – Conditions and requirements for use

1. This authorisation does not authorise the export of items where:

- (1) the exporter has been informed by the competent authorities of the Member State in which he is established as defined in Article 9(6) of this Regulation that the items in question are or may be intended, in their entirety or in part:
 - (a) for use in connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or other nuclear explosive devices, or the development, production, maintenance or storage of missiles capable of delivering such weapons;
 - (b) for a military end-use as defined in Article 4(2) of this Regulation where the purchasing country or country of destination is subject to an arms embargo imposed by a decision or a common position adopted by the Council or a decision of the Organisation for Security and Cooperation in Europe or an arms embargo imposed by a binding resolution of the Security Council of the United Nations;
 - (c) for use as parts or components of military items listed in the national military list that have been exported from the territory of the Member State concerned without authorisation or in breach of an authorisation prescribed by the national legislation of that Member State; or
 - (d) for use in connection with a violation of human rights, democratic principles or freedom of speech as defined by the Charter of Fundamental Rights of the European Union, by using interception technologies and digital data transfer devices for monitoring mobile phones and text messages and targeted surveillance of Internet use (e.g. via Monitoring Centres and Lawful Interception Gateways);
- (2) the exporter, under his obligation to exercise due diligence, is aware that the items in question are intended, in their entirety or in part, for any of the uses referred to in subparagraph 1;

- (3) the exporter, under his obligation to exercise due diligence, is aware that the items in question will be re-exported to any destination other than those listed in Part 2 of this Annex or in Part 2 of Annex IIa or to Member States;
 - (4) the relevant items are exported to a customs-free zone or a free warehouse which is located in a destination covered by this authorisation.
2. Exporters must mention the EU reference number X002 and specify that the items are being exported under Union General Export Authorisation EU005 in box 44 of the Single Administrative Document.
3. Any exporter who uses this authorisation must notify the competent authorities of the Member State where he is established of the first use of this authorisation no later than 30 days after the date when the first export took place or, alternatively, and in accordance with a requirement by the competent authority of the Member State where the exporter is established, prior to the first use of this authorisation. Member States shall notify the Commission of the notification mechanism chosen for this authorisation. The Commission shall publish the information notified to it in the C series of the *Official Journal of the European Union*.

Reporting requirements attached to the use of this authorisation and additional information that the Member State from which the export is made might require on items exported under this authorisation are defined by Member States.

A Member State may require exporters established in that Member State to register prior to the first use of this authorisation. Registration shall be automatic and acknowledged by the competent authorities to the exporter without delay and in any case within 10 working days of receipt, subject to Article 9(1) of this Regulation.

Where applicable the requirements set out in the second and third subparagraphs shall be based on those defined for the use of national general export authorisations granted by those Member States which provide for such authorisations.

ANNEX II^f

UNION GENERAL EXPORT AUTHORISATION No EU006

(referred to in Article 9(1) of this Regulation)

Chemicals

Part 1 – Items

This general export authorisation covers the following dual-use items specified in Annex I to this Regulation:

1C350:

1. Thiodiglycol (111-48-8);
2. Phosphorus oxychloride (10025-87-3);
3. Dimethyl methylphosphonate (756-79-6);
5. Methylphosphonyl dichloride (676-97-1);
6. Dimethyl phosphite (DMP) (868-85-9);
7. Phosphorus trichloride (7719-12-2);
8. Trimethyl phosphite (TMP) (121-45-9);
9. Thionyl chloride (7719-09-7);
10. 3-Hydroxy-1-methylpiperidine (3554-74-3);
11. N,N-Diisopropyl-(beta)-aminoethyl chloride (96-79-7);
12. N,N-Diisopropyl-(beta)-aminoethane thiol (5842-07-9);
13. Quinuclidin-3-ol (1619-34-7);
14. Potassium fluoride (7789-23-3);
15. 2-Chloroethanol (107-07-3);
16. Dimethylamine (124-40-3);
17. Diethyl ethylphosphonate (78-38-6);
18. Diethyl-N,N-dimethylphosphoramidate (2404-03-7);
19. Diethyl phosphite (762-04-9);
20. Dimethylamine hydrochloride (506-59-2);
21. Ethyl phosphinyl dichloride (1498-40-4);
22. Ethyl phosphonyl dichloride (1066-50-8);
24. Hydrogen fluoride (7664-39-3);
25. Methyl benzilate (76-89-1);
26. Methyl phosphinyl dichloride (676-83-5);
27. N,N-Diisopropyl-(beta)-amino ethanol (96-80-0);
28. Pinacolyl alcohol (464-07-3);
30. Triethyl phosphite (122-52-1);

31. Arsenic trichloride (7784-34-1);
32. Benzoic acid (76-93-7);
33. Diethyl methylphosphonite (15715-41-0);
34. Dimethyl ethylphosphonate (6163-75-3);
35. Ethyl phosphinyl difluoride (430-78-4);
36. Methyl phosphinyl difluoride (753-59-3);
37. 3-Quinuclidone (3731-38-2);
38. Phosphorus pentachloride (10026-13-8);
39. Pinacolone (75-97-8);
40. Potassium cyanide (151-50-8);
41. Potassium bifluoride (7789-29-9);
42. Ammonium hydrogen fluoride or ammonium bifluoride (1341-49-7);
43. Sodium fluoride (7681-49-4);
44. Sodium bifluoride (1333-83-1);
45. Sodium cyanide (143-33-9);
46. Triethanolamine (102-71-6);
47. Phosphorus pentasulphide (1314-80-3);
48. Di-isopropylamine (108-18-9);
49. Diethylaminoethanol (100-37-8);
50. Sodium sulphide (1313-82-2);
51. Sulphur monochloride (10025-67-9);
52. Sulphur dichloride (10545-99-0);
53. Triethanolamine hydrochloride (637-39-8);
54. N,N-Diisopropyl-(Beta)-aminoethyl chloride hydrochloride (4261-68-1);
55. Methylphosphonic acid (993-13-5);
56. Diethyl methylphosphonate (683-08-9);
57. N,N-Dimethylaminophosphoryl dichloride (677-43-0);
58. Triisopropyl phosphite (116-17-6);
59. Ethyldiethanolamine (139-87-7);
60. O,O-Diethyl phosphorothioate (2465-65-8);
61. O,O-Diethyl phosphorodithioate (298-06-6);
62. Sodium hexafluorosilicate (16893-85-9);
63. Methylphosphonothioic dichloride (676-98-2).

1C450 a:

4. Phosgene: Carbonyl dichloride (75-44-5);
5. Cyanogen chloride (506-77-4);
6. Hydrogen cyanide (74-90-8);
7. Chloropicrin: Trichloronitromethane (76-06-2);

1C450 b:

1. Chemicals, other than those specified in the Military Goods Controls or in 1C350, containing a phosphorus atom to which is bonded one methyl, ethyl or propyl (normal or iso) group but not further carbon atoms;
2. N,N-Dialkyl [methyl, ethyl or propyl (normal or iso)] phosphoramidic dihalides, other than N,N-Dimethylaminophosphoryl dichloride which is specified in 1C350.57;
3. Dialkyl [methyl, ethyl or propyl (normal or iso)] N,N-dialkyl [methyl, ethyl or propyl (normal or iso)]-phosphoramidates, other than Diethyl-N,N-dimethylphosphoramidate which is specified in 1C350;
4. N,N-Dialkyl [methyl, ethyl or propyl (normal or iso)] aminoethyl-2-chlorides and corresponding protonated salts, other than N,N-Diisopropyl-(beta)-aminoethyl chloride or N,N-Diisopropyl-(beta)-aminoethyl chloride hydrochloride which are specified in 1C350;
5. N,N-Dialkyl [methyl, ethyl or propyl (normal or iso)] aminoethane-2-ols and corresponding protonated salts; other than N,N-Diisopropyl-(beta)-aminoethanol (96-80-0) and N,N-Diethylaminoethanol (100-37-8) which are specified in 1C350;
6. N,N-Dialkyl [methyl, ethyl or propyl (normal or iso)] aminoethane-2-thiols and corresponding protonated salts, other than N,N-Diisopropyl-(beta)-aminoethane thiol which is specified in 1C350;
8. Methyldiethanolamine (105-59-9).

Part 2 – Destinations

This authorisation is valid throughout the Union for exports to the following destinations:

Argentina, Croatia, Iceland, South Korea, Turkey, and Ukraine.

Part 3 – Conditions and requirements for use

1. This authorisation does not authorise the export of items where:

- (1) the exporter has been informed by the competent authorities of the Member State in which he is established as defined in Article 9(6) of this Regulation that the items in question are or may be intended, in their entirety or in part:
 - (a) for use in connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or other nuclear explosive devices, or the development, production, maintenance or storage of missiles capable of delivering such weapons;
 - (b) for a military end-use as defined in Article 4(2) of this Regulation where the purchasing country or country of destination is subject to an arms embargo imposed by a decision or a common position adopted by the Council or a decision of the Organisation for Security and Cooperation in Europe or an arms embargo imposed by a binding resolution of the Security Council of the United Nations; or
 - (c) for use as parts or components of military items listed in the national military list that have been exported from the territory of the Member State concerned without authorisation or in breach of an authorisation prescribed by the national legislation of that Member State;
- (2) the exporter, under his obligation to exercise due diligence, is aware that the items in question are intended, in their entirety or in part, for any of the uses referred to in subparagraph 1;

- (3) the exporter, under his obligation to exercise due diligence, is aware that the items in question will be re-exported to any destination other than those listed in Part 2 of this Annex or in Part 2 of Annex IIa or to Member States; or
 - (4) the relevant items are exported to a customs-free zone or a free warehouse which is located in a destination covered by this authorisation.
2. Exporters must mention the EU reference number X002 and specify that the items are being exported under Union General Export Authorisation EU006 in box 44 of the Single Administrative Document.
3. Any exporter who uses this authorisation must notify the competent authorities of the Member State where he is established of the first use of this authorisation no later than 30 days after the date when the first export took place or, alternatively, and in accordance with a requirement by the competent authority of the Member State where the exporter is established, prior to the first use of this authorisation. Member States shall notify the Commission of the notification mechanism chosen for this authorisation. The Commission shall publish the information notified to it in the C series of the *Official Journal of the European Union*.

Reporting requirements attached to the use of this authorisation and additional information that the Member State from which the export is made might require on items exported under this authorisation are defined by Member States.

A Member State may require exporters established in that Member State to register prior to the first use of this authorisation. Registration shall be automatic and acknowledged by the competent authorities to the exporter without delay and in any case within 10 working days of receipt, subject to Article 9(1) of this Regulation.

Where applicable the requirements set out in the second and third subparagraphs shall be based on those defined for the use of national general export authorisations granted by those Member States which provide for such authorisations.

ANNEX IIg

(List referred to in Article 9(4)(a) of this Regulation and Annexes IIa, IIc and IId to this Regulation)

The entries do not always provide a complete description of the items and the related notes in Annex I. Only Annex I provides a complete description of the items.

The mention of an item in this Annex does not affect the application of the General Software Note (GSN) in Annex I.

- all items specified in Annex IV,
 - 0C001 “Natural uranium” or “depleted uranium” or thorium in the form of metal, alloy, chemical compound or concentrate and any other material containing one or more of the foregoing,
 - 0C002 “Special fissile materials” other than those specified in Annex IV,
 - 0D001 “Software” specially designed or modified for the “development”, “production” or “...” of goods specified in Category 0, in so far as it relates to 0C001 or to those items of 0C002 that are excluded from Annex IV,
 - 0E001 “Technology” in accordance with the Nuclear Technology Note for the “development”, “production” or “...” of goods specified in Category 0, in so far as it relates to 0C001 or to those items of 0C002 that are excluded from Annex IV,
 - 1A102 Resaturated pyrolysed carbon-carbon components designed for space launch vehicles specified in 9A004 or sounding rockets specified in 9A104,
 - 1C351 Human pathogens, zoonoses and “toxins”,
 - 1C352 Animal pathogens,
 - 1C353 Genetic elements and genetically modified organisms,
 - 1C354 Plant pathogens,
 - 1C450a.1. amiton: O,O-Diethyl S-[2-(diethylamino)ethyl] phosphorothiolate (78-53-5) and corresponding alkylated or protonated salts,
 - 1C450a.2. PFIB: 1,1,3,3,3-Pentafluoro-2-(trifluoromethyl)-1-propene (382-21-8),
 - 7E104 “Technology” for the integration of flight control, guidance and propulsion data into a flight management system for optimisation of rocket system trajectory,
 - 9A009.a. Hybrid rocket propulsion systems with total impulse capacity exceeding 1.1 MNs,
 - 9A117 Staging mechanisms, separation mechanisms and interstages usable in “missiles”.
-

STATEMENT BY THE COMMISSION

The Commission intends to review this Regulation no later than 31 December 2013, in particular as regards assessing the possibility of introducing a General Export Authorisation on low-value shipments.

**STATEMENT BY THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE COMMISSION ON
LOW-VALUE SHIPMENTS**

This Regulation does not affect the National General Export Authorisations on low-value shipments issued by Member States in accordance with Article 9(4) of Regulation (EC) No 428/2009.

REGULATION (EU) No 1233/2011 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 16 November 2011

on the application of certain guidelines in the field of officially supported export credits and
repealing Council Decisions 2001/76/EC and 2001/77/EC

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 Article 207 thereof,

Having regard to the proposal from the European Commission,

Acting in accordance with the ordinary legislative procedure ⁽¹⁾,

Whereas:

- (1) Export Credit Agencies ('ECAs') contribute to the development of world trade by supporting export and investments by companies in a manner that complements the provision of private sector finance and insurance. The Union is party to the Arrangement on Officially Supported Export Credits ('the Arrangement') of the Organisation for Economic Co-operation and Development ('OECD'). The Arrangement, as concluded by the Participants thereof, regulates the financial terms and conditions that ECAs may offer in order to foster a level playing field for officially supported export credits.
- (2) By virtue of Council Decision 2001/76/EC of 22 December 2000 replacing the Decision of 4 April 1978 on the application of certain guidelines in the field of officially supported export credits ⁽²⁾ and Council Decision 2001/77/EC of 22 December 2000 on the application of principles of a framework agreement on project finance in the field of officially supported export credits ⁽³⁾, the guidelines contained in the Arrangement and the specific rules for project finance apply in the Union.
- (3) The Arrangement indirectly contributes, through the activity of the ECAs, to free and fair trade and investment by companies which would otherwise have less access to credit facilities provided by the private sector.
- (4) The Member States should comply with the Union's general provisions on external action, such as consolidating democracy, respect for human rights and policy coherence for development, and the fight against climate change, when establishing, developing and implementing their national export credit systems and when carrying out their supervision of officially supported export credit activities.

(5) The Participants to the Arrangement are involved in a continuous process intended to minimise market distortion and to establish a level playing field in which the premiums charged by the ECAs are risk based and should be adequate to cover long-term operating costs and losses and in accordance with World Trade Organization obligations. In order to achieve this goal, the export credit systems operate in a transparent way and agencies report accordingly to the OECD.

(6) Well-targeted export credits provided by ECAs can contribute to market access opportunities for Union companies, including for small and medium-sized enterprises (SMEs).

(7) The Participants to the Arrangement and the Member States of the Union agreed to disclose certain information on export credits according to the transparency rules of the OECD and of the Union in order to facilitate a level playing field for the Participants to the Arrangement and Member States.

(8) The Union applies transparency and reporting measures as set out in Annex I.

(9) In view of the intensified competitive situation on world markets and in order to avoid competitive disadvantages for Union companies, the Commission, with regard to the negotiating authorisation from the Member States, should support the efforts by the OECD in reaching out to non-Participants to the Arrangement. The Commission should use bilateral and multilateral negotiations in order to establish global standards for officially supported export credits. Global standards in this field are a prerequisite for a level playing field in world trade.

(10) Although OECD countries are guided by the Arrangement, non-OECD countries are not Participants to the Arrangement and this could lead to a competitive advantage for exporters of the latter countries. Those countries, therefore, are being encouraged to apply the Arrangement in order to ensure a level playing field also at the global level.

(11) In view of the Union's Better Regulation policy, aimed at simplifying and improving existing regulation, the Commission and Member States, in future reviews of the Arrangement, will focus, where appropriate, on reducing administrative burdens on businesses and national administrations, including ECAs.

⁽¹⁾ Position of the European Parliament of 13 September 2011 (not yet published in the Official Journal) and decision of the Council of 8 November 2011.

⁽²⁾ OJ L 32, 2.2.2001, p. 1.

⁽³⁾ OJ L 32, 2.2.2001, p. 55.

- (12) The Participants to the Arrangement decided to amend and rationalise the Arrangement. Changes agreed upon by them cover enhanced user-friendliness, improving consistency among the relevant international obligations and the achievement of greater transparency, in particular with regard to non-Participants to the Arrangement. Moreover, the Participants to the Arrangement also agreed to incorporate in the text of the Arrangement the rules on project finance which were introduced by Decision 2001/77/EC, and the rules for export credits for ships, which were introduced by Council Decision 2002/634/EC ⁽¹⁾ amending Decision 2001/76/EC.
- (13) Decision 2001/76/EC, as amended, should be repealed and replaced by this Regulation and the consolidated and revised text of the Arrangement annexed thereto, and Decision 2001/77/EC should be repealed.
- (14) In order to smoothly and promptly incorporate into Union legislation the amendments to the guidelines set out in the Arrangement as agreed upon by the Participants to the Arrangement, the Commission should adopt delegated acts to amend Annex II where this is necessary. Therefore the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of amendments to the guidelines as agreed upon by the Participants to the Arrangement. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council,

HAVE ADOPTED THIS REGULATION:

Article 1

Application of the Arrangement

The guidelines contained in the Arrangement on Officially Supported Export Credits ('the Arrangement') shall apply in the Union. The text of the Arrangement is annexed to this Regulation.

Article 2

Delegation of power

The Commission shall adopt delegated acts in accordance with Article 3 to amend Annex II as a result of amendments to the guidelines agreed upon by the Participants to the Arrangement.

Where, in the case of amendments to Annex II as a result of amendments to the guidelines agreed upon by the Participants to the Arrangement, imperative grounds of urgency so require,

the procedure provided for in Article 4 shall apply to delegated acts adopted pursuant to this Article.

Article 3

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 2 shall be conferred on the Commission for an indeterminate period of time from 9 December 2011.
3. The delegation of power referred to in Article 2 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Article 2 shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of 2 months of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by 2 months at the initiative of the European Parliament or of the Council.

Article 4

Urgency procedure

1. Delegated acts adopted pursuant to this Article shall enter into force without delay and shall apply as long as no objection is expressed in accordance with paragraph 2. The notification of a delegated act to the European Parliament and to the Council shall state the reasons for the use of the urgency procedure.
2. Either the European Parliament or the Council may object to a delegated act in accordance with the procedure referred to in Article 3(5). In such a case, the Commission shall repeal the act without delay following the notification of the decision to object by the European Parliament or by the Council.

Article 5

Transparency and reporting

The transparency and reporting measures to be applied in the Union are set out in Annex I.

⁽¹⁾ OJ L 206, 3.8.2002, p. 16.

*Article 6***Repeal**

Decisions 2001/76/EC and 2001/77/EC are hereby repealed.

*Article 7***Entry into force**

This Regulation shall enter into force on the day following 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 Strasbourg, 16 November 2011.

For the European Parliament

The President

J. BUZEK

For the Council

The President

W. SZCZUKA

ANNEX I

1. Without prejudice to the prerogatives of the Member States' institutions exercising the supervision of the national export credit programs, each Member State shall make available to the Commission an Annual Activity Report in order to step up transparency at Union level. Member States shall report, in accordance with their national legislative framework, on assets and liabilities, claims paid and recoveries, new commitments, exposures and premium charges. Where contingent liabilities might arise from officially supported export credit activities, those activities shall be reported as part of the Annual Activity Report.
2. In the Annual Activity Report, Member States shall describe how environmental risks, which can carry other relevant risks, are taken into account in the officially supported export credit activities of their ECAs.
3. The Commission shall produce an annual review for the European Parliament based on this information, including an evaluation regarding the compliance of ECAs with Union objectives and obligations.
4. The Commission, according to its competencies shall provide to the European Parliament an annual report on negotiations undertaken, where the Commission has negotiating authorisation in the various forums of international cooperation, to establish global standards in the field of officially supported export credits.

The first reporting period, under the scope of this Regulation, covers the year 2011.

ANNEX II

ARRANGEMENT ON OFFICIALLY SUPPORTED EXPORT CREDITS

TABLE OF CONTENTS

	Page
CHAPTER I: GENERAL PROVISIONS	52
1. PURPOSE	52
2. STATUS	52
3. PARTICIPATION	52
4. INFORMATION AVAILABLE TO NON-PARTICIPANTS	52
5. SCOPE OF APPLICATION	52
6. SECTOR UNDERSTANDINGS	53
7. PROJECT FINANCE	53
8. WITHDRAWAL	53
9. MONITORING	53
CHAPTER II: FINANCIAL TERMS AND CONDITIONS FOR EXPORT CREDITS	53
10. DOWN PAYMENT, MAXIMUM OFFICIAL SUPPORT AND LOCAL COSTS	53
11. CLASSIFICATION OF COUNTRIES FOR MAXIMUM REPAYMENT TERMS	54
12. MAXIMUM REPAYMENT TERMS	54
13. REPAYMENT TERMS FOR NON-NUCLEAR POWER PLANT	54
14. REPAYMENT OF PRINCIPAL AND PAYMENT OF INTEREST	55
15. INTEREST RATES, PREMIUM RATES AND OTHER FEES	56
16. VALIDITY PERIOD FOR EXPORT CREDITS	56
17. ACTION TO AVOID OR MINIMISE LOSSES	56
18. MATCHING	56
19. MINIMUM FIXED INTEREST RATES UNDER OFFICIAL FINANCING SUPPORT	56
20. CONSTRUCTION OF CIRRs	56
21. VALIDITY OF CIRRs	57
22. APPLICATION OF CIRRs	57
23. PREMIUM FOR CREDIT RISK	57
24. MINIMUM PREMIUM RATES FOR COUNTRY AND SOVEREIGN CREDIT RISK	57
25. COUNTRY RISK CLASSIFICATION	58
26. CLASSIFICATION OF MULTILATERAL AND REGIONAL INSTITUTIONS	59

	Page
27. PERCENTAGE AND QUALITY OF OFFICIAL EXPORT CREDIT COVER	59
28. EXCLUSION OF SELECTED COUNTRY RISK ELEMENTS AND COUNTRY RISK MITIGATION TECHNIQUES	60
29. REVIEW OF THE VALIDITY OF THE MINIMUM PREMIUM RATES FOR COUNTRY AND SOVEREIGN CREDIT RISK	61
CHAPTER III: PROVISIONS FOR TIED AID	61
30. GENERAL PRINCIPLES	61
31. FORMS OF TIED AID	61
32. ASSOCIATED FINANCING	62
33. COUNTRY ELIGIBILITY FOR TIED AID	62
34. PROJECT ELIGIBILITY	63
35. MINIMUM CONCESSIONALITY LEVEL	63
36. EXEMPTIONS FROM COUNTRY OR PROJECT ELIGIBILITY FOR TIED AID	64
37. CALCULATION OF CONCESSIONALITY LEVEL OF TIED AID	64
38. VALIDITY PERIOD FOR TIED AID	65
39. MATCHING	65
CHAPTER IV: PROCEDURES	66
SECTION 1: COMMON PROCEDURES FOR EXPORT CREDITS AND TRADE-RELATED AID	66
40. NOTIFICATIONS	66
41. INFORMATION ON OFFICIAL SUPPORT	66
42. PROCEDURES FOR MATCHING	66
43. SPECIAL CONSULTATIONS	66
SECTION 2: PROCEDURES FOR EXPORT CREDITS	67
44. PRIOR NOTIFICATION WITH DISCUSSION	67
45. PRIOR NOTIFICATION WITHOUT DISCUSSION	67
SECTION 3: PROCEDURES FOR TRADE-RELATED AID	67
46. PRIOR NOTIFICATION	67
47. PROMPT NOTIFICATION	68
SECTION 4: CONSULTATION PROCEDURES FOR TIED AID	68
48. PURPOSE OF CONSULTATIONS	68
49. SCOPE AND TIMING OF CONSULTATIONS	68
50. OUTCOME OF CONSULTATIONS	69
SECTION 5: INFORMATION EXCHANGE FOR EXPORT CREDITS AND TRADE-RELATED AID	69

	Page
51. CONTACT POINTS	69
52. SCOPE OF ENQUIRIES	69
53. SCOPE OF RESPONSES	69
54. FACE-TO-FACE CONSULTATIONS	69
55. PROCEDURES AND FORMAT OF COMMON LINES	70
56. RESPONSES TO COMMON LINE PROPOSALS	70
57. ACCEPTANCE OF COMMON LINES	70
58. DISAGREEMENT ON COMMON LINES	71
59. EFFECTIVE DATE OF COMMON LINE	71
60. VALIDITY OF COMMON LINES	71
SECTION 6: OPERATIONAL PROVISIONS FOR THE COMMUNICATION OF MINIMUM INTEREST RATES (CIRRs)	71
61. COMMUNICATION OF MINIMUM INTEREST RATES	71
62. EFFECTIVE DATE FOR APPLICATION OF INTEREST RATES	71
63. IMMEDIATE CHANGES IN INTEREST RATES	71
SECTION 7: REVIEWS	72
64. REGULAR REVIEW OF THE ARRANGEMENT	72
65. REVIEW OF MINIMUM INTEREST RATES	72
66. REVIEW OF MINIMUM PREMIUM RATES AND RELATED ISSUES	72
ANNEX I: SECTOR UNDERSTANDING ON EXPORT CREDITS FOR SHIPS	73
ANNEX II: SECTOR UNDERSTANDING ON EXPORT CREDITS FOR NUCLEAR POWER PLANT ...	76
ANNEX III: SECTOR UNDERSTANDING ON EXPORT CREDITS FOR CIVIL AIRCRAFT	78
ANNEX IV: SECTOR UNDERSTANDING ON EXPORT CREDITS, RENEWABLE ENERGIES AND WATER PROJECTS, IN FORCE FOR A TRIAL PERIOD UNTIL 30 JUNE 2007	89
ANNEX V: INFORMATION TO BE PROVIDED FOR NOTIFICATIONS	92
ANNEX VI: CALCULATION OF THE MINIMUM PREMIUM RATES	97
ANNEX VII: CRITERIA AND CONDITIONS GOVERNING THE APPLICATION OF COUNTRY RISK CLASSIFICATION REFLECTING A THIRD COUNTRY GUARANTOR OR A MULTILATERAL OR REGIONAL INSTITUTION	99
ANNEX VIII: CRITERIA AND CONDITIONS GOVERNING THE APPLICATION OF COUNTRY RISK MITI- GATION/EXCLUSION IN CALCULATING THE MINIMUM PREMIUM RATES	101
ANNEX IX: CHECKLIST OF DEVELOPMENTAL QUALITY	108
ANNEX X: TERMS AND CONDITIONS APPLICABLE TO PROJECT FINANCE TRANSACTIONS	109
ANNEX XI: LIST OF DEFINITIONS	111

CHAPTER I

GENERAL PROVISIONS

1. Purpose

- a) The main purpose of the Arrangement on Officially Supported Export Credits, referred to throughout this document as the Arrangement, is to provide a framework for the orderly use of officially supported export credits.
- b) The Arrangement seeks to foster a level playing field for official support, as defined in Article 5 a), in order to encourage competition among exporters based on quality and price of goods and services exported rather than on the most favourable officially supported financial terms and conditions.

2. Status

The Arrangement, developed within the OECD framework, initially came into effect in April 1978 and is of indefinite duration. The Arrangement is a Gentlemen's Agreement among the Participants; it is not an OECD Act ⁽¹⁾, although it receives the administrative support of the OECD Secretariat ('the Secretariat').

3. Participation

The Participants to the Arrangement currently are: Australia, Canada, the European Union, Japan, Korea, New Zealand, Norway, Switzerland and the United States. Other OECD Members and non-Members may be invited to become Participants by the current Participants.

4. Information available to non-participants

- a) The Participants undertake to share information with non-Participants on notifications related to official support as set out in Article 5 a).
- b) A Participant shall, on the basis of reciprocity, reply to a request from a non-Participant in a competitive situation on the financial terms and conditions offered for its official support, as it would reply to a request from a Participant.

5. Scope of application

The Arrangement shall apply to all official support provided by or on behalf of a government for export of goods and/or services, including financial leases, which have a repayment term of 2 years or more.

- a) Official support may be provided in different forms:
 - 1. Export credit guarantee or insurance (pure cover).
 - 2. Official financing support:
 - direct credit/financing and refinancing, or
 - interest rate support.
 - 3. Any combination of the above.
- b) The Arrangement shall apply to tied aid; the procedures set out in Chapter IV shall also apply to trade-related untied aid.
- c) The Arrangement does not apply to exports of Military Equipment and Agricultural Commodities.
- d) Official support shall not be provided if there is clear evidence that the contract has been structured with a purchaser in a country which is not the final destination of the goods primarily with the aim of obtaining more favourable repayment terms.

⁽¹⁾ As defined in Article 5 of the OECD Convention.

6. Sector understandings

a) The following Sector Understandings are part of the Arrangement:

- Ships (Annex I),
- Nuclear Power Plants (Annex II),
- Civil Aircraft (Annex III),
- Renewable Energies and Water Projects (Annex IV).

b) A Participant to a Sector Understanding may apply its provisions for official support for export of goods and/or services covered by that Sector Understanding. Where a Sector Understanding does not include a corresponding provision to that of the Arrangement, a Participant to the Sector Understanding shall apply the provision of the Arrangement.

7. Project finance

- a) The Participants may apply the terms and conditions set out in Annex X to the export of goods and/or services for transactions that meet the criteria set out in Appendix 1 of Annex X.
- b) Paragraph a) does not apply to the export of goods and services covered by the Sector Understanding on Civil Aircraft.

8. Withdrawal

A Participant may withdraw by notifying the Secretariat in writing by means of instant communication, e.g. the OECD On-line Information System (OLIS). The withdrawal takes effect 180 calendar days after receipt of the notification by the Secretariat.

9. Monitoring

The Secretariat shall monitor the implementation of the Arrangement.

CHAPTER II

FINANCIAL TERMS AND CONDITIONS FOR EXPORT CREDITS

Financial terms and conditions for export credits encompass all the provisions set out in this Chapter which shall be read in conjunction one with the other.

The Arrangement sets out limitations on terms and conditions that may be officially supported. The Participants recognise that more restrictive financial terms and conditions than those provided for by the Arrangement traditionally apply to certain trade or industrial sectors. The Participants shall continue to respect such customary financial terms and conditions, in particular the principle by which repayment terms do not exceed the useful life of the goods.

10. Down payment, maximum official support and local costs

- a) The Participants shall require purchasers of goods and services which are the subject of official support to make down payments of a minimum of 15 per cent of the export contract value at or before the starting point of credit as defined in Annex XI. For the assessment of down payments, the export contract value may be reduced proportionally if the transaction includes goods and services from a third country which are not officially supported. Financing/insurance of 100 per cent of the premium is permissible. Premium may or may not be included in the export contract value. Retention payments made after the starting point of credit are not regarded as down payment in this context.
- b) Official support for such down payments shall only take the form of insurance or guarantee against the usual pre-credit risks.
- c) Except as provided for in paragraphs b) and d), the Participants shall not provide official support in excess of 85 per cent of the export contract value, including third country supply but excluding local costs.

d) The Participants may provide official support for local costs, provided that:

1. The total combined official support provided pursuant to paragraphs c) and d) shall not exceed 100 per cent of the export contract value. In consequence, the amount of local costs supported shall not exceed the amount of the down payment.
2. It shall not be provided on terms more favourable/less restrictive than those agreed for the related exports.
3. For Category I countries as defined in Article 11 a), it shall be limited to pure cover.

11. Classification of countries for maximum repayment terms

- a) Category I countries are those which are on the World Bank's graduation list ⁽¹⁾. All other countries are in Category II. The World Bank graduation level is recalculated on an annual basis. A country will change category only after its World Bank category has remained unchanged for 2 consecutive years.
- b) The following operational criteria and procedures apply when classifying countries:
 1. Classification for Arrangement purposes is determined by per capita GNI as calculated by the World Bank for the purposes of the World Bank classification of borrowing countries.
 2. In cases where the World Bank does not have enough information to publish per capita GNI data, the World Bank shall be asked to estimate whether the country in question has per capita GNI above or below the current threshold. The country shall be classified according to the estimate unless the Participants decide to act otherwise.
 3. If a country is reclassified in accordance with Article 11 a), the reclassification will take effect 2 weeks after the conclusions drawn from the abovementioned data from the World Bank have been communicated to all Participants by the Secretariat.
 4. In cases where the World Bank revises figures, such revisions shall be disregarded in relation to the Arrangement. Nevertheless, the classification of a country may be changed by way of a Common Line and Participants would favourably consider a change due to errors and omissions in the figures subsequently recognised in the same calendar year in which the figures were first distributed by the Secretariat.

12. Maximum repayment terms

Without prejudice to Article 13, the maximum repayment term varies according to the classification of the country of destination determined by the criteria in Article 11.

- a) For Category I countries, the maximum repayment term is 5 years, with the possibility of agreeing up to 8½ years when the procedures for prior notification set out in Article 45 are followed.
- b) For Category II countries, the maximum repayment term is 10 years.
- c) In the event of a contract involving more than one country of destination the Participants should seek to establish a Common Line in accordance with the procedures in Articles 55 to 60 to reach agreement on appropriate terms.

13. Repayment terms for non-nuclear power plant

- a) For non-nuclear power plant, the maximum repayment term shall be 12 years. If a Participant intends to support a repayment term longer than that provided for in Article 12, the Participant shall give prior notification in accordance with the procedure in Article 45.

⁽¹⁾ Based on the annual review by the World Bank of its country classification, a per capita Gross National Income (GNI) threshold will be used for the purpose of classification of country category; such threshold is available on the OECD website (www.oecd.org/ech/xcred).

b) Non-nuclear power plant are complete power stations, or parts thereof, not fuelled by nuclear power; they include all components, equipment, materials, and services (including the training of personnel) directly required for the construction and commissioning of such non-nuclear power stations. This does not include items for which the buyer is usually responsible, e.g. costs associated with land development, roads, construction villages, power lines, and switchyard and water supply; as well as costs arising from official approval procedures (e.g. site permits, fuel loading permits) in the buyer's country, except:

1. in cases where the buyer of the switchyard is the same as the buyer of the power plant, the maximum repayment term for the original switchyard shall be the same as that for the non-nuclear power plant (i.e. 12 years); and
2. the maximum repayment term for sub-stations, transformers and transmission lines with a minimum voltage threshold of 100 kV shall be the same as that for the non-nuclear power plant.

14. Repayment of principal and payment of interest

- a) The principal sum of an export credit shall be repaid in equal instalments.
- b) Principal shall be repaid and interest shall be paid no less frequently than every 6 months and the first instalment of principal and interest shall be made no later than 6 months after the starting point of credit.
- c) For export credits provided in support of lease transactions, equal repayments of principal and interest combined may be applied in lieu of equal repayments of principal as set out in paragraph a).
- d) On an exceptional and duly justified basis, export credits may be provided on terms other than those set out in a) through c) above. The provision of such support shall be explained by an imbalance in the timing of the funds available to the obligor and the debt service profile available under an equal, semi-annual repayment schedule, and shall comply with the following criteria:
 1. No single repayment of principal or series of principal payments within a 6-month period shall exceed 25 per cent of the principal sum of the credit.
 2. Principal shall be repaid no less frequently than every 12 months. The first repayment of principal shall be made no later than 12 months after the starting point of credit and no less than 2 per cent of the principal sum of the credit shall have been repaid 12 months after the starting point of credit.
 3. Interest shall be paid no less frequently than every 12 months and the first interest payment shall be made no later than 6 months after the starting point of credit.
 4. The maximum weighted average life of the repayment period shall not exceed:
 - for transactions with sovereign buyers (or with a sovereign repayment guarantee), 4½ years for transactions in Category I Countries and 5¼ years for Category II Countries,
 - for transactions with non-sovereign buyers (and with no sovereign repayment guarantee), 5 years for Category I Countries and 6 years for Category II Countries,
 - notwithstanding the provisions set out in the two previous tirets, for transactions involving support for non-nuclear power plants according to Article 13, 6¼ years.
 5. The Participant shall give prior notification in accordance with Article 45 that explains the reason for not providing support according to paragraphs a) through c).
- e) Interest due after the starting point of credit shall not be capitalised

15. Interest rates, premium rates and other fees

- a) Interest excludes:
1. any payment by way of premium or other charge for insuring or guaranteeing supplier credits or financial credits;
 2. any payment by way of banking fees or commissions relating to the export credit other than annual or semi-annual bank charges that are payable throughout the repayment period; and
 3. withholding taxes imposed by the importing country.
- b) Where official support is provided by means of direct credits/financing or refinancing, the premium either may be added to the face value of the interest rate or may be a separate charge; both components are to be specified separately to the Participants.

16. Validity period for export credits

Financial terms and conditions for an individual export credit or line of credit, other than the validity period for Commercial Interest Reference Rates (CIRRs) set out in Article 21, shall not be fixed for a period exceeding 6 months prior to final commitment.

17. Action to avoid or minimise losses

The Arrangement does not prevent export credit authorities or financing institutions from agreeing to less restrictive financial terms and conditions than those provided for by the Arrangement, if such action is taken after the contract award (when the export credit agreement and ancillary documents have already become effective) and is intended solely to avoid or minimise losses from events which could give rise to non-payment or claims.

18. Matching

Taking into account a Participant's international obligations and consistent with the purpose of the Arrangement, a Participant may match, according to the procedures set out in Article 42, financial terms and conditions offered by a Participant or a non-Participant. Financial terms and conditions provided in accordance with this Article are considered to be in conformity with the provisions of Chapter I and II and, when applicable, Annexes I, II, III, IV and X.

19. Minimum fixed interest rates under official financing support

- a) The Participants providing official financing support for fixed rate loans shall apply the relevant Commercial Interest Reference Rates (CIRRs) as minimum interest rates. CIRRs are interest rates established according to the following principles:
1. CIRRs should represent final commercial lending interest rates in the domestic market of the currency concerned;
 2. CIRRs should closely correspond to the rate for first-class domestic borrowers;
 3. CIRRs should be based on the funding cost of fixed interest-rate finance;
 4. CIRRs should not distort domestic competitive conditions; and
 5. CIRRs should closely correspond to a rate available to first-class foreign borrowers.
- b) The provision of official financing support shall not offset or compensate, in part or in full, for the appropriate credit risk premium to be charged for the risk of non-repayment pursuant to the provisions of Article 23.

20. Construction of CIRRs

- a) Each Participant wishing to establish a CIRR shall initially select one of the following two base-rate systems for its national currency:
1. 3-year government bond yields for a repayment term of up to and including 5 years; 5-year government bond yields for over 5 and up to and including 8½ years; and 7-year government bond yields for over 8½ years; or

2. 5-year government bond yields for all maturities.

Exceptions to the base rate system shall be agreed by the Participants.

- b) CIRRs shall be set at a fixed margin of 100 basis points above each Participant's base rate unless Participants have agreed otherwise.
- c) Other Participants shall use the CIRR set for a particular currency should they decide to finance in that currency.
- d) A Participant may change its base-rate system after giving 6 months' advance notice and with the counsel of the Participants.
- e) A Participant or a non-Participant may request that a CIRR be established for the currency of a non-Participant. In consultation with the interested non-Participant, a Participant or the Secretariat on behalf of that non-Participant may make a proposal for the construction of the CIRR in that currency using Common Line procedures in accordance with Articles 55 to 60.

21. Validity of CIRRs

The interest rate applying to a transaction shall not be fixed for a period longer than 120 days. A margin of 20 basis points shall be added to the CIRR if the terms and conditions of the official financing support are fixed before the contract date.

22. Application of CIRRs

- a) Where official financing support is provided for floating rate loans, banks and other financing institutions shall not be allowed to offer the option of the lower of either the CIRR (at time of the original contract) or the short-term market rate throughout the life of the loan.
- b) In the event of a voluntary, early repayment of a loan of or any portion thereof, the borrower shall compensate the government institution providing official financing support for all costs and losses incurred as a result of such early repayment, including the cost to the government institution of replacing the part of the fixed rate cash inflow interrupted by the early repayment.

23. Premium for credit risk

The Participants shall charge premium, in addition to interest charges, to cover the risk of non-repayment of export credits. The premium rates charged by the Participants shall be risk-based, shall converge and shall not be inadequate to cover long-term operating costs and losses.

24. Minimum premium rates for country and sovereign credit risk

The Participants shall charge no less than the applicable Minimum Premium Rate (MPR) for Country and Sovereign Credit Risk, irrespective of whether the buyer/borrower is a private or public entity.

- a) The applicable MPR is determined according to the following factors:
 - the applicable country risk classification as set out in Article 25,
 - whether official export credit cover is strictly limited to country risk as defined in Article 25 a),
 - the time at risk (i.e. the Horizon of Risk or HOR),
 - the percentage of cover and quality of official export credit product provided as set out in Article 27, and
 - any country risk mitigation/exclusion technique applied as set out in Article 28.
- b) MPRs are expressed in percentages of the principal value of the credit as if premium were collected in full at the date of the first drawdown of the credit. An explanation of the mathematical formula used to calculate the MPRs is provided in Annex VI.

- c) For countries classified in Category 0 as set out in Article 25, no MPRs have been established but the Participants shall not charge premium rates which undercut available private market pricing.
- d) The 'highest risk' countries in Category 7 shall, in principle, be subject to premium rates in excess of the MPRs established for that Category; these premium rates shall be determined by the Participant providing official support.
- e) In calculating the MPR for a transaction, the applicable country risk classification to be applied shall be the classification of the buyer's country, unless:
 - security in the form of an irrevocable, unconditional, on-demand, legally valid and enforceable guarantee of the total debt repayment obligation for the entire duration of the credit is provided by an entity, creditworthy in relation to the size of the guaranteed debt, in a third country, in which case the applicable Country Risk Classification may be that of the country in which the guarantor is located, or
 - a Multilateral or Regional Institution as set out in Article 26 is acting either as borrower or guarantor for the transaction, in which case the applicable Country Risk Classification may be that of the specific Multilateral or Regional Institution involved.
- f) The criteria and conditions relating to the application of a country risk classification according to the situations described in the first and second tirets of Article 24 e) are set out in Annex VII.
- g) If official support is strictly limited to country risk as defined in Article 25 a), i.e. cover of buyer/borrower risk is completely excluded, the MPR is reduced by 10 per cent; this is captured by the mathematical formula used to calculate the MPRs in Annex VI.
- h) The HOR convention used in the calculation of an MPR is one-half of the disbursement period plus the entire repayment period and assumes a regular export credit repayment profile, i.e. repayment in equal semi-annual instalments of principal plus accrued interest beginning 6 months after the starting point of credit. For export credits with non-standard repayment profiles, the equivalent repayment period (expressed in terms of equal, semi-annual instalments) is calculated using the following formula: equivalent repayment period = (average weighted life of the repayment period - 0,25)/0,5.
- i) The Participant applying the MPR in the case referred to in the first tiret of paragraph e) above that leads to a premium rate below the MPR applicable to the buyer's country shall give prior notification according to Article 44 a). The Participant applying the MPR in the case referred to in the second tiret of Article 24 e) or in Article 24 g) shall give prior notification in accordance with Article 45 a).

25. Country risk classification

Countries shall be classified according to the likelihood of whether they will service their external debts (i.e. country credit risk).

- a) The five elements of country credit risk are:
 - general moratorium on repayments decreed by the buyer's/borrower's/guarantor's government or by that agency of a country through which repayment is effected,
 - political events and/or economic difficulties arising outside the country of the notifying Participant or legislative/administrative measures taken outside the country of the notifying Participant which prevent or delay the transfer of funds paid in respect of the credit,
 - legal provisions adopted in the buyer's/borrower's country declaring repayments made in local currency to be a valid discharge of the debt, notwithstanding that, as a result of fluctuations in exchange rates, such repayments, when converted into the currency of the credit, no longer cover the amount of the debt at the date of the transfer of funds,
 - any other measure or decision of the government of a foreign country which prevents repayment under a credit, and
 - cases of force majeure occurring outside the country of the notifying Participant, i.e. war (including civil war), expropriation, revolution, riot, civil disturbances, cyclones, floods, earthquakes, eruptions, tidal waves and nuclear accidents.

- b) Countries are classified into one of eight Country Risk Categories (0-7). MPRs have been established for Categories 1 through 7, but not for Category 0, as the level of country risk is considered to be negligible for countries in this Category.
- c) High Income OECD Countries, as defined by the World Bank on an annual basis according to per capita GNI, are classified in Category 0.
 - For the purposes of the MPRs, any OECD country classified in Category 0 by virtue of its High Income status shall remain classified in Category 0 until it falls below the High Income GNI threshold for 2 consecutive years, at which time the country's classification should be reviewed according to Article 25 d) to f).
 - Any OECD country above the High Income threshold for 2 consecutive years shall be classified, by definition, in Category 0. Such classification shall take effect immediately after the Secretariat has communicated a country's status as determined by the World Bank.
 - Other countries deemed to be of a similar risk level may also be classified in Category 0.
- d) All countries other than High Income OECD Countries ⁽¹⁾ are classified through the Country Risk Classification Methodology, which is comprised of:
 - The Country Risk Assessment Model (the Model), which produces a quantitative assessment of country credit risk which is based, for each country, on three groups of risk indicators: the payment experience of the Participants, the financial situation and the economic situation. The methodology of the Model consists of different steps including the assessment of the three groups of risk indicators, and the combination and flexible weighting of the risk indicator groups.
 - The qualitative assessment of the Model results, considered country-by-country to integrate the political risk and/or other risk factors not taken into account in full or in part by the Model. If appropriate, this may lead to an adjustment to the quantitative Model assessment to reflect the final assessment of the country credit risk.
- e) Country Risk Classifications shall be monitored on an ongoing basis and reviewed at least annually and changes resulting from the Country Risk Classification Methodology shall be immediately communicated by the Secretariat. When a country is reclassified in a lower or higher Country Risk Category, the Participants shall, no later than 5 working days after the reclassification has been communicated by the Secretariat, charge premium rates at or above the MPRs associated with the new Country Risk Category.
- f) The applicable country risk classifications shall be made public by the Secretariat.

26. Classification of multilateral and regional institutions

Multilateral and Regional Institutions shall be classified and reviewed as appropriate; such applicable classifications shall be made public by the Secretariat.

27. Percentage and quality of official export credit cover

The MPRs are differentiated to take account of the differing quality of export credit products and percentage of cover provided by the Participants as set out in Annex VI. The differentiation is based on the exporter's perspective (i.e. to neutralise the competitive effect arising from the differing qualities of product provided to the exporter/financial institution).

- a) The quality of an export credit product is a function of whether the product is insurance, guarantee or direct credit/financing, and for insurance products whether cover of interest during the claims waiting period (i.e. the period between the due date of payment by the buyer/borrower and the date that the insurer is liable to reimburse the exporter/financial institution) is provided without a surcharge.

⁽¹⁾ For administrative purposes, some countries that do not generally receive officially supported export credits may not be classified.

b) All existing export credit products offered by the Participants shall be classified into one of the three product categories which are:

- below standard product, i.e. insurance without cover of interest during the claims waiting period and insurance with cover of interest during the claims waiting period with an appropriate premium surcharge,
- standard product, i.e. insurance with cover of interest during the claims waiting period without an appropriate premium surcharge and direct credit/financing, and
- above standard product, i.e. guarantees.

28. Exclusion of selected country risk elements and country risk mitigation techniques

The Participants may, in accordance with the specific criteria and conditions set out in Annex VIII, exclude certain elements of country risk or use defined country risk mitigation techniques listed in Article 28 b) resulting in lower applicable MPRs through the application of a Country Risk Mitigation/Exclusion Factor (MEF) in the MPR formula. The MEF is determined as follows:

a) With respect to the exclusion of selected country credit risk elements from official export credit cover:

- in situations where only the first three country credit risk elements, as set forth in Article 25 a), are excluded in their totality from cover, a MEF of 0,5 may be applied,
- in situations where only the fourth and fifth country credit risk elements, as set forth in Article 25 a), are excluded in their totality from cover, a MEF of 0,2 may be applied.

b) With respect to the following country risk mitigation techniques, the applicable MPR as well as the criteria and conditions under which the MEF may be applied are set out in Annex VIII:

- Offshore Future Flow Structure Combined with Offshore Escrow Account,
- Offshore Hard Security,
- Offshore Asset-Based Security,
- Offshore Asset-Secured and Asset-Based Financing,
- Co-financing with International Financial Institutions (IFIs),
- Local Currency Financing,
- Third Country Insurance or Conditional Guarantee,
- Debtor Representing a Better Risk Than the Sovereign.

c) The application of more than one of the country risk mitigation techniques described in Article 28 b) shall not have a direct cumulative impact on the applicable MEF. The selection of an appropriate MEF to reflect the combination of country risk mitigation techniques shall take into account the possible overlapping impact of two or more techniques on identical country credit risks. In the case of overlapping, only the best quality security shall normally be considered in determining the appropriate, applicable MEF.

d) The Participant applying the MPR in the cases referred to in Article 28 a) to c) shall give prior notification according to Article 44 a).

e) The list of country risk mitigation techniques in Article 28 b) is not intended to be a closed list; in accordance with Article 66, the Participants shall monitor and review the body of experience with the use of these techniques including the applicable criteria, conditions, circumstances and MEFs set forth in Annex VIII.

29. Review of the validity of the minimum premium rates for country and sovereign credit risk

- a) To assess the adequacy of MPRs and to allow, if necessary, for adjustments, either upwards or downwards, three Premium Feedback Tools (PFTs) shall be used in parallel to monitor and adjust the MPRs.
- b) The Cash Flow PFT and the Accruals PFT are accounting approaches that assess the validity of the MPRs on an aggregate, Country Risk Category and Horizon of Risk basis according to the Participants' actual results in relation to the country and sovereign credit risk of export credits subject to the MPRs.
- c) The third PFT is comprised of four sets of Private Market Indicators ⁽¹⁾ which provide information on market's pricing of country and sovereign credit risk.

CHAPTER III

PROVISIONS FOR TIED AID

30. General principles

- a) The Participants have agreed to have complementary policies for export credits and tied aid. Export credit policies should be based on open competition and the free play of market forces. Tied aid policies should provide needed external resources to countries, sectors or projects with little or no access to market financing. Tied aid policies should ensure best value for money, minimise trade distortion, and contribute to developmentally effective use of these resources.
- b) The tied aid provisions of the Arrangement do not apply to the aid programmes of multilateral or regional institutions.
- c) These principles do not prejudice the views of the Development Assistance Committee (DAC) on the quality of tied and untied aid.
- d) A Participant may request additional information relevant to the tying status of any form of aid. If there is uncertainty as to whether a certain financing practice falls within the scope of the definition of tied aid set out in Annex XI, the donor country shall furnish evidence in support of any claim to the effect that the aid is in fact 'untied' in accordance with the definition in Annex XI.

31. Forms of tied aid

Tied aid can take the form of:

- a) Official Development Assistance (ODA) loans as defined in the 'DAC Guiding Principles for Associated Financing and Tied and Partially Untied Official Development Assistance (1987)';
- b) ODA grants as defined in the 'DAC Guiding Principles for Associated Financing and Tied and Partially Untied Official Development Assistance (1987)'; and
- c) Other Official Flows (OOF), which includes grants and loans but excludes officially supported export credits that are in conformity with the Arrangement; or
- d) any association, e.g. mixture, in law or in fact, within the control of the donor, the lender or the borrower involving two or more of the preceding, and/or the following financing components:
 1. an export credit that is officially supported by way of direct credit/financing, refinancing, interest rate support, guarantee or insurance to which the Arrangement applies; and
 2. other funds at or near market terms, or down payment from the purchaser.

⁽¹⁾ The Private Market Indicators are: sovereign bonds, read-across method, forfeit market and syndicated loan.

32. Associated financing

a) Associated financing may take various forms including mixed credits, mixed financing, joint financing, parallel financing or single integrated transactions. The main characteristics are that they all feature:

- a concessional component that is linked in law or in fact to the non-concessional component,
- either a single part or all of the financing package that is, in effect, tied aid, and
- concessional funds those are available only if the linked non-concessional component is accepted by the recipient.

b) Association or linkage 'in fact' is determined by such factors as:

- the existence of informal understandings between the recipient and the donor authorities,
- the intention by the donor to facilitate the acceptability of a financing package through the use of ODA,
- the effective tying of the whole financing package to procurement in the donor country,
- the tying status of ODA and the means of tendering for or contracting of each financing transaction, or
- any other practice, identified by the DAC or the Participants in which a de facto liaison exists between two or more financing components.

c) The following practices shall not prevent the determination of an association or linkage 'in fact':

- contract splitting through the separate notification of the component parts of one contract,
- splitting of contracts financed in several stages,
- non-notification of interdependent parts of a contract, and/or
- non-notification because part of the financing package is untied.

33. Country eligibility for tied aid

a) There shall be no tied aid to countries which, according to their per capita GNI, are ineligible for 17-year loans from the World Bank. The World Bank recalculates the threshold for this Category on an annual basis ⁽¹⁾. A country will be reclassified only after its World Bank category has been unchanged for 2 consecutive years.

b) The following operational criteria and procedures apply when classifying countries:

1. Classification for Arrangement purposes is determined by per capita GNI as calculated by the World Bank for the purposes of the World Bank classification of borrowing countries; this classification shall be made public by the Secretariat.
2. In cases where the World Bank does not have enough information to publish per capita GNI data, the World Bank shall be asked to estimate whether the country in question has per capita GNI above or below the current threshold. The country shall be classified according to the estimate unless the Participants decide to act otherwise.

⁽¹⁾ Based on the annual review by the World Bank of its country classification, a per capita Gross National Income (GNI) threshold will be used for the purpose of tied aid eligibility; such threshold is available on the OECD website (www.oecd.org/ech/xcred).

3. If a country's eligibility for tied aid does change in accordance with Article 33 a), the reclassification shall take effect 2 weeks after the conclusions drawn from the abovementioned World Bank data have been communicated to all Participants by the Secretariat. Before the effective date of reclassification, no tied aid financing for a newly eligible country may be notified; after that date, no tied aid financing for a newly promoted country may be notified, except that individual transactions covered under a prior committed credit line may be notified until the expiry of the credit line (which shall be no more than 1 year from the effective date).
4. In cases where the World Bank revises figures such revisions shall be disregarded in relation to the Arrangement. Nevertheless, the classification of a country may be changed by way of a Common Line, in accordance with the appropriate procedures in Articles 55 to 60, and the Participants would favourably consider a change due to errors and omissions in the figures subsequently recognised in the same calendar year as the figures that were first distributed by the Secretariat.
5. Notwithstanding the classifications of countries ineligible or eligible to receive tied aid, the Participants should avoid providing any tied aid credit, other than outright grants, food and humanitarian aid as well as aid designed to mitigate the effects of nuclear or major industrial accidents or to prevent their occurrence, for Belarus, Bulgaria, Romania, the Russian Federation and Ukraine. Should the per capita GNI of any of these countries exceed, for 3 consecutive years, the World Bank's threshold for ineligibility for 17-year loans, country eligibility for such credits would be subject to Article 33 a) and b) 1) to 4) above, as well as all other tied aid provisions of the Arrangement ⁽¹⁾.

34. Project eligibility

- a) Tied aid shall not be extended to public or private projects that normally should be commercially viable if financed on market or Arrangement terms.
- b) The key tests for such aid eligibility are:
 - whether the project is financially non-viable, i.e. does the project lack capacity with appropriate pricing determined on market principles, to generate cash flow sufficient to cover the project's operating costs and to service the capital employed, i.e. the first key test, or
 - whether it is reasonable to conclude, based on communication with other Participants, that it is unlikely that the project can be financed on market or Arrangement terms, i.e. the second key test. In respect of projects larger than 50 million SDRs special weight shall be given to the expected availability of financing at market or Arrangement terms when considering the appropriateness of such aid.
- c) The key tests under subparagraph b) above are intended to describe how a project should be evaluated to determine whether it should be financed with such aid or with export credits on market or Arrangement terms. Through the consultation process described in Articles 48 to 50, a body of experience is expected to develop over time that will more precisely define, for both export credit and aid agencies, *ex-ante* guidance as to the line between the two categories of projects.

35. Minimum concessionality level

The Participants shall not provide tied aid that has a concessionality level of less than 35 per cent, or 50 per cent if the beneficiary country is a Least Developed Country (LDC), except for the cases set out below, which are also exempt from the notification procedures set out in Article 47 a):

- a) technical assistance: tied aid where the official development aid component consists solely of technical cooperation that is less than either 3 per cent of the total value of the transaction or one million Special Drawing Rights (SDRs), whichever is lower; and

⁽¹⁾ For the purpose of Article 33 b) 5), the de-commissioning of nuclear power plant can be regarded as humanitarian aid. In case of nuclear or major industrial accident that causes serious transfrontier pollution, any affected Participant may provide tied aid to eliminate or mitigate its effects. In case of significant risk that such an accident may occur, any potentially affected Participant intending to provide aid to prevent its occurrence shall give prior notification in accordance with Article 46. Other Participants shall give favourable consideration to an acceleration of tied aid procedures in line with the specific circumstances.

- b) small projects: capital projects of less than one million SDRs that are funded entirely by development assistance grants.

36. Exemptions from country or project eligibility for tied aid

- a) The provisions of Articles 33 and 34 do not apply to tied aid where the concessionality level is 80 per cent or more except for tied aid that forms part of an associated financing package, described in Article 32.
- b) The provisions of Article 34 do not apply to tied aid with a value of less than two million SDRs except for tied aid that forms part of an associated financing package, described in Article 32.
- c) Tied aid for LDCs as defined by the United Nations is not subject to the provisions of Articles 33 and 34.
- d) Notwithstanding Articles 33 and 34, a Participant may, exceptionally, provide support by one of the following means:
- the Common Line procedure as defined in Annex XI and described in Articles 55 to 60, or
 - justification on aid grounds through support by a substantial body of the Participants as described in Articles 48 and 49, or
 - a letter to the OECD Secretary-General, in accordance with the procedures in Article 50, which the Participants expect will be unusual and infrequent.

37. Calculation of concessionality level of tied aid

The concessionality level of tied aid is calculated using the same method as for the grant element used by the DAC, except that:

- a) The discount rate used to calculate the concessionality level of a loan in a given currency, i.e. the Differentiated Discount Rate (DDR), is subject to annual change on 15 January and is calculated as follows:

- The average of the CIRR + Margin,

Margin (M) depends on the repayment term (R) as follows:

R	M
less than 15 years	0,75
from 15 years up to, but not including, 20 years	1,00
from 20 years up to, but not including, 30 years	1,15
from 30 years and above	1,25

- For all currencies the average of the CIRR is calculated taking an average of the monthly CIRRs valid during the 6-month period between 15 August of the previous year and 14 February of the current year. The calculated rate, including the Margin, is rounded to the nearest ten basis points. If there is more than one CIRR for the currency, the CIRR for the longest maturity as set out in Article 20 a), shall be used for this calculation.
- b) The base date for the calculation of the concessionality level is the starting point of credit as set out in Annex XI.
- c) For the purpose of calculating the overall concessionality level of an associated financing package, the concessionality levels of the following credits, funds and payments are considered to be zero:
- export credits that are in conformity with the Arrangement,
 - other funds at or near market rates,

— other official funds with a concessionality level of less than the minimum permitted pursuant to Article 35 except in cases of matching, and

— down payment from the purchaser.

Payments on or before the starting point of credit that are not considered down payment shall be included in the calculation of the concessionality level.

- d) The discount rate in matching: in matching aid, identical matching means matching with an identical concessionality level that is recalculated with the discount rate in force at the time of matching.
- e) Local costs and third country procurement shall be included in the calculation of concessionality level only if they are financed by the donor country.
- f) The overall concessionality level of a package is determined by multiplying the nominal value of each component of the package by the respective concessionality level of each component, adding the results, and dividing this total by the aggregate nominal value of the components.
- g) The discount rate for a given aid loan is the rate in effect at the time of notification. However, in cases of prompt notification, the discount rate is the one in effect at the time when the terms and conditions of the aid loan were fixed. A change in the discount rate during the life of a loan does not change its concessionality level.
- h) If a change of currency is made before the contract is concluded, the notification shall be revised. The discount rate used to calculate the concessionality level will be the one applicable at the date of revision. A revision is not necessary if the alternative currency and all the necessary information for calculation of the concessionality level are indicated in the original notification.
- i) Notwithstanding subparagraph g), the discount rate used to calculate the concessionality level of individual transactions initiated under an aid credit line shall be the rate that was originally notified for the credit line.

38. Validity period for tied aid

- a) The Participants shall not fix terms and conditions for tied aid, whether this relates to the financing of individual transactions or to an aid protocol, an aid credit line or to a similar agreement, for more than 2 years. In the case of an aid protocol, an aid credit line or similar agreement, the validity period shall commence at the date of its signature, to be notified in accordance with Article 47; the extension of a credit line shall be notified as if it were a new transaction with a note explaining that it is an extension and that it is renewed at terms allowed at the time of the notification of the extension. In the case of individual transactions, including those notified under an aid protocol, an aid credit line or similar agreement, the validity period shall commence at the date of notification of the commitment in accordance with Article 46 or 47, as appropriate.
- b) When a country has become ineligible for 17-year World Bank Loans for the first time, the validity period of existing and new tied aid protocols and credit lines notified shall be restricted to 1 year after the date of the potential reclassification in accordance with procedures in Article 33 b).
- c) Renewal of such protocols and credit lines is possible only on terms which are in accordance with the provisions of Articles 33 and 34 of the Arrangement following:

— reclassification of countries, and

— a change in the provisions of the Arrangement.

In these circumstances, the existing terms and conditions can be maintained notwithstanding a change in the discount rate set out in Article 37.

39. Matching

Taking into account a Participant's international obligations and consistent with the purpose of the Arrangement, a Participant may match, according to the procedures set out in Article 42, financial terms and conditions offered by a Participant or a non-Participant.

CHAPTER IV

PROCEDURES

*Section 1: Common procedures for export credits and trade-related aid***40. Notifications**

The notifications set out by the procedures in the Arrangement shall be made in accordance with, and include the information contained in, Annex V and shall be copied to the Secretariat.

41. Information on official support

- a) As soon as a Participant commits the official support which it has notified in accordance with the procedures in Articles 44 to 47, it shall inform all other Participants accordingly by including the notification reference number on the relevant Creditor Reporting System (CRS) Form 1C.
- b) In an exchange of information in accordance with Articles 52 to 54, a Participant shall inform the other Participants of the credit terms and conditions that it envisages supporting for a particular transaction and may request similar information from the other Participants.

42. Procedures for matching

- a) Before matching financial terms and conditions assumed to be offered by a Participant or a non-Participant pursuant to Articles 18 and 39, a Participant shall make every reasonable effort, including as appropriate by use of the face-to-face consultations described in Article 54, to verify that these terms and conditions are officially supported and shall comply with the following:
 - 1. The Participant shall notify all other Participants of the terms and conditions it intends to support following the same notification procedures required for the matched terms and conditions. In the case of matching a non-Participant, the matching Participant shall follow the same notification procedures that would have been required had the matched terms been offered by a Participant.
 - 2. Notwithstanding 1) above, if the applicable notification procedure would require the matching Participant to withhold its commitment beyond the final bid closing date, then the matching Participant shall give notice of its intention to match as early as possible.
 - 3. If the initiating Participant moderates or withdraws its intention to support the notified terms and conditions, it shall immediately inform all other Participants accordingly.
- b) A Participant intending to offer identical financial terms and conditions to those notified according to Articles 44 and 45 may do so once the waiting period stipulated therein has expired. This Participant shall give notification of its intention as early as possible.

43. Special consultations

- a) A Participant that has reasonable grounds to believe that financial terms and conditions offered by another Participant ('the initiating Participant') are more generous than those provided for in the Arrangement shall inform the Secretariat; the Secretariat shall immediately make available such information.
- b) The initiating Participant shall clarify the financial terms and conditions of its offer within 2 working days following the issue of the information from the Secretariat.
- c) Following clarification by the initiating Participant, any Participant may request that a special consultation meeting of the Participants be organised by the Secretariat within 5 working days to discuss the issue.
- d) Pending the outcome of the special consultation meeting of the Participants, financial terms and conditions benefiting from official support shall not become effective.

*Section 2: Procedures for export credits***44. Prior notification with discussion**

- a) A Participant shall notify all other Participants at least 10 calendar days before issuing any commitment if the Minimum Premium Rate applied has been determined according to the first tiret of Article 24 e) or Article 28 in accordance with Annex V to the Arrangement. If any other Participant requests a discussion during this period, the initiating Participant shall wait an additional 10 calendar days. If the applicable MPR after risk mitigation/exclusion is less than or equal to 75 per cent of the MPR which would result from the application of the buyer country's country risk classification without any risk mitigation or exclusion, the notifying Participant shall notify all other Participants at least 20 calendar days before issuing any commitment.
- b) A Participant shall inform all other Participants of its final decision following a discussion to facilitate the review of the body of experience in Accordance with Article 66. The Participants shall maintain records of their experience with regard to premium rates notified in accordance with paragraph a) above.

45. Prior notification without discussion

- a) A Participant shall notify all other Participants at least 10 calendar days before issuing any commitment in accordance with Annex V to the Arrangement if it intends:
 - 1. to support a repayment term of more than 5 but not exceeding 8½ years to a Category I Country;
 - 2. to provide support for a non-nuclear power plant with a repayment term longer than the relevant maximum in Article 12, but not exceeding 12 years as stipulated in Article 13 a);
 - 3. to provide support according to Article 14 d);
 - 4. to apply a premium rate in accordance with the second tiret of Article 24 e);
 - 5. to apply a premium rate in accordance with Article 24 g).
- b) If the initiating Participant moderates or withdraws its intention to provide support for such transaction, it shall immediately inform all other Participants.

*Section 3: Procedures for trade-related aid***46. Prior notification**

- a) A Participant shall give prior notification if it intends to provide official support for:
 - trade-related untied aid with a value of two million SDRs or more, and a concessionality level of less than 80 per cent,
 - trade-related untied aid with a value of less than two million SDRs and a grant element (as defined by the DAC) of less than 50 per cent,
 - trade-related tied aid with a value of two million SDRs or more and a concessionality level of less than 80 per cent, or
 - trade-related tied aid with a value of less than two million SDRs and a concessionality level of less than 50 per cent, except for the cases set out in Article 35 a) and b).
- b) Prior notification shall be made at the latest 30 working days before the bid closing or commitment date, whichever is the earlier.
- c) If the initiating Participant moderates or withdraws its intention to support the notified terms and conditions, it shall immediately inform all other Participants accordingly.
- d) The provision of this Article shall apply to tied aid that forms part of an associated financing package, as described in Article 32.

47. Prompt notification

- a) A Participant shall promptly notify all other Participants, i.e. within 2 working days of the commitment, if it provides official support for tied aid with a value of either:
 - two million SDRs or more and a concessionality level of 80 per cent or more, or
 - less than two million SDRs and a concessionality level of 50 per cent or more except for the cases set out in Article 35 a) and b).
- b) A Participant shall also promptly notify all other Participants when an aid protocol, credit line or similar agreement is signed.
- c) Prior notification need not be given if a Participant intends to match financial terms and conditions that were subject to a prompt notification.

*Section 4: Consultation procedures for tied aid***48. Purpose of consultations**

- a) A Participant seeking clarification about possible trade motivation for tied aid may request that a full Aid Quality Assessment (detailed in Annex IX) be supplied.
- b) Furthermore, a Participant may request consultations with other Participants, in accordance with Article 49. These include face-to-face consultations as outlined in Article 54 in order to discuss:
 - first, whether an aid offer meets the requirements of Articles 33 and 34, and
 - if necessary, whether an aid offer is justified even if the requirements of Articles 33 and 34 are not met.

49. Scope and timing of consultations

- a) During consultations, a Participant may request, among other items, the following information:
 - the assessment of a detailed feasibility study/project appraisal,
 - whether there is a competing offer with non-concessional or aid financing,
 - the expectation of the project generating or saving foreign currency,
 - whether there is cooperation with multilateral organisations such as the World Bank,
 - the presence of International Competitive Bidding (ICB), in particular if the donor country's supplier is the lowest evaluated bid,
 - the environmental implications,
 - any private sector participation, and
 - the timing of the notifications (e.g. 6 months prior to bid closing or commitment date) of concessional or aid credits.
- b) The consultation shall be completed and the findings on both questions in Article 48 notified by the Secretariat to all Participants at least 10 working days before the bid closing date or commitment date, whichever comes first. If there is disagreement among the consulting parties, the Secretariat shall invite other Participants to express their views within 5 working days. It shall report these views to the notifying Participant, which should reconsider going forward if there appears to be no substantial support for an aid offer.

50. Outcome of consultations

- a) A donor which wishes to proceed with a project despite the lack of substantial support shall provide prior notification of its intentions to other Participants, no later than 60 calendar days after the completion of the Consultation, i.e. acceptance of the Chairman's conclusion. The donor shall also write a letter to the Secretary-General of the OECD outlining the results of the consultations and explaining the overriding non-trade related national interest that forces this action. The Participants expect that such an occurrence will be unusual and infrequent.
- b) The donor shall immediately notify the Participants that it has sent a letter to the Secretary-General of the OECD, a copy of which shall be included with the notification. Neither the donor nor any other Participant shall make a tied aid commitment until 10 working days after this notification to Participants has been issued. For projects for which competing commercial offers were identified during the consultation process, the aforementioned 10-working day period shall be extended to 15 days.
- c) The Secretariat shall monitor the progress and results of consultations.

*Section 5: Information exchange for export credits and trade-related aid***51. Contact points**

All communications shall be made between the designated contact points in each country by means of instant communication, e.g. OLIS, and shall be treated in confidence.

52. Scope of enquiries

- a) A Participant may ask another Participant about the attitude it takes with respect to a third country, an institution in a third country or a particular method of doing business.
- b) A Participant which has received an application for official support may address an enquiry to another Participant, giving the most favourable credit terms and conditions that the enquiring Participant would be willing to support.
- c) If an enquiry is made to more than one Participant, it shall contain a list of addressees.
- d) A copy of all enquiries shall be sent to the Secretariat.

53. Scope of responses

- a) The Participant to which an enquiry is addressed shall respond within 7 calendar days and provide as much information as possible. The reply shall include the best indication that the Participant can give of the decision it is likely to take. If necessary, the full reply shall follow as soon as possible. Copies shall be sent to the other addressees of the enquiry and to the Secretariat.
- b) If an answer to an enquiry subsequently becomes invalid for any reason, because for example:
 - an application has been made, changed or withdrawn, or
 - other terms are being considered,

a reply shall be made without delay and copied to all other addressees of the enquiry and to the Secretariat.

54. Face-to-face consultations

- a) A Participant shall agree within 10 working days to requests for face-to-face consultations.
- b) A request for face-to-face consultations shall be made available to Participants and non-Participants. The consultations shall take place as soon as possible after the expiry of the 10-working day period.
- c) The Chairman of the Participants shall coordinate with the Secretariat on any necessary follow-up action, e.g. a Common Line. The Secretariat shall promptly make available the outcome of the consultation.

55. Procedures and format of common lines

- a) Common Line proposals are addressed only to the Secretariat. A proposal for a Common Line shall be sent to all Participants and, where tied aid is involved, all DAC contact points by the Secretariat. The identity of the initiator is not revealed on the Common Line Register on the Bulletin Board of the OLIS. However, the Secretariat may orally reveal the identity of the initiator to a Participant or DAC member on demand. The Secretariat shall keep a record of such requests.
- b) The Common Line proposal shall be dated and shall be in the following format:
 - reference number, followed by 'Common Line',
 - name of the importing country and buyer,
 - name or description of the project as precise as possible to clearly identify the project,
 - terms and conditions foreseen by the initiating country,
 - Common Line proposal,
 - nationality and names of known competing bidders,
 - commercial and financial bid closing date and tender number to the extent it is known,
 - other relevant information, including reasons for proposing the Common Line, availability of studies of the project and/or special circumstances.
- c) A Common Line proposal put forward in accordance with Article 33 b) 4) shall be addressed to the Secretariat and copied to other Participants. The Participant making the Common Line proposal shall provide a full explanation of the reasons why it considers that the classification of a country should differ from the procedure set out in Article 33 b).
- d) The Secretariat shall make publicly available the agreed Common Lines.

56. Responses to common line proposals

- a) Responses shall be made within 20 calendar days, although the Participants are encouraged to respond to a Common Line proposal as quickly as possible.
- b) A response may be a request for additional information, acceptance, and rejection, a proposal for modification of the Common Line or an alternative Common Line proposal.
- c) A Participant which advises that it has no position because it has not been approached by an exporter, or by the authorities in the recipient country in case of aid for the project, shall be deemed to have accepted the Common Line proposal.

57. Acceptance of common lines

- a) After a period of 20 calendar days, the Secretariat shall inform all Participants of the status of the Common Line proposal. If not all Participants have accepted the Common Line, but no Participant has rejected it, the proposal shall be left open for a further period of 8 calendar days.
- b) After this further period, a Participant which has not explicitly rejected the Common Line proposal shall be deemed to have accepted the Common Line. Nevertheless, a Participant, including the initiating Participant, may make its acceptance of the Common Line conditional on the explicit acceptance by one or more Participants.

- c) If a Participant does not accept one or more elements of a Common Line it implicitly accepts all other elements of the Common Line. It is understood that such a partial acceptance may lead other Participants to change their attitude towards a proposed Common Line. All Participants are free to offer or match terms and conditions not covered by a Common Line.
- d) A Common Line which has not been accepted may be reconsidered using the procedures in Articles 55 and 56. In these circumstances, the Participants are not bound by their original decision.

58. Disagreement on common lines

If the initiating Participant and a Participant which has proposed a modification or alternative cannot agree on a Common Line within the additional 8-calendar day period, this period can be extended by their mutual consent. The Secretariat shall inform all Participants of any such extension.

59. Effective date of common line

The Secretariat shall inform all Participants either that the Common Line will go into effect or that it has been rejected; the Common Line will take effect 3 calendar days after this announcement. The Secretariat shall make available on OLIS a permanently updated record of all Common Lines which have been agreed or are undecided.

60. Validity of common lines

- a) A Common Line, once agreed, shall be valid for a period of 2 years from its effective date, unless the Secretariat is informed that it is no longer of interest, and that this is accepted by all Participants. A Common Line shall remain valid for a further 2-year period if a Participant seeks an extension within 14 calendar days of the original date of expiry. Subsequent extensions may be agreed through the same procedure. A Common Line agreed in accordance with Article 33 b) 4) shall be valid until World Bank data for the following year is available.
- b) The Secretariat shall monitor the status of Common Lines and shall keep the Participants informed accordingly, through the maintenance of the listing 'The Status of Valid Common Lines' on OLIS. Accordingly, the Secretariat, inter alia, shall:
 - add new Common Lines when these have been accepted by the Participants,
 - update the expiry date when a Participant requests an extension,
 - delete Common Lines which have expired,
 - issue, on a quarterly basis, a list of Common Lines due to expire in the following quarter.

Section 6: Operational provisions for the communication of minimum interest rates (CIRRs)

61. Communication of minimum interest rates

- a) CIRRs for currencies that are determined according to the provisions of Article 20 shall be sent by means of instant communication at least monthly to the Secretariat for circulation to all Participants.
- b) Such notification shall reach the Secretariat no later than 5 days after the end of each month covered by this information. The Secretariat shall then inform immediately all Participants of the applicable rates and make them publicly available.

62. Effective date for application of interest rates

Any changes in the CIRRs shall enter into effect on the 15th day after the end of each month.

63. Immediate changes in interest rates

When market developments require the notification of an amendment to a CIRR during the course of a month, the amended rate shall be implemented 10 days after notification of this amendment has been received by the Secretariat.

*Section 7: Reviews***64. Regular review of the arrangement**

- a) The Participants shall review regularly the functioning of the Arrangement. In the review, the Participants shall examine, inter alia, notification procedures, implementation and operation of the DDR system, rules and procedures on tied aid, questions of matching, prior commitments and possibilities of wider participation in the Arrangement.
- b) This review shall be based on information of the Participants' experience and on their suggestions for improving the operation and efficacy of the Arrangement. The Participants shall take into account the objectives of the Arrangement and the prevailing economic and monetary situation. The information and suggestions that Participants wish to put forward for this review shall reach the Secretariat no later than 45 calendar days before the date of review.

65. Review of minimum interest rates

- a) The Participants shall periodically review the system for setting CIRRs in order to ensure that the notified rates reflect current market conditions and meet the aims underlying the establishment of the rates in operation. Such reviews shall also cover the margin to be added when these rates are applied.
- b) A Participant may submit to the Chairman of the Participants a substantiated request for an extraordinary review in case this Participant considers that the CIRR for one or more than one currency no longer reflect current market conditions.

66. Review of minimum premium rates and related issues

The Participants shall regularly monitor and review all aspects of the premium rules and procedures. This shall include:

- a) the methodology for the Country Risk Assessment Model to review its validity in the light of experience;
 - b) the Minimum Premium Rates for country and sovereign credit risk to adjust them over time to ensure that they remain an accurate measure of risk, taking into account the three PFTs: the cash flow and accruals approaches and, where appropriate, private market indicators;
 - c) the differentiations in the MPRs which take account of the differing quality of export credit products and percentage of cover provided; and
 - d) the body of experience related to the use of risk mitigation and/or exclusion as set out in Article 28 and the continued validity and appropriateness of the specific allowable Risk Mitigation/Exclusion Factors. To assist the review the Secretariat shall provide reports of all notifications.
-

ANNEX I

SECTOR UNDERSTANDING ON EXPORT CREDITS FOR SHIPS

CHAPTER I

SCOPE OF THE SECTOR UNDERSTANDING**1. Participation**

The Participants to the Sector Understanding are: Australia, the European Union, Japan, Korea and Norway.

2. Scope of application

This Sector Understanding, which complements the Arrangement, sets out specific guidelines for officially supported export credits relating to export contracts of:

- a) Any new sea-going vessel of 100 gt and above used for the transportation of goods or persons, or for the performance of a specialised service (for example, fishing vessels, fish factory ships, ice breakers and as dredgers, that present in a permanent way by their means of propulsion and direction (steering) all the characteristics of self-navigability in the high sea), tugs of 365 kW and over and to unfinished shells of ships that are afloat and mobile. The Sector Understanding does not cover military vessels. Floating docks and mobile offshore units are not covered by the Sector Understanding, but should problems arise in connection with export credits for such structures, the Participants to the Sector Understanding ('the Participants'), after consideration of substantiated requests by any Participant, may decide that they shall be covered.
- b) Any conversion of a ship. Ship conversion means any conversion of sea-going vessels of more than 1 000 gt on condition that conversion operations entail radical alterations to the cargo plan, the hull or the propulsion system.
- c) 1. Although hovercraft-type vessels are not included in the Sector Understanding, Participants are allowed to grant export credits for hovercraft vessels on equivalent conditions to those prevailing in the Sector Understanding. They commit themselves to apply this possibility moderately and not to grant such credit conditions to hovercraft vessels in cases where it is established that no competition is offered under the conditions of the Sector Understanding.
2. In the Sector Understanding, the term 'hovercraft' is defined as follows: an amphibious vehicle of at least 100 tons designed to be supported wholly by air expelled from the vehicle forming a plenum contained within a flexible skirt around the periphery of the vehicle and the ground or water surface beneath the vehicle, and capable of being propelled and controlled by airscrews or ducted air from fans or similar devices.
3. It is understood that the granting of export credits at conditions equivalent to those prevailing in this Sector Understanding should be limited to those hovercraft vessels used on maritime routes and non-land routes, except for reaching terminal facilities standing at a maximum distance of 1 kilometre from the water.

CHAPTER II

PROVISIONS FOR EXPORT CREDITS AND TIED AID**3. Maximum repayment term**

The maximum repayment term, irrespective of country classification, is 12 years after delivery.

4. Cash payment

The Participants shall require a minimum cash payment of 20 per cent of the contract price by delivery.

5. Repayment of principal

The principal sum of an export credit shall be repaid in equal instalments at regular intervals of normally 6 months and a maximum of 12 months.

6. Minimum premium

The provisions of the Arrangement in relation to minimum premium benchmarks shall not be applied until such provisions have been further reviewed by the Participants to this Sector Understanding.

7. Aid

Any Participant desiring to provide aid must, in addition to the provisions of the Arrangement, confirm that the ship is not operated under an open registry during the repayment term and that appropriate assurance has been obtained that the ultimate owner resides in the receiving country, is not a non-operational subsidiary of a foreign interest and has undertaken not to sell the ship without his government's approval.

CHAPTER III

PROCEDURES

8. Notification

For the purpose of transparency each Participant shall, in addition to the provisions of the Arrangement and the IBRD/Berne Union/OECD Creditor Reporting System, provide annually information on its system for the provision of official support and of the means of implementation of this Sector Understanding, including the schemes in force.

9. Review

- a) The Sector Understanding shall be reviewed annually or upon request by any Participant within the context of the OECD Working Party on Shipbuilding, and a report made to the Participants to the Arrangement.
 - b) To facilitate coherence and consistency between the Arrangement and this Sector Understanding and taking into account the nature of the shipbuilding industry, the Participants to this Sector Understanding and to the Arrangement will consult and coordinate as appropriate.
 - c) Upon a decision by the Participants to the Arrangement to change the Arrangement, the Participants to this Sector Understanding ('the Participants') will examine such a decision and consider its relevance to this Sector Understanding. Pending such consideration the amendments to the Arrangement will not apply to this Sector Understanding. In case the Participants can accept the amendments to the Arrangement they shall report this in writing to the Participants to the Arrangement. In case the Participants cannot accept the amendments to the Arrangement as far as their application to shipbuilding is concerned they shall inform the Participants to the Arrangement of their objections and enter into consultations with them with a view to seeking a resolution of the issues. In case no agreement can be reached between the two groups, the views of the Participants as regards the application of the amendments to shipbuilding shall prevail.
 - d) Upon entry into force of the 'Agreement Respecting Normal Competitive Conditions in the Commercial Shipbuilding and Repair Industry' this Sector Understanding shall cease to apply for those Participants who are legally required to apply the 1994 Understanding on Export Credits for Ships [C/WP6(94)6]. Such Participants shall work for an immediate review to bring the 1994 Understanding in accordance with this Sector Understanding.
-

*Attachment***COMMITMENTS FOR FUTURE WORK**

In addition to the Future Work of the Arrangement, the Participants to this Sector Understanding agree:

- a) to develop an illustrative list of types of ships which are generally considered non-commercially viable, taking into account the disciplines on tied aid set out in the Arrangement;
 - b) to review the provisions of the Arrangement in relation to minimum premium benchmarks with a view to incorporating them into this Sector Understanding;
 - c) to discuss, subject to the developments in relevant international negotiations, the inclusion of other disciplines on minimum interest rates including a special CIRR and floating rates;
 - d) to discuss the applicability of yearly instalments of repayment of principal.
-

ANNEX II

SECTOR UNDERSTANDING ON EXPORT CREDITS FOR NUCLEAR POWER PLANT

CHAPTER I

SCOPE OF THE SECTOR UNDERSTANDING**1. Scope of application**

- a) This Sector Understanding, which complements the Arrangement:
- Sets out the special guidelines which apply to officially supported export credits relating to contracts for the export of complete nuclear power stations or parts thereof, comprising all components, equipment, materials and services, including the training of personnel, directly required for the construction and commissioning of such nuclear power stations. It also sets out the terms which apply to support for nuclear fuel.
 - Does not apply to items for which the buyer is usually responsible, in particular, costs associated with land development, roads, construction village, power lines, switchyard and water supply, as well as costs arising in the buyer's country from official approval procedures (e.g. site permit, construction permit, fuel loading permit), except:
 - in cases where the buyer of the switchyard is the same as the buyer of the power plant and the contract is concluded in relation to the original switchyard for that power plant, the maximum repayment term and the minimum interest rates for the original switchyard shall be the same as those for the nuclear power plant (i.e. 15 years and the SCIRRs).
 - Does not apply to sub-stations, transformers and transmission lines.
- b) This Sector Understanding also applies to the modernisation of existing nuclear power plant in cases where both the overall value of the modernisation is at or above 80 million SDRs (Category X) and the economic life of the plant is likely to be extended by at least 15 years. If either of these criteria is not met, the terms of the Arrangement apply.
- c) The terms of the Arrangement rather than the Sector Understanding shall apply to official support provided for the decommissioning of nuclear power plant. Decommissioning is defined as the closing down or dismantling of a nuclear power plant. The Common Line procedures set out in Articles 55 to 60 of the Arrangement provide the possibility to restrict or extend repayment terms.

2. Review

The Participants shall review the provisions of the Sector Understanding regularly.

CHAPTER II

PROVISIONS FOR EXPORT CREDITS AND TIED AID**3. Maximum repayment term**

The maximum repayment term, irrespective of the country classification, is 15 years.

4. Repayment of principal and payment of interest

- a) The principal sum of an export credit shall be repaid in equal instalments.
- b) Principal shall be repaid and interest shall be paid no less frequently than every 6 months and the first instalment of principal and interest shall be made no later than 6 months after the starting point of credit.
- c) For export credits provided in support of lease transactions, equal repayments of principal and interest combined may be applied in lieu of equal repayments of principal as set out in paragraph a).

5. Minimum interest rates

- a) A Participant providing official financing support through direct financing, refinancing or interest rate support shall apply minimum interest rates; the Participant shall apply the relevant Special Commercial Interest Reference Rate (SCIRR). Where the fixed SCIRR commitment is limited initially to a maximum period which does not exceed 15 years starting from the date of contract award, any official support for the remaining period of the loan shall also be limited to guarantees or interest rate support at the relevant SCIRR prevailing at the time of roll-over.

- b) Where official financing support is provided for equipment for the partial supply of nuclear power plant for which the supplier has no responsibility for commissioning, the minimum interest rate shall be the SCIRR in accordance with Article 6 of this Sector Understanding. Alternatively, a Participant may offer the relevant CIRR in accordance with Article 20 of the Arrangement, provided that the maximum period from the date of contract award to the date of final repayment does not exceed 10 years.

6. Construction of SCIRRS

SCIRRS shall be set at a fixed margin of 75 basis points above the CIRR for the currency in question, except that for the yen, the margin shall be 40 basis points. For those currencies which have more than one CIRR rate, in accordance with the first tier of Article 20 a) of the Arrangement, the CIRR for the longest term shall be used for constructing the SCIRR.

7. Local costs and capitalisation of interest

The provisions of Article 10 d) of the Arrangement do not apply where official financing support is provided on the basis of the SCIRR. Official financing support at rates other than SCIRRS for both local costs and capitalisation of interest accruing before the starting point taken together shall not cover an amount exceeding 15 per cent of the export value.

8. Official support for nuclear fuel

- a) The maximum repayment term for the initial fuel load shall not exceed 4 years from delivery. A Participant providing official financing support for the initial fuel load shall apply minimum interest rates; the Participant shall apply the relevant CIRR. The initial fuel load shall consist of no more than the initially installed nuclear core, plus two subsequent reloads, together consisting of up to two-thirds of a nuclear core.
- b) The maximum repayment term for subsequent reloads of nuclear fuel is 6 months. If in exceptional circumstances longer terms, but in any case not exceeding 2 years, are considered appropriate the procedures set out in Article 44 of the Arrangement shall apply. A Participant providing official financing support for the subsequent reload of nuclear fuel shall apply minimum interest rates; the Participant shall apply the relevant CIRR.
- c) Official support for the separate provision of Uranium Enrichment Services shall not be provided on terms more favourable than those which apply to nuclear fuel.
- d) Reprocessing and spent fuel management (including waste disposal) shall be paid for on a cash basis.
- e) The Participants shall not provide free nuclear fuel or services.

9. Aid

The Participants shall not provide aid support, unless this is in the form of an untied grant.

CHAPTER III

PROCEDURES

10. Prior consultation

Recognising the advantages which can accrue if a common attitude towards terms can be achieved for nuclear power plant, the Participants agree to engage in prior consultation in all cases where there is an intention to provide official support.

11. Prior notification

- a) The Participant initiating a prior consultation shall notify all other Participants at least 10 working days before taking a final decision of the terms it intends to support in accordance with Annex V to the Arrangement.
- b) Other Participants shall not take a final decision on the terms it will support during the 10-working day period specified in subparagraph a) above but shall within 5 days exchange information with all other Participants in the consultation on the appropriate credit terms for the transaction with the objective of achieving a common attitude on such terms.
- c) If a common attitude is not achieved through these means within the 10-day period after receipt of the initial notification the final decision of each Participant in the consultation shall be delayed for an additional 10 working days during which period further efforts to achieve a common attitude shall be made at face-to-face consultation.

ANNEX III

SECTOR UNDERSTANDING ON EXPORT CREDITS FOR CIVIL AIRCRAFT

PART 1

NEW LARGE AIRCRAFT AND ENGINES FOR SUCH AIRCRAFT

CHAPTER I

SCOPE*1. Form and Scope of Application*

- a) Part 1 of the Sector Understanding, which complements the Arrangement, sets out the special guidelines which apply to officially supported export credits relating to the sale or lease of new large civil aircraft, listed in Appendix I, and the engines installed in such aircraft. A new aircraft is an aircraft owned by the manufacturer, i.e. an aircraft which has not been delivered nor previously used for its intended purpose of carrying fare-paying passengers and/or freight. This would not preclude support by a Participant for terms appropriate to new aircraft for transactions where, with the prior knowledge of that Participant, interim commercial financing arrangements had been put in place because the provision of official support had been delayed. In such cases, the repayment term, including the 'starting point of the credit' and the 'final repayment date', would be the same as they would have been had the sale or lease of the aircraft received official support from the date the aircraft was originally delivered.
- b) The terms of Chapter I also apply to engines and spare parts when contemplated as part of the original aircraft order, subject to the provisions of Article 33 of Part 3 of this Sector Understanding. It does not apply to flight simulators, which are subject to the terms of the Arrangement.

2. Objective

The objective of this Part of the Sector Understanding is to establish a balanced equilibrium that on all markets:

- equalises competitive financial conditions between the Participants,
- neutralises finance among the Participants as a factor in the choice among competing aircraft, and
- avoids distortions of competition.

CHAPTER II

PROVISIONS FOR EXPORT CREDITS AND AID*3. Down Payment*

- a) The Participants shall require a minimum down payment of 15 per cent of the total price of the aircraft, which includes the price of the airframe, any installed engines plus the spare engines and spare parts to the extent referred to in Article 33 of Part 3 of this Sector Understanding.
- b) Official support for such down payment can only take the form of insurance and guarantees, i.e. pure cover, against the usual pre-credit risks.

4. Maximum Repayment Term

The maximum repayment term is 12 years.

5. Eligible Currencies

The currencies which are eligible for official financing support are euro, pound sterling and US dollar.

6. Repayment of Principal

- a) The principal sum of an export credit shall normally be repaid in equal and regular instalments not less frequently than every 6 months and with the first instalment to be made no later than 6 months after the starting point of credit. In the case of leases, such profile of repayment may be applied either for the amount of principal only or for the principal and interest combined.

- b) A Participant intending to support a repayment of principal on different terms than those set out in paragraph a) shall comply with the following:

1. no single repayment or series of repayments within a 6-month period shall exceed 25 per cent of the principal sum repayable during the repayment term;
2. the Participant shall give prior notification.

7. *Payment of Interest*

- a) Interest shall not normally be capitalised during the repayment period.
- b) Interest shall be payable not less frequently than every 6 months and with the first payment to be made no later than 6 months after the starting point of credit.
- c) A Participant intending to support a payment of interest on different terms than those set out in paragraphs a) and b) shall give prior notification.

8. *Minimum Interest Rates*

- a) The Participants providing official financing support, which shall not exceed 85 per cent of the total price of the aircraft referred to in subparagraph a) of Article 3 of this Sector Understanding, shall apply minimum interest rates up to a maximum of 62,5 per cent of the total price of the aircraft as follows:

- on repayment terms of up to and including 10 years – TB10 + 120 basis points,
- on repayment terms in excess of 10 years and up to 12 years – TB10 + 175 basis points,
- where TB10 means the 10-year government bond yield for the relevant currency (except the euro) at the constant maturity averaged over the previous 2 calendar weeks. In the case of the euro, TB10 means the yield at the 10-year maturity of the euro yield curve, calculated by Eurostat for the purpose of establishing the euro CIRR, averaged over the previous 2 calendar weeks. For all currencies a margin as specified above shall be applied.

- b) The maximum percentage of the aircraft total price that may be financed at the fixed minimum interest rates specified in subparagraph a) above shall be limited to 62,5 per cent when repayment of the loan is spread over the entire life of the financing and 42,5 per cent when repayment of the loan is spread over the later maturities. The Participants are free to use either repayment approach, subject to the ceiling applicable to that pattern. A Participant offering such a tranche shall notify the other Participants of the amount, the interest rate, the date on which the interest rate is set, the validity period for the interest rate and the pattern of repayment. The Participants shall review the two ceilings at the time of each review in accordance with Article 17 of this Sector Understanding to examine whether one ceiling provides more advantages than the other with a view to adjusting the more advantageous so that a balance is more evenly struck.

- c) Subject to the 85 per cent threshold specified in subparagraph a) above:

1. The Participants may additionally provide official financing support in a manner comparable with that provided by the Private Export Funding Corporation (PEFCO). Fortnightly information on PEFCO's borrowing costs and applicable lending rates, exclusive of official guarantee fees, on fixed rate finance for immediate disbursements over a series of dates, for contract offers and for bid offers, shall be communicated to the other Participants on a regular basis. A Participant offering such a tranche shall notify the other Participants of the amount, the interest rate, the date on which the interest rate is set, the validity period for the interest rate and the pattern of repayments. Any Participant matching such financing offered by another Participant shall match it in all of its terms and conditions other than the validity period of offers of commitment as set out in Article 8 of this Sector Understanding.

2. These rates as notified shall be applied by all Participants as long as the 24-month disbursement interest rate does not exceed 225 basis points above TB10. In the event that the 24-month rate exceeds 225 basis points, the Participants are free to apply the rate of 225 basis points for the 24-month disbursement and all the corresponding rates and shall consult immediately with a view to finding a permanent solution.

- d) The minimum interest rates are inclusive of credit insurance premium and guarantee fees. However, commitment and management fees are not included in the interest rate.

9. *Interest Rate Adjustments*

The minimum interest rates set out in Article 8 of this Sector Understanding shall be reviewed every 2 weeks. If the average of the government bond yield for the relevant currency at constant maturity differs by 10 basis points or more at the end of any 2-week period, such minimum interest rates will be adjusted by the same basis points difference noted above and the recalculated rate rounded to the nearest 5 basis points.

10. *Validity Period for Export Credits/Interest Rate Offers*

The duration of minimum interest rate offers set in accordance with Article 8 of this Sector Understanding shall not exceed 3 months.

11. *Determination of Interest Rate Offers and Selection of Interest Rates*

- a) The Participants may provide official financing support in accordance with Articles 8 and 9 of this Sector Understanding at an interest rate applying on the date an interest rate offer is made for the relevant aircraft, provided that the offer is accepted within its validity period in accordance with Article 10 of this Sector Understanding. If the interest rate offer is not so accepted, further interest rate offers may be made up to, but no later than, the date of delivery of the relevant aircraft.
- b) An interest rate offer may be accepted and the interest rate selected at any time between contract signature and the date of delivery of the relevant aircraft. The rate selected by the borrower shall be irrevocable.

12. *Pure Cover Support*

The Participants may provide official support by way of guarantee or insurance only, i.e. pure cover, subject to the 85 per cent threshold specified in Article 8 a) of this Sector Understanding. Any Participant providing such support shall notify other Participants of the amount, term, currency and pattern of repayments and interest rates.

13. *Competition Reference Point*

In the event of officially supported competition, aircraft that are in the list of large civil aircraft in Appendix I to this Sector Understanding and that compete with other aircraft may benefit from the same credit terms and conditions.

14. *Security for the Repayment Risk*

The Participants may decide upon the security which they deem acceptable to secure the repayment risk without reference to other Participants. However, they agree to provide details of such security if requested by other Participants, or when deemed appropriate.

15. *Model Changes*

The Participants agree that when a fixed interest rate offer has been made or has been concluded on one type of aircraft, the terms contained therein cannot be transferred to another type bearing a different model designation.

16. *Leases*

The Participants may, subject to the other terms of Part 1 of this Sector Understanding, provide support for a financial lease on the same basis as a contract of sale.

17. *Aid*

The Participants shall not provide aid support, unless this is in the form of an untied grant. However, Participants shall consider sympathetically any requests for a Common Line for tied aid for humanitarian purposes.

CHAPTER III

PROCEDURES

18. *Prior Notification, Matching and Information Exchange*

The procedures for prior notification, matching and information exchange set out in the Arrangement shall apply to this Part of this Sector Understanding. Furthermore, the Participants may request a consultation if there is any reason to believe that another Participant is offering an officially supported credit on terms and conditions that do not conform to the Sector Understanding. The consultation shall be held within 10 days, but otherwise follow the procedures set out in Article 54 of the Arrangement.

19. *Review*

The Participants shall review the procedures and provisions of this Sector Understanding regularly to bring them closer to market conditions. However, if market conditions or customary financing practices change considerably, a review may be requested at any time.

PART 2

ALL NEW AIRCRAFT EXCEPT LARGE AIRCRAFT

CHAPTER IV

SCOPE

20. *Form and Scope of Application*

Part 2 of this Sector Understanding, which complements the Arrangement, sets out the special guidelines which apply to officially supported export credits for the sale or lease of new aircraft not covered by Part 1 of this Sector Understanding. It does not apply to hovercraft or to flight simulators which are subject to the terms of the Arrangement.

21. *Best Endeavours*

The provisions of this Chapter represent the most generous terms that Participants may offer when providing official support. The Participants shall, however, continue to respect customary market terms for different types of aircraft and shall do everything in their power to prevent these terms from being eroded.

22. *Categories Of Aircraft*

The Participants have agreed on the following categorisation of aircraft:

- Category A: turbine powered aircraft, including helicopters (e.g. turbo jet, turbo prop and turbo fan aircraft), with generally between 30 and 70 seats,
- Category B: other turbine powered aircraft, including helicopters,
- Category C: other aircraft, including helicopters.

An illustrative list of aircraft in Categories A and B is set out in Appendix I.

CHAPTER V

PROVISIONS FOR EXPORT CREDITS AND AID

23. *Maximum Repayment Term*

The maximum repayment term varies according to the aircraft categorisation which shall be determined by the criteria set out in Article 22 of this Sector Understanding.

- a) For Category A aircraft the maximum repayment term is 10 years.
- b) For Category B aircraft the maximum repayment term is 7 years.
- c) For Category C aircraft the maximum repayment term is 5 years.

24. *Repayment of Principal*

- a) The principal sum of an export credit shall normally be repaid in equal and regular instalments not less frequently than every 6 months and with the first instalment to be made no later than 6 months after the starting point of credit. In the case of leases, such profile of repayment may be applied either for the amount of principal only or for the principal and interest combined.
- b) A Participant intending to support a repayment of principal on different terms than those set out in paragraph a) shall comply with the following:
 - 1. no single repayment or series of repayments within a 6-month period shall exceed 25 per cent of the principal sum repayable during the repayment term;
 - 2. the Participant shall give prior notification.

25. *Payment of Interest*

- a) Interest shall not normally be capitalised during the repayment period.
- b) Interest shall be payable not less frequently than every 6 months and with the first payment to be made no later than 6 months after the starting point of credit.
- c) A Participant intending to support a payment of interest on different terms than those set in paragraphs a) and b) shall give prior notification.
- d) Interest excludes:
 1. any payment by way of premium or other charge for insuring or guaranteeing supplier credits or financial credits. Where official support is provided by means of direct credits/financing or refinancing, the premium either may be added to the face value of the interest rate or may be a separate charge; both components are to be specified separately to the Participants;
 2. any other payment by way of banking fees or commissions relating to the export credit other than annual or semi-annual bank charges that are payable throughout the repayment period; and
 3. withholding taxes imposed by the importing country.

26. *Minimum Interest Rates*

The Participants providing official financing support shall apply minimum interest rates; the Participants shall apply the relevant CIRR set out in Article 20 of the Arrangement.

27. *Insurance Premium and Guarantee Fees*

The Participants shall not waive in part, or in total, insurance premium or guarantee fees.

28. *Aid*

The Participants shall not provide aid support, unless this is in the form of an untied grant. However, the Participants shall consider sympathetically any requests for a Common Line for tied aid for humanitarian purposes.

CHAPTER VI

PROCEDURES

29. *Prior Notification, Matching and Information Exchange*

In the event of officially supported competition for a sale or lease, aircraft competing with those from another category or with those covered by other Parts of the Sector Understanding shall, for that specific sale or lease, be able to benefit from the same terms and conditions as those other aircraft. The procedures for prior notification, matching and information exchange set out in the Arrangement shall apply to this Part of the Sector Understanding. Furthermore, the Participants may request a consultation if there is any reason to believe that another Participant is offering an officially supported credit on terms that do not conform to the Sector Understanding. The consultation shall be held within 10 days, but otherwise follow the procedures set out in Article 54 of the Arrangement.

30. *Review*

The Participants shall review the procedures and provisions of this Sector Understanding regularly in order to bring them closer to market conditions. However, if market conditions or customary financing practices change considerably, a review may be requested at any time.

PART 3

USED AIRCRAFT, SPARE ENGINES, SPARE PARTS, MAINTENANCE AND SERVICE CONTRACTS

CHAPTER VII

SCOPE

31. *Form and Scope of Application*

Part 3 of the Sector Understanding, which complements the Arrangement, sets out the special guidelines which apply to officially supported export credits relating to the sale or lease of used aircraft; and of spare engines, spare parts, maintenance and service contracts in conjunction with both new and used aircraft. It does not apply to hovercraft or to flight simulators, which are subject to the terms of the Arrangement. The relevant provisions of Parts 1 and 2 of this Sector Understanding apply except as follows.

32. *Used Aircraft*

The Participants shall not support credit terms more favourable than those set out in the Sector Understanding for new aircraft. The following rules apply specifically to used aircraft.

	Age of Aircraft (years)		Normal Maximum Repayment Terms		
		Large Aircraft	Category A	Category B	Category C
1		10	8	6	5
2		9	7	6	5
3		8	6	5	4
4		7	6	5	4
5 – 10		6	6	5	4
Over 10		5	5	4	3

These terms shall be reviewed if the maximum repayment term for new aircraft is changed.

- b) The Participants shall apply the provisions set out in Articles 24 and 25 of this Sector Understanding.
- c) The Participants providing official financing support shall apply minimum interest rates; the Participants shall apply the relevant CIRP set out in Article 20 of the Arrangement.

33. *Spare Engines and Spare Parts*

- a) The financing of these items when contemplated as part of the original aircraft order may be on the same terms as for the aircraft. However, in such cases the Participants shall also take account of the size of the fleet of each aircraft type, including aircraft being acquired, aircraft already the subject of a firm order or already owned, on the following basis:

- for the first five aircraft of the type in the fleet: 15 per cent of the aircraft price, i.e. the price of the airframe and installed engines, and
- for the sixth and subsequent aircraft of that type in the fleet: 10 per cent of the aircraft price, i.e. the price of the airframe and installed engines.

- b) When these items are not ordered with the aircraft, the maximum repayment term shall be 5 years for new spare engines and 2 years for other spare parts.
- c) Notwithstanding subparagraph b) above for new spare engines for large aircraft, the Participants may exceed the maximum repayment term of 5 years by up to 3 years:

- where the transaction has a minimum contract value of more than USD 20 million, or
- includes a minimum of four new spare engines.

The contract value shall be reviewed every 2 years and adjusted for price escalation accordingly.

- d) The Participants reserve the right to change their practice and match the practices of competing Participants in relation to the timing of the first repayment of principal with respect to spare engines and spare parts.

34. *Maintenance and Service Contracts*

The Participants may offer official financing support with a repayment term of up to 2 years for maintenance and service contracts.

CHAPTER VIII

PROCEDURES35. *Prior Notification, Matching and Information Exchange*

The procedures for prior notification, matching and information exchange set out in the Arrangement shall apply to this Part of the Sector Understanding. Furthermore, the Participants may request a consultation if there is any reason to believe that another Participant is offering an officially supported credit on terms that do not conform to the Sector Understanding. The consultation shall be held within 10 days, but otherwise follow the procedures set out in Article 54 of the Arrangement.

36. *Review*

The Participants shall review the procedures and provisions of this Sector Understanding regularly in order to bring them closer to market conditions. However, if market conditions or customary financing practices change considerably, a review may be requested at any time.

Appendix I

ILLUSTRATIVE LIST

All other similar aircraft that may be introduced in the future shall be covered by this Sector Understanding and shall be added to the appropriate list in due course. These lists are not exhaustive and serve only to indicate the type of aircraft to be included in the different categories where doubts could arise.

LARGE CIVIL AIRCRAFT

Manufacturer	Designation
Airbus	A 300
Airbus	A 310
Airbus	A 318
Airbus	A 319
Airbus	A 320
Airbus	A 321
Airbus	A 330
Airbus	A 340
Boeing	B 737
Boeing	B 747
Boeing	B 757
Boeing	B 767
Boeing	B 777
Boeing	B 707, 727
British Aerospace	RJ70
British Aerospace	RJ85
British Aerospace	RJ100
British Aerospace	RJ115
British Aerospace	BAe146
Fairchild Dornier	728 Jet
Fairchild Dornier	928 Jet
Fokker	F 70
Fokker	F 100
Lockheed	L-100
McDonnell Douglas	MD-80 series
McDonnell Douglas	MD-90 series
McDonnell Douglas	MD-11
McDonnell Douglas	DC-10
McDonnell Douglas	DC-9
Lockheed	L-1011
Ramaero	1.11-495

CATEGORY A AIRCRAFT

Turbine-powered aircraft – including helicopters (e.g. turbo jet, turbo-prop and turbo-fan aircraft), with generally between 30 and 70 seats. In case a new large turbine-powered aircraft with over 70 seats is being developed, immediate consultations shall be held upon request with a view to agreeing on the classification of such an aircraft in this Category or in Part 1 of this Understanding in view of the competitive situation.

Manufacturer	Designation
Aeritalia	G 222
Aeritalia/Aerospatiale	ATR 42
Aeritalia/Aerospatiale	ATR 72
Aerospatiale/MBB	C160 Transall
De Havilland	Dash 8
De Havilland	Dash 8 – 100
De Havilland	Dash 8 – 200
De Havilland	Dash 8 – 300
Boeing Vertol	234 Chinook
Broman (U.S.)	BR 2000
British Aerospace	BAe ATP
British Aerospace	BAe 748
British Aerospace	BAe Jetstream 41
British Aerospace	BAe Jetstream 61
Canadair	CL 215T
Canadair	CL 415
Canadair	RJ
Casa	CN235
Dornier	DO 328
EH Industries	EH-101
Embraer	EMB 120 Brasilia
Embraer	EMB 145
Fairchild Dornier	528 Jet
Fairchild Dornier	328 Jet
Fokker	F 50
Fokker	F 27
Fokker	F 28
Gulfstream America	Gulfstream I-4
LET	610
Saab	SF 340
Saab	2000
Short	SD 3-30
Short	SD 3-60
Short	Sherpa

CATEGORY B AIRCRAFT

Other turbine-powered aircraft, including helicopters.

Manufacturer	Designation
Aérospatiale	AS 332
Agusta	A 109, A 119
Beech	1900
Beech	Super King Air 300
Beech	Starship 1
Bell Helicopter	206B
Bell Helicopter	206L
Bell Helicopter	212
Bell Helicopter	230
Bell Helicopter	412
Bell Helicopter	430
Bell Helicopter	214
Bombardier/Canadair	Global Express
British Aerospace	BAe Jetstream 31
British Aerospace	BAe 125
British Aerospace	BAe 1000
British Aerospace	BAe Jetstream Super 31
Beech Aircraft Corp d/b/a Raytheon Aircraft Co.	Hawker 1000
Beech Aircraft Corp d/b/a Raytheon Aircraft Co.	Hawker 800
Beech Aircraft Corp d/b/a Raytheon Aircraft Co.	King Air 350
Beech Aircraft Corp d/b/a Raytheon Aircraft Co.	Beechjet 400 series
Beech Aircraft Corp d/b/a Raytheon Aircraft Co.	Starship 2000A
Bell	B 407
Canadair	Challenger 601-3A
Canadair	Challenger 601-3R
Canadair	Challenger 604
Casa	C 212-200
Casa	C 212-300
Cessna	Citation
Cessna	441 Conquest III and Caravan 208 series
Claudius Dornier	CD2
Dassault Breguet	Falcon
Dornier	DO 228-200
Embraer	EMB 110 P2
Embraer/FAMA	CBA 123
Eurocopter	AS 350, AS 355, EC 120, AS 365, EC 135

Manufacturer	Designation
Eurocopter	B0105LS
Fairchild	Merlin/300
Fairchild	Metro 25
Fairchild	Metro III V
Fairchild	Metro III
Fairchild	Metro III A
Fairchild	Merlin IVC-41
Gulfstream America	Gulfstream II, III, IV and V
IAI	Astra SP and SPX
IAI	Arava 101 B
Learjet	31A, 35A, 45 and 60 series
MBB	BK 117 C
MBB	BO 105 CBS
McDonnell Helicopter System	MD 902, MD 520, MD 600
Mitsubishi	Mu2 Marquise
Piaggio	P 180
Pilatus Britten-Norman	BN2T Islander
Piper	400 LS
Piper	T 1040
Piper	PA-42-100 (Cheyenne 400)
Piper	PA-42-720 (Cheyenne III A)
Piper	Cheyenne II
Reims	Cessna-Caravan II
SIAI-Marchetti	SF 600 Canguro
Short	Tucano
Westland	W30

ANNEX IV

SECTOR UNDERSTANDING ON EXPORT CREDITS, RENEWABLE ENERGIES AND WATER PROJECTS, IN FORCE FOR A TRIAL PERIOD UNTIL 30 JUNE 2007

CHAPTER I

GENERAL PROVISIONS**1. Scope of application**

This Sector Understanding, which complements the Arrangement, sets out the financial terms and conditions which may apply to officially supported export credits relating to contracts for renewable energies and water projects; the scope of eligible sectors is set out in Appendix 1.

CHAPTER II

FINANCIAL TERMS AND CONDITIONS FOR EXPORT CREDITS**2. Maximum repayment terms**

The maximum repayment term, irrespective of the country classification as set out in Article 11 of the Arrangement, is 15 years.

3. Repayment of principal and payment of interest

- a) The principal sum of an export credit shall be repaid in equal instalments.
- b) Principal shall be repaid and interest shall be paid no less frequently than every 6 months and the first instalment of principal and interest shall be made no later than 6 months after the starting point of credit.
- c) For export credits provided in support of lease transactions, equal repayments of principal and interest combined may be applied in lieu of equal repayments of principal as set out in paragraph a).

4. Minimum fixed interest rates under official financing support

A Participant providing official financing support through direct financing, refinancing or interest rate support shall apply the following minimum interest rates:

- a) for a repayment term of up to and including 12 years, the Participant shall apply the relevant Commercial Interest Reference Rate (CIRR), in accordance with Article 20 of the Arrangement;
- b) for a repayment term in excess of 12 years and up to and including 14 years, a surcharge of 20 basis points above the CIRR shall apply for all currencies;
- c) for a repayment term in excess of 14 years, the relevant Special Commercial Interest Reference Rate (SCIRR) in accordance with Article 5 of this Sector Understanding shall apply for all currencies.

5. Construction of SCIRRS

SCIRRs shall be set at a fixed margin of 75 basis points above the CIRR for the currency in question, except that for the yen the margin shall be 40 basis points. For those currencies which have more than one CIRR rate, in accordance with the first tiret of Article 20 a) of the Arrangement, the CIRR for the longest term shall be used for constructing the SCIRR.

CHAPTER III

PROCEDURES**6. Prior notification without discussion**

A Participant shall notify all other Participants at least 10 calendar days before issuing any commitment covered by the scope of this Sector Understanding in accordance with Annex V to the Arrangement.

CHAPTER IV

REVIEW**7. Trial period and monitoring**

- a) The financial terms and conditions set out in this Sector Understanding shall apply for a Trial Period of 2 years, i.e. from 1 July 2005 to 30 June 2007. During the 2-year trial period, the Participants shall review the operation of this Sector Understanding to consider the experience gained.
 - b) These financial terms and conditions shall be discontinued at the end of the Trial Period unless the Participants agree upon one of the following:
 - to continue the Trial Period, with any necessary enhancements/modifications, or
 - to cement the financial terms and conditions in the Arrangement, with any necessary enhancements/modifications.
 - c) The Secretariat shall report on the implementation of these financial terms and conditions.
-

Appendix 1

ELIGIBLE SECTORS

The following renewable energies and water sectors shall be eligible for the financial terms and conditions set out in this Sector Understanding provided that their impacts are addressed in accordance with the 2003 OECD Recommendation on Common Approaches to the Environment and Officially Supported Export Credits ⁽¹⁾ (as subsequently amended by Members of the OECD Export Credits and Credit Guarantee Working Group (ECG) and agreed by the OECD Council) from 1 July 2005:

- a) Wind energy.
- b) Geothermal energy.
- c) Tidal and tidal stream power.
- d) Wave power.
- e) Solar photovoltaic power.
- f) Solar thermal energy.
- g) Ocean thermal energy.
- h) Bio-energy: all sustainable biomass, landfill gas, sewage treatment plant gas and biogas energy installations. 'Biomass' shall mean the biodegradable fraction of products, waste and residues from agriculture (including vegetal and animal substances), forestry and related industries, as well as the biodegradable fraction of industrial and municipal waste.
- i) Projects related to the supply of water for human use and wastewater treatment facilities:
 - infrastructure for the supply of drinking water to households, i.e. water purification for the purpose of obtaining drinking water and distribution network (including leakage control),
 - wastewater collection and treatment facilities, i.e. collection and treatment of household and industrial wastewater and sewage, including processes for the reuse or recycling of water and the treatment of sludge directly associated with these activities.
- j) Hydro power.

⁽¹⁾ It is understood that the OECD Recommendation applies equally to projects that are not eligible for these financial terms and conditions.

ANNEX V

INFORMATION TO BE PROVIDED FOR NOTIFICATIONS

The information listed in Section I below shall be provided for all notifications made under the Arrangement (including its Annexes). In addition, the information specified in Section II shall be provided, as appropriate, in relation to the specific type of notification being made.

I. INFORMATION TO BE PROVIDED FOR ALL NOTIFICATIONS**a) Basic Information**

1. Notifying country
2. Notification date
3. Name of notifying authority/agency
4. Reference number
5. Original notification or revision to previous notification (revision number as relevant)
6. Tranche number (if relevant)
7. Reference number of credit line (if relevant)
8. Arrangement Article(s) under which the notification is being made
9. Reference number of notification being matched (if relevant)
10. Description of support being matched (if relevant)

b) Buyer/Borrower/Guarantor Information

11. Buyer/borrower Country
12. Buyer/borrower Name
13. Buyer/borrower Location
14. Buyer/borrower Status
15. Guarantor Country (if relevant)
16. Guarantor Name (if relevant)
17. Guarantor Location (if relevant)
18. Guarantor Status (if relevant)

c) Information on Goods and/or Services Being Exported and the Project

19. Description of the goods and/or services being exported
20. Description of the project (if relevant)
21. Location of the project (if relevant)
22. Tender closing date (if relevant)
23. Expiry date of credit line (if relevant)

24. Value of contract(s) supported, either the actual value (for all lines of credit and project finance transactions or for any individual transaction on a voluntary basis) or according to the following scale in millions of SDRs:

Category	From	To
I:	0	1
II:	1	2
III:	2	3
IV:	3	5
V:	5	7
VI:	7	10
VII:	10	20
VIII:	20	40
IX:	40	80
X:	80	120
XI:	120	160
XII:	160	200
XIII:	200	240
XIV:	240	280
XV:	280	(*)

(*) Indicate the number of SDR 40 million multiples in excess of SDR 280 million, e.g. SDR 410 million would be notified as Category XV + 4.

25. Currency of contract(s)

d) Financial Terms and Conditions of the Official Export Credit Support

26. Credit value; the actual value for notifications involving lines of credit and project finance transactions or for any individual transaction on a voluntary basis, or according to the SDR scale

27. Currency of credit

28. Down payment (percentage of the total value of the contracts supported)

29. Local Costs (percentage of the total value of the contracts supported)

30. Starting point of credit and reference to the applicable subparagraph of Article 10

31. Length of the repayment period

32. Interest rate base

33. Interest rate or margin

II. ADDITIONAL INFORMATION TO BE PROVIDED, AS APPROPRIATE, FOR NOTIFICATIONS MADE IN RELATION TO SPECIFIC PROVISIONS

a) Arrangement, Article 14 d) 5)

1. Repayment profile
2. Repayment frequency
3. Length of time between the starting point of credit and the first repayment of principal
4. Amount of interest capitalised before the starting point of credit

5. Weighted average life of the repayment period
6. Explanation of the reason for not providing support according to Article 14 paragraphs a) through c)
- b) Arrangement, Articles 24 and 28
 1. Country risk classification of the buyer/borrower country or multilateral/regional institution
 2. Length of the disbursement period
 3. Percentage of cover for country risk
 4. Quality of cover (i.e. below standard, standard or above standard)
 5. MPR based on the country risk classification of the buyer/borrower country absent any third country guarantee, involvement of a multilateral/regional institution and/or risk mitigation/exclusion
 6. Applicable MPR
 7. Actual premium rate charged (expressed in MPR format as a percentage of the principal)
- c) Arrangement, Article 24 e), first tiret
 1. Country risk classification of the guarantor country
 2. Confirmation that the guarantee covers all five country risks listed in Article 25 a) for the entire duration of the credit
 3. Indication as to whether the total amount at risk (i.e. principal and interest) is covered by the guarantee
 4. Confirmation that the guarantor is creditworthy in relation to the size of the guaranteed debt
 5. Confirmation that the guarantee is legally valid and capable of being enforced in the third country jurisdiction
 6. Indication as to whether any financial relationship exists between the guarantor and the buyer/borrower
 7. In the case that there is a relationship between the guarantor and the buyer/borrower:
 - the type of relationship (e.g. parent-subsidiary, subsidiary-parent, common ownership),
 - confirmation that the guarantor is legally and financially independent and can fulfil the buyer/borrower's payment obligation,
 - confirmation that the guarantor would not be affected by events, regulations or sovereign intervention in the buyer/borrower's country.
- d) Arrangement, Article 28
 1. Risk mitigation/exclusion technique used
 2. MEF applied
 3. Full explanation of what country credit risks have either been externalised/removed or limited/excluded in the individual transaction, as well as an explanation of how such externalisation/removal or limitation/exclusion of the country credit risks justifies the MEF applied
- e) Arrangement, Articles 46 and 47
 1. Form of tied aid (i.e. development aid or premixed credit or associated finance)
 2. Overall concessionality level of the tied and partially untied aid financing calculated in accordance with Article 37

3. DDR used for concessionality calculation
 4. Treatment of cash payments in the calculation of the concessionality level
 5. Restrictions on use of credit lines
- f) Annex II, Article 10
1. Repayment profile
 2. Repayment frequency
 3. Length of time between the starting point of credit and the first repayment of principal
 4. Local cost support: terms of payment and nature of support
 5. Portion of the project to be financed (with separate information on fuel loads where appropriate)
 6. Any other relevant information (including references to related cases)
- g) Annex IV, Article 6
1. Enhanced description of the project, including the specific sector as listed in Appendix 1 of the Sector Understanding on Export Credits, Renewable Energies and Water Projects (Annex IV)
 2. A full explanation why special financial terms are required
 3. In respect of interest rate, information on the level of surcharge over the CIRR where Article 4 b) or c) of the Sector Understanding on Export Credits, Renewable Energies and Water Projects (Annex IV) applies
- h) Annex X, Article 5
1. Explanation of why project finance terms are being provided
 2. Contract value in relation to turnkey contract, portion of sub-contracts, etc.
 3. Enhanced project description
 4. Type of cover provided prior to the starting point of credit
 5. Percentage of cover for political risk prior to the starting point of credit
 6. Percentage of cover for commercial risk prior to the starting point of credit
 7. Type of cover provided after the starting point of credit
 8. Percentage of cover for political risk after the starting point of credit
 9. Percentage of cover for commercial risk after the starting point of credit
 10. Length of the construction period (if applicable)
 11. Length of the disbursement period
 12. Weighted average life of the repayment period
 13. Repayment profile
 14. Repayment frequency
 15. Length of time between the starting point of credit and the first repayment of principal

16. Percentage of principal repaid by the mid-point of credit
 17. Amount of interest capitalised before the starting point of credit
 18. Other fees received by the ECA, e.g. commitment fees (optional, except in the case of transactions with buyers in High Income OECD Countries)
 19. Premium rate (optional, except in the case of projects in High Income OECD Countries)
 20. Confirmation (and explanation as necessary) that the transaction involves/is characterised by:
 - the financing of a particular economic unit in which a lender is satisfied to consider the cash flows and earnings of that economic unit as the source of funds from which a loan will be repaid and to the assets of the economic unit as collateral for the loan,
 - financing of export transactions with an independent (legally and economically) project company, e.g. special purpose company, in respect of investment projects generating their own revenues,
 - appropriate risk-sharing among the partners of the project, e.g. private or creditworthy public shareholders, exporters, creditors, off-takers, including adequate equity,
 - project cash flow sufficient during the entire repayment period to cover operating costs and debt service for outside funds,
 - priority deduction from project revenues of operating costs and debt service,
 - a non-sovereign buyer/borrower with no sovereign repayment guarantee,
 - asset-based securities for proceeds/assets of the project, e.g. assignments, pledges, proceed accounts,
 - limited or no recourse to the sponsors of the private sector shareholders/sponsors of the project after completion.
- i) Annex X, Article 5, for projects in High Income OECD Countries
1. Total debt syndication amount for the project, including official and private lenders
 2. Total amount of the debt syndication from private lenders
 3. Percentage of the debt syndication provided by the Participants
 4. Confirmation that:
 - in respect of participation in a loan syndication with private financial institutions that do not benefit from official export credit support, the Participant is a minority partner with *pari passu* status throughout the life of the loan,
 - the premium rate reported under item 18 above does not undercut available private market financing and is commensurate with the corresponding rates being charged by other private financial institutions that are participating in the syndication.
-

ANNEX VI

CALCULATION OF THE MINIMUM PREMIUM RATES

The formula for calculating the applicable MPR for an export credit is:

$$\text{MPR} = ((a \times \text{HOR}) + b) \times (\text{PC}/0,95) \times \text{QPF} \times \text{PCF} \times (1-\text{MEF}) \times \text{BRF}$$

where:

- a and b are coefficients associated with the applicable Country Risk Category,
- HOR is the horizon of risk,
- PC is the percentage of cover,
- QPF is the quality of product factor,
- PCF is the percentage of cover factor,
- MEF is the country risk mitigation/exclusion factor,
- BRF is the buyer risk cover factor.

The values for coefficients a and b are obtained from the following table:

	Country Risk Category							
	0	1	2	3	4	5	6	7
a	n/a	0,100	0,225	0,392	0,585	0,780	0,950	1,120
b	n/a	0,350	0,350	0,400	0,500	0,800	1,200	1,800

The Horizon of Risk (HOR) is calculated as follows:

For standard repayment profiles (i.e. equal semi-annual repayments of principal):

$$\text{HOR} = (\text{length of the disbursement period} \times 0,5) + \text{the length of the repayment period}$$

For non-standard repayment profiles, the equivalent repayment period (expressed in terms of equal, semi-annual instalments) is calculated using the following formula:

$$\text{HOR} = (\text{weighted average life of the repayment period} - 0,25)/0,5$$

The use of years or months in the formula has no impact on the calculation as long as the same unit is used for the disbursement and repayment periods.

The Percentage of Cover (PC) expressed as a decimal value (i.e. 95 per cent is expressed as 0,95)

The Quality of Product Factor (QPF) is obtained from the following table:

Product Quality	Country Risk Category							
	0	1	2	3	4	5	6	7
below standard	n/a	0,9965	0,9935	0,9850	0,9825	0,9825	0,9800	0,9800
standard	n/a	1,0000	1,0000	1,0000	1,0000	1,0000	1,0000	1,0000
above standard	n/a	1,0035	1,0065	1,0150	1,0175	1,0175	1,0200	1,0200

The Percentage of Cover Factor (PCF) is determined as follows:

For $PC \leq 0,95$, $PCF = 1$

For $PC > 0,95$, $PCF = 1 + ((PC - 0,95)/0,05) \times \text{percentage of cover coefficient}$

	Country Risk Category							
	0	1	2	3	4	5	6	7
percentage of cover coefficient	n/a	0,00000	0,00337	0,00489	0,01639	0,03657	0,05878	0,08598

The Country Risk Mitigation/Exclusion Factor (MEF) is determined as follows:

For export credits with no country risk mitigation, $MEF = 0$

For export credits with country risk mitigation, the MEF is determined according to the criteria set out in Annex VIII.

The Buyer Risk Cover Factor (BRF) is determined as follows:

When cover for buyer risk is excluded completely, $BRF = 0,90$

When cover for buyer risk is not excluded, $BRF = 1$

ANNEX VII

CRITERIA AND CONDITIONS GOVERNING THE APPLICATION OF COUNTRY RISK CLASSIFICATION REFLECTING A THIRD COUNTRY GUARANTOR OR A MULTILATERAL OR REGIONAL INSTITUTION**PURPOSE**

This Annex provides the criteria and conditions that govern the application of a country risk classification reflecting a third country guarantor or a multilateral or regional institution according to the situations described in the first and second tirets of Article 24 e) of the Arrangement.

APPLICATION*Country Risk Classification Reflecting a Third Country Guarantor***Case 1: Guarantee for the Total Amount at Risk**

When security in the form of a guarantee from an entity which is located outside of the country of the buyer/borrower is provided for the total amount at risk (i.e. principal and interest), the applicable Country Risk Classification may be that of the country in which the guarantor is located when the following criteria are met:

- the guarantee covers the entire duration of the credit,
- the guarantee is irrevocable, unconditional and available on-demand,
- the guarantee is legally valid and capable of being enforced in the guarantor country's jurisdiction,
- the guarantee is for the five country credit risks on the buyer/borrower country,
- the guarantor is creditworthy in relation to the size of the guaranteed debt,
- the guarantor is subject to the monetary control and transfer regulations of the country in which it is located,
- if the guarantor is a subsidiary/parent of the guaranteed entity, Participants shall, on a case-by-case basis, determine whether: (1) in consideration of the relationship between the subsidiary/parent and the degree of legal commitment of the parent, the subsidiary/parent is legally and financially independent and could fulfil its payment obligations; (2) the subsidiary/parent could be affected by local events/regulations or sovereign intervention; and (3) the Head Office would in the event of a default regard itself as being liable.

Case 2: Guarantee Limited in Amount

When security in the form of a guarantee from an entity which is located outside of the country of the buyer/borrower is provided for a limited amount at risk (i.e. principal and interest), the applicable Country Risk Classification may be that of the country in which the guarantor is located for the portion of the credit subject to the guarantee. In addition to the criteria listed for Case 1, the guarantor's country classification may be applied only when either the guaranteed amount (principal amount plus the related interest) is either: (1) greater than or equal to 10 per cent of the principal plus the related interest; or (2) 5 million SDRs principal plus the related interest if the transaction exceeds 50 million SDRs.

For the unguaranteed portion, the applicable Country Risk Classification is that of the buyer country.

*Country Risk Classification Reflecting a Multilateral or Regional Institution***Case 1: Guarantee for the Total Amount at Risk**

When security in the form of a guarantee from a classified multilateral or regional institution is provided for the total amount at risk (i.e. principal and interest), the applicable Country Risk Classification may be that of the multilateral or regional institution when the following criteria are met:

- the guarantee covers the entire duration of the credit,
- the guarantee is irrevocable, unconditional and available on-demand,

- the guarantee is for the five country credit risks on the buyer/borrower country,
- the guarantor is legally committed for the total amount of the credit,
- the repayments are made directly to the creditor.

Case 2: Guarantee Limited in Amount

When security in the form of a guarantee from a classified multilateral or regional institution is provided for a limited amount at risk (i.e. principal and interest), the applicable Country Risk Classification may be that of the multilateral or regional institution for the portion of the credit subject to the guarantee. In addition to the criteria listed for Case 1, the multilateral or regional institution's classification may be applied only when either the guaranteed amount (principal amount plus the related interest) is either: (1) greater than or equal to 10 per cent of the principal plus the related interest; or (2) 5 million SDRs principal plus the related interest if the transaction exceeds 50 million SDRs.

For the unguaranteed portion, the applicable Country Risk Classification is that of the buyer country.

Case 3: Multilateral or Regional Institution as the Borrower

When a classified multilateral or regional institution is the borrower, the applicable Country Risk Classification may be that of the multilateral or regional institution.

Classification of Multilateral or Regional Institutions

Multilateral and regional institutions shall be eligible for classification if the institution is generally exempt from the monetary control and transfer regulations of the country in which it is located. Such institutions shall be classified in Country Risk Categories 0 through 7 on a case-by-case basis according to an assessment of the risk of each on its own merits and in consideration of whether:

- the institution has statutory and financial independence,
- all of the institution's assets are immune from nationalisation or confiscation,
- the institution has full freedom of transfer and conversion of funds,
- the institution is not subject to government intervention in the country where it is located,
- the institution has tax immunity, and
- there is an obligation of all its Member countries to supply additional capital to meet the institution's obligations.

The assessment should also take into consideration the historical payment record in situations of country credit risks default either in the country where it is located or in a buyer/borrower country; and any other factors which may be deemed appropriate in the assessment process.

The list of classified multilateral and regional institutions is not closed and a Participant may nominate an institution for review according to the above-listed considerations. The classifications of multilateral and regional institutions shall be made public by the Participants.

ANNEX VIII

CRITERIA AND CONDITIONS GOVERNING THE APPLICATION OF COUNTRY RISK MITIGATION/EXCLUSION IN CALCULATING THE MINIMUM PREMIUM RATES**PURPOSE**

This Annex provides detail on the use of country credit risk mitigation/exclusion techniques listed in Article 28 b) of the Arrangement; this includes the criteria, conditions and specific circumstances which apply to their use as well as the applicable MEFs.

GENERAL APPLICATION

For all country credit risk mitigation/exclusion techniques listed in Article 28 b) of the Arrangement:

- the listed MEFs are the maximum that would be envisaged in the best circumstances and should be justified on a case-by-case basis,
- participants shall ascertain whether the security arrangements can be validly enforced in their legal/judicial environment,
- the MPR resulting from the use of country credit risk mitigation/exclusion techniques shall not undercut private market pricing under similar circumstances,
- in the case where a transaction is financed in parallel by other sources, any security retained in relation to the official export credit is treated, at least, *pari passu* with the same security held by the other sources.

SPECIFIC APPLICATION**1. Offshore Future Flow Structure Combined with Offshore Escrow Account**

Definition:

A written document, such as a deed or a release or trustee arrangement, sealed and delivered to a third party, i.e. a person not party to the instrument, to be held by such third party until the fulfilment of certain conditions and then to be delivered by him to the other party to take effect. If the following criteria are satisfied subject to consideration of the additional factors listed, this technique can reduce or eliminate the transfer risks, mainly in the higher risk country categories.

Criteria:

- The escrow account is related to a foreign exchange-earning project and the flows into the escrow account are generated by the project itself and/or by other offshore export receivables.
- The escrow account is held offshore, i.e. located outside the buyer/borrower country where there are very limited, transfer or other country risks (i.e. a country classified in Category 0).
- The escrow account is located in a first class bank which is not directly or indirectly controlled by interests of the buyer/borrower or by the country of the buyer/borrower.
- The funding of the account is secured through long-term or other appropriate contracts.
- The combination of the sources of revenues (i.e. generated by the project itself and/or the other sources) of the buyer/borrower flowing through the account are in hard currency and can reasonably be expected to be collectively sufficient for the service of the debt for the entire duration of the credit, and come from one or more creditworthy foreign customers located in better risk countries than the country of the buyer/borrower (i.e. normally countries classified in Category 0).
- The buyer/borrower irrevocably instructs the foreign customers to pay directly into the account (i.e. the payments are not forwarded through an account controlled by the buyer/borrower or through its country).
- The funds which have to be kept within the account are equal to at least 6 months of debt service. Where flexible repayment terms are being applied under a project finance structure, an amount equivalent to the actual 6 months debt service under such flexible terms are to be kept within the account; this amount may vary over time depending on the debt service profile.

- The buyer/borrower has restricted access to the account (i.e. only after payment of the debt service under the credit).
- The revenues deposited in the account are assigned to the lender as direct beneficiary, for the entire life of the credit.
- The opening of the account has received all the necessary legal authorisations from the local and any other appropriate authorities.
- The escrow account and contractual arrangements may not be conditional and/or revocable and/or limited in duration.

Additional Factors to be taken into Consideration:

The technique applies subject to a case-by-case consideration of the above characteristics and, inter alia, with regard to:

- the country, the buyer/borrower (i.e. either public or private), the sector, the vulnerability in relation to the commodities or services involved, including their availability for the entire duration of the credit, and the customers,
- the legal structures, e.g. whether the mechanism is sufficiently immune against the influence of the buyer/borrower or its country,
- the degree to which the technique remains subject to government interference, renewal or withdrawal,
- whether the account would be sufficiently protected against project related risks,
- the amount which will flow into the account and the mechanism for the continuation of appropriate provision,
- the situation with regard to the Paris Club (e.g. possible exemption),
- the possible impact of country risks other than the transfer risk,
- the protection against the risks of the country where the account is located,
- the contracts with the customers, including their nature and duration, and
- the global amount of the expected foreign earnings in relation to the total amount of the credit.

Applicable MEF

The maximum applicable MEF is 0,20 unless:

Specific Case 1: the maximum applicable MEF is 0,40 if all of the following additional criteria are met:

- the creditor has a first priority interest in the escrow account and the long-term contracts,
- the buyer/borrower is a private entity being more than 80 per cent private ownership,
- either the projected Loan Life Coverage Ratio (LLCR) averages at least 2,5:1 or the projected LLCR averages at least 2,0:1 and the projected Annual Debt Service Coverage Ratio (ADSCR) is not less than 1,0 at all times after the starting point of credit ⁽¹⁾,
- there is at least 12 months of debt service pre-funding in escrow, which shall be replenished after each call on the pre-funded amount.

⁽¹⁾ The calculations of LLCR and the ADSCR shall be made in accordance with the conventions normally applied by prudent international lenders to establish an agreed (central scenario) banking case at or near financial close, after completion of full (technical and economic) due diligence.

Specific Case 2: The maximum applicable MEF is 0,30 if all of the following additional criteria are met:

- either the LLCR averages at least 1,75:1, or there is at least 9 months of debt service pre-funding in escrow, which shall be replenished after each call on the pre-funded amount.

2. Offshore Hard Security

Definition:

Security in the form of offshore first or second priority pledges or assignments of securities held offshore by a shareholder of the buyer/borrower or by the buyer/borrower itself, or cash on deposit in an offshore account.

Criteria:

- the securities are defined as publicly-listed stocks and bonds issued by entities located in a better risk country located outside the buyer/borrower country and traded on exchanges in countries classified in Category 0,
- the cash is defined as deposits in hard currencies of countries classified in Category 0 or treasuries in such hard currencies issued by countries classified in Category 0,
- the security is unconditional and irrevocable for the entire duration of the credit,
- the country where the security is located represents a better risk than the buyer/borrower country and would normally be a country classified in Category 0,
- the security is beyond the reach and jurisdiction of the buyer/borrower,
- the prudently-assessed projected market value of the securities corresponds throughout the repayment period to the amount of the outstanding debt covered by the security,
- in any event, the cash deposit or the prudential value of the securities (which should cover both Principal and Interest) shall be for: (1) not less than 10 per cent of the Principal amount plus the related Interest; or (2) 5 million SDRs Principal plus the related Interest if the transaction exceeds 50 million SDRs,
- the security can be legally and unconditionally realised in any event of default (i.e. of country credit risks in the buyer/borrower country),
- the proceeds of the securities or of the cash deposit can be freely converted into the currency of the credit or in another hard currency,
- in the event of default, the securities are directly transferred to the creditor, or the cash deposit is paid directly to the creditor for the appropriate amount.

Additional Factors to be taken into Consideration:

The technique applies normally to all countries, buyers/borrowers and sectors, subject to a case-by-case consideration of the above characteristics and, inter alia, with regard to:

- the implications of the ownership (either public or private) of the securities or of the cash deposit, e.g. with regard to the likelihood of the realisation of this security in case of public debtors,
- the prospective value of the securities and the likelihood of realisation in relation to the entity, the sector and the country from which they originate,
- the legal environment.

Applicable MEF

The specific MEF to be applied shall:

- reflect the degree of potential externalisation subject, inter alia, to the continuing value of the assets, as well as the possible uncertainties with regard to the realisation of the security,

- be determined case-by-case to reflect, inter alia, on a basis, the value of the security provided in relation to the principal value of the credit and the applicable country risk classification of the country in which the security is located.

The value of cash security shall be taken at no more than 80 per cent and the value of stocks or bonds shall be taken at no more than 35 per cent of its prudential valuation.

3. Offshore Asset-Based Security

Definition:

Security in the form of first priority mortgages on real (i.e. immovable) assets which are held offshore.

Criteria:

- The security is unconditional and irrevocable for the entire duration of the credit.
- The real assets have a prudently-assessed projected market value and represent for the owner a substantial equity stake. This projected value corresponds throughout the repayment period with the amount of the outstanding debt on the buyer/borrower.
- The security can be legally and unconditionally realised in any event of default (e.g. of country credit risks in the buyer/borrower country).
- The proceeds can be converted into the currency of the credit or in another hard currency.
- In the event of default the appropriate proceeds are paid or assigned directly to the creditor.
- The country where the security can be enforced represents a better-risk category than the buyer/borrower country, i.e. it is normally ranked in the best-risk categories.

Additional Factors to be taken into Consideration:

The technique applies normally to all countries, buyers/borrowers and sectors, subject to a case-by-case consideration of the above characteristics and, inter alia, with regard to:

- the implications of the ownership of the real assets (either public or private), e.g. with regard to the likelihood of the realisation of this security in case of public owners,
- the nature of the real assets (e.g. sector) which may impact on the continuity in their value and on the likelihood of realisation,
- the legal environment.

Applicable MEF

The specific MEF to be applied shall:

- reflect the degree of potential externalisation subject, inter alia, to the continuing value of the assets, as well as the possible uncertainties with regard to the realisation of the security, and
- be determined case-by-case to reflect, inter alia, on a basis, the value of the security provided in relation to the principal value of the credit and the applicable country risk classification of the country in which the security is located.

The difference between the MPR resulting from the application of this technique and the MPR which would apply absent mitigation shall be no greater than 15 per cent of the difference between the MPR which would apply absent risk mitigation and the MPR which would result from the application of the country risk classification of the country in which the asset is located.

In the following circumstances, the pricing implications apply on a basis as outlined below:

- The security (which should cover both Principal and Interest) is limited in amount on a uniform basis for the entire duration of the credit and for: (1) not less than 10 per cent of the Principal amount plus the related Interest; or (2) 5 million SDRs Principal plus the related Interest if the transaction exceeds 50 million SDRs; in this case the pricing implication applies on a pro-rata basis to the guaranteed Principal/the Principal amount of the credit.

- The security (which should cover both Principal and Interest) is limited in amount on a non-uniform basis for the entire duration of the credit and for: (1) not less than 10 per cent of the Principal amount plus the related Interest; or (2) 5 million SDRs Principal plus the related Interest if the transaction exceeds 50 million SDRs; in this case the pricing implication applies on a pro-rata basis derived from the use of the average weighted life concept.

4. Offshore Asset-Secured and Asset-Based Financing

Definition:

Security in the form of an offshore lease or a first priority mortgage on movable assets which is not:

- (1) used to make the country credit risks acceptable (e.g. for countries in high risk categories); or
- (2) mainly related to the buyer/borrower or the lessor risks.

Criteria:

- the assets are typically directly related to the transaction,
- the assets are identifiable and mobile or portable and can be physically as well as legally repossessed/seized by the creditor, its agent or nominee outside the country of the buyer/borrower or lessee,
- the security is irrevocable and unconditional for the entire duration of the credit,
- the assets have a prudently-assessed projected market value which corresponds throughout the repayment period to the amount of the outstanding debt,
- the security is registered offshore in an acceptable jurisdiction,
- the assets can be freely sold and offer opportunities for their use outside the country of the buyer/borrower or lessee,
- the proceeds can be converted into the currency of the credit or in any other hard currency,
- in the event of realisation of the security, the proceeds are paid directly to the creditor.

Additional Factors to be taken into Consideration:

The technique applies, in the first instance, to, e.g. aircraft, ships and oil platforms, primarily intended to be used outside the country of the buyer/borrower or lessee. However, it may be applied to all countries, buyers/borrowers and sectors, subject to a case-by-case consideration of the above characteristics and, inter alia, with regard to:

- the nature of the assets which may impact on their complete mobility, the possibility to repossess them outside the country of the buyer/borrower or lessee and their projected commercial market value,
- the costs of seizing, transporting, refurbishing and reselling the assets, as well as the interest costs accruing until resale,
- the possibility of seizing the assets in the best-risk countries offering an appropriate legal environment.

Applicable MEF

The specific MEF to be applied shall:

- reflect the degree of potential country credit risk mitigation depending, inter alia, on the continuing value of the assets as well as the possible uncertainties with regard to their international recoverability,
- be determined on a case-by-case basis, and
- not exceed 0,10, or 0,20 in the case of aircraft.

In the case where the security (which should cover both Principal and Interest) is limited in amount on a uniform basis for the entire duration of the credit and for: (1) not less than 10 per cent of the Principal amount plus the related Interest; or (2) 5 million SDRs Principal plus the related Interest if the transaction exceeds 50 million SDRs, the MEF shall be calculated on a basis reflecting the amount of the security in comparison with the guaranteed Principal/the Principal amount of the credit.

5. Co-Financing with International Financial Institutions (IFIs)

Definition:

The export credit (i.e. insurance/guarantee/loan) is co-financed with an IFI which has been classified by the Participants for premium purposes.

Criteria:

- the IFI has a preferred creditor status,
- the IFI has assessed the project, its technical, economic and financial aspects, and the country risk environment,
- the IFI is deemed to follow the execution and the repayment of the project.

Additional Factors to be taken into Consideration:

The technique applies to all countries/buyers/borrowers and sectors where the IFI may intervene in accordance with its status and policy subject to a case-by-case consideration of the above characteristics and, inter alia, with regard to whether, in respect of the project:

- the Participant and the IFI have developed close exchanges during the evaluation and setting-up process of the project and of its financing,
- the Participant has obtained from the IFI the benefit of *pari passu* and cross-default clauses for the entire amount and duration of the credit,
- the clauses and the cooperation between the Participant and the IFI will also apply in case the maturity schedule of the two credits is not parallel, and
- the same IFI arrangements apply to any competing offer from a Participant.

Applicable MEF

The maximum applicable MEF shall be no greater than 0,05.

6. Local Currency Financing

Definition:

Contract and financing negotiated in convertible and available local, other than hard, currencies and financed locally that eliminates or mitigates the transfer risk. The primary debt obligation in local currency would, in principle, not be affected by the occurrence of the first two country credit risks.

Criteria:

- The ECA liability and claims payment or the payment to the Direct Lender are expressed/made throughout in local currency.
- The ECA is normally not exposed to the transfer risk.
- In the normal course of events, there will be no requirement for local currency deposits to be converted into hard currency.
- The borrower's repayment in his own currency and in his own country is a valid discharge of the loan obligation.
- If a borrower's income is in local currency the borrower is protected against adverse exchange rate movements.
- Transfer regulations in the borrower's country should not affect the borrower's repayment obligations, which would remain in local currency.

- Subsequent to an event of default leading to a claims payment in local currency, the value of that claim is translated, as explicitly set out in the loan agreement, into an equivalent hard currency amount. Recovery of the claims payment would be in local currency as a counter value of the hard currency value of the claims payment at the time of the claims payment.
- Responsibility for conversion of local currency repayments by the buyer/borrower will be borne by the insured party who would also carry the exchange risk of devaluation or appreciation of local currency receipts. (Whilst a Direct Lender may have a direct exposure to currency fluctuations it is not related to country risks or buyer/borrower risks).

Additional Factors to be taken into Consideration:

The technique applies on a selective basis in respect of convertible and transferable currencies, where the underlying economy is sound. The Participant ECA should be in a position to meet its obligations to pay claims expressed in its own currency in the event that the local currency becomes either 'non-transferable' or 'non-convertible' after the ECA takes on liability. (A Direct Lender would however carry this exposure.)

Translation of a defaulted amount (not the whole loan value) into an equivalent hard currency amount would still leave the borrower with a continuing local currency obligation, albeit of an 'open-ended' value, in relation to the equivalent hard currency value of the defaulted amount. The eventual payment in local currency by the borrower of its outstanding indebtedness would need to be equivalent to the hard currency value of the claims payment at the time of the claims payment.

Applicable MEF

The specific MEF to be applied shall be determined on a case-by-case basis; however, if the first three country credit risks are specifically excluded, the maximum MEF is 0,50. If the risk is only mitigated, i.e. not explicitly excluded, the maximum MEF is 0,35.

7. Third Country Insurance or Conditional Guarantee

8. Debtor Representing a Better Risk than the Sovereign

The use of techniques 7 and 8 of this Annex is subject to further discussions among the Participants.

ANNEX IX

CHECKLIST OF DEVELOPMENTAL QUALITY**CHECKLIST OF DEVELOPMENTAL QUALITY OF AID-FINANCED PROJECTS**

A number of criteria have been developed in recent years by the DAC to ensure that projects in developing countries that are financed totally or in part by Official Development Assistance (ODA) contribute to development. They are essentially contained in the:

- DAC Principles for Project Appraisal, 1988,
- DAC Guiding Principles for Associated Financing and Tied and Partially Untied Official Development Assistance, 1987, and
- Good Procurement Practices for Official Development Assistance, 1986.

CONSISTENCY OF THE PROJECT WITH THE RECIPIENT COUNTRY'S OVERALL INVESTMENT PRIORITIES (PROJECT SELECTION)

Is the project part of investment and public expenditure programmes already approved by the central financial and planning authorities of the recipient country?

(Specify policy document mentioning the project, e.g. public investment programme of the recipient country.)

Is the project being co-financed with an international development finance institution?

Does evidence exist that the project has been considered and rejected by an international development finance institution or another DAC Member on grounds of low developmental priority?

In the case of a private sector project, has it been approved by the government of the recipient country?

Is the project covered by an intergovernmental agreement providing for a broader range of aid activities by the donor in the recipient country?

PROJECT PREPARATION AND APPRAISAL

Has the project been prepared, designed and appraised against a set of standards and criteria broadly consistent with the DAC Principles for Project Appraisal (PPA)? Relevant principles concern project appraisal under:

- a) economic aspects (paragraphs 30 to 38 PPA);
- b) technical aspects (paragraph 22 PPA);
- c) financial aspects (paragraphs 23 to 29 PPA).

In the case of a revenue producing project, particularly if it is producing for a competitive market, has the concessionary element of the aid financing been passed on to the end-user of the funds (paragraph 25 PPA)?

- a) Institutional assessment (paragraphs 40 to 44 PPA).
- b) Social and distributional analysis (paragraphs 47 to 57 PPA).
- c) Environmental assessment (paragraphs 55 to 57 PPA).

PROCUREMENT PROCEDURES

What procurement mode will be used among the following? (For definitions, see Principles listed in Good Procurement Practices for ODA).

- a) International competitive bidding (Procurement Principle III and its Annex 2: Minimum conditions for effective international competitive bidding).
- b) National competitive bidding (Procurement Principle IV).
- c) Informal competition or direct negotiations (Procurement Principle V A or B).

Is it envisaged to check price and quality of supplies (paragraph 63 PPA)?

ANNEX X

TERMS AND CONDITIONS APPLICABLE TO PROJECT FINANCE TRANSACTIONS

CHAPTER I

GENERAL PROVISIONS**1. Scope of application**

- a) This Annex sets out terms and conditions that Participants may support for project finance transactions that meet the eligibility criteria set out in Appendix 1.
- b) Where no corresponding provision exists in this Annex, the terms of the Arrangement shall apply.

CHAPTER II

FINANCIAL TERMS AND CONDITIONS**2. Maximum repayment terms**

The maximum repayment term is 14 years, except when official export credit support provided by the Participants comprises more than 35 per cent of the syndication for a project in a High Income OECD country, the maximum repayment term is 10 years.

3. Repayment of principal and payment of interest

The principal sum of an export credit may be repaid in unequal instalments, and principal and interest may be paid in less frequent than semi-annual instalments, as long as the following conditions are met:

- a) no single repayment of principal or series of principal payments within a 6-month period shall exceed 25 per cent of the principal sum of the credit;
- b) the first repayment of principal shall be made no later than 24 months after the starting point of credit and no less than 2 per cent of the principal sum of the credit shall have been repaid 24 months after the starting point of credit;
- c) interest shall be paid no less frequently than every 12 months and the first interest payment shall be made no later than 6 months after the starting point of credit;
- d) the weighted average life of the repayment period shall not exceed 7¼ years, except when official export credit support provided by the Participants comprises more than 35 per cent of the syndication for a project in a High Income OECD country, the weighted average life of the repayment period shall not exceed 5¼ years;
- e) the Participant shall give prior notification according to Article 5 of this Annex.

4. Minimum fixed interest rates

Where Participants are providing official financing support for fixed rate loans:

- a) for repayment terms of up to and including 12 years, Participants shall apply the relevant Commercial Interest Reference Rates (CIRRs) constructed in Accordance with Article 20 of the Arrangement;
- b) for repayment terms in excess of 12 years, a surcharge of 20 basis points on the CIRR shall apply for all currencies.

CHAPTER III

PROCEDURES**5. Prior notification for project finance transactions**

A Participant shall notify all Participants of the intent to provide support according to the terms and conditions of this Annex at least 10 calendar days before issuing any commitment. The notification shall be provided in accordance with Annex V to the Arrangement. If any Participant requests an explanation in respect of the terms and conditions being supported during this period, the notifying Participant shall wait an additional 10 calendar days before issuing any commitment.

Appendix 1

ELIGIBILITY CRITERIA FOR PROJECT FINANCE TRANSACTIONS

I. Basic criteria

The transaction involves/is characterised by:

- a) the financing of a particular economic unit in which a lender is satisfied to consider the cash flows and earnings of that economic unit as the source of funds from which a loan will be repaid and to the assets of the economic unit as collateral for the loan;
- b) financing of export transactions with an independent (legally and economically) project company, e.g. special purpose company, in respect of investment projects generating their own revenues;
- c) appropriate risk-sharing among the partners of the project, e.g. private or creditworthy public shareholders, exporters, creditors, off-takers, including adequate equity;
- d) project cash flow sufficient during the entire repayment period to cover operating costs and debt service for outside funds;
- e) priority deduction from project revenues of operating costs and debt service;
- f) a non-sovereign buyer/borrower with no sovereign repayment guarantee (not including performance guarantees, e.g. off-take arrangements);
- g) asset-based securities for proceeds/assets of the project, e.g. assignments, pledges, proceed accounts;
- h) limited or no recourse to the sponsors of the private sector shareholders/sponsors of the project after completion.

II. Additional criteria for project finance transactions in high income OECD countries

The transaction involves/is characterised by:

- a) participation in a loan syndication with private financial institutions that do not benefit from Official Export Credit Support, whereby:
 - 1. the Participant is a minority partner with pari passu status throughout the life of the loan; and
 - 2. official export credit support provided by the Participants comprises less than 50 per cent of the syndication;
 - b) premium rates for any official support that do not undercut available private market financing and that are commensurate with the corresponding rates being charged by other private financial institutions that are participating in the syndication.
-

ANNEX XI

LIST OF DEFINITIONS

For the purpose of the Arrangement:

- a) **Commitment:** any statement, in whatever form, whereby the willingness or intention to provide official support is communicated to the recipient country, the buyer, the borrower, the exporter or the financial institution.
- b) **Common Line:** an understanding between the Participants to agree, for a given transaction or in special circumstances, on specific financial terms and conditions for official support. The rules of an agreed Common Line supersede the rules of the Arrangement only for the transaction or in the circumstances specified in the Common Line.
- c) **Concessionality Level of Tied Aid:** in the case of grants the concessionality level is 100 per cent. In the case of loans, the concessionality level is the difference between the nominal value of the loan and the discounted present value of the future debt service payments to be made by the borrower. This difference is expressed as a percentage of the nominal value of the loan.
- d) **Export Contract Value:** the total amount to be paid by or on behalf of the purchaser for goods and/or services exported, i.e. excluding local costs as defined hereafter. In the case of a lease, it excludes the portion of the lease payment that is equivalent to interest.
- e) **Final Commitment:** for an export credit transaction (either in the form of a single transaction or a line of credit), a final commitment exists when the Participant commits to precise and complete financial terms and conditions, either through a reciprocal agreement or by a unilateral act.
- f) **Interest Rate Support:** an arrangement between a government and banks or other financial institutions which allows the provision of fixed rate export finance at or above the CIRR.
- g) **Line of Credit:** a framework, in whatever form, for export credits that covers a series of transactions which may or may not be linked to a specific project.
- h) **Local Costs:** expenditure for goods and services in the buyer's country that are necessary either for executing the exporter's contract or for completing the project of which the exporter's contract forms a part. These exclude commission payable to the exporter's agent in the buying country.
- i) **Pure Cover:** official support provided by or on behalf of a government by way of export credit guarantee or insurance only, i.e. which does not benefit from official financing support.
- j) **Repayment Term:** the period beginning at the starting point of credit, as defined in this Annex, and ending on the contractual date of the final repayment of principal.
- k) **Starting Point of Credit:**
 - 1. **Parts or components (intermediate goods) including related services:** in the case of parts or components, the starting point of credit is not later than the actual date of acceptance of the goods or the weighted mean date of acceptance of the goods (including services, if applicable) by the buyer or, for services, the date of the submission of the invoices to the client or acceptance of services by the client.
 - 2. **Quasi-capital goods, including related services – machinery or equipment, generally of relatively low unit value, intended to be used in an industrial process or for productive or commercial use:** in the case of quasi-capital goods, the starting point of credit is not later than the actual date of acceptance of the goods or the weighted mean date of acceptance of the goods by the buyer or, if the exporter has responsibilities for commissioning, then the latest starting point is at commissioning, or for services, the date of the submission of the invoices to the client or acceptance of the service by the client. In the case of a contract for the supply of services where the supplier has responsibility for commissioning, the latest starting point is commissioning.

3. Capital goods and project services – machinery or equipment of high value intended to be used in an industrial process or for productive or commercial use:
 - In the case of a contract for the sale of capital goods consisting of individual items usable in themselves, the latest starting point is the actual date when the buyer takes physical possession of the goods, or the weighted mean date when the buyer takes physical possession of the goods.
 - In the case of a contract for the sale of capital equipment for complete plant or factories where the supplier has no responsibility for commissioning, the latest starting point is the date at which the buyer is to take physical possession of the entire equipment (excluding spare parts) supplied under the contract.
 - If the exporter has responsibility for commissioning, the latest starting point is at commissioning.
 - For services, the latest starting point of credit is the date of the submission of the invoices to the client or acceptance of service by the client. In the case of a contract for the supply of services where the supplier has responsibility for commissioning, the latest starting point is commissioning.
 4. Complete plants or factories – complete productive units of high value requiring the use of capital goods:
 - In the case of a contract for the sale of capital equipment for complete plant or factories where the supplier has no responsibility for commissioning, the latest starting point of credit is the date when the buyer takes physical possession of the entire equipment (excluding spare parts) supplied under the contract.
 - In case of construction contracts where the contractor has no responsibility for commissioning, the latest starting point is the date when construction has been completed.
 - In the case of any contract where the supplier or contractor has a contractual responsibility for commissioning, the latest starting point is the date when he has completed installation or construction and preliminary tests to ensure it is ready for operation. This applies whether or not it is handed over to the buyer at that time in accordance with the terms of the contract and irrespective of any continuing commitment which the supplier or contractor may have, e.g. for guaranteeing its effective functioning or training local personnel.
 - Where the contract involves the separate execution of individual parts of a project, the date of the latest starting point is the date of the starting point for each separate part, or the mean date of those starting points, or, where the supplier has a contract, not for the whole project but for an essential part of it, the starting point may be that appropriate to the project as a whole.
 - For services, the latest starting point of credit is the date of the submission of the invoices to the client or the acceptance of service by the client. In the case of a contract for the supply of services where the supplier has responsibility for commissioning, the latest starting point is commissioning.
 - l) Tied Aid: aid which is in effect (in law or in fact) tied to the procurement of goods and/or services from the donor country and/or a restricted number of countries; it includes loans, grants or associated financing packages with a concessionality level greater than zero per cent.

This definition applies whether the 'tying' is by formal agreement or by any form of informal understanding between the recipient and the donor country, or whether a package includes components from the forms set out in Article 31 of the Arrangement that are not freely and fully available to finance procurement from the recipient country, substantially all other developing countries and from the Participants, or if it involves practices that the DAC or the Participants consider equivalent to such tying.
 - m) Untied Aid: aid which includes loans or grants whose proceeds are fully and freely available to finance procurement from any country.
 - n) Weighted Average Life of the Repayment Period: the time that it takes to retire one-half of the principal of a credit. This is calculated as the sum of time (in years) between the starting point of credit and each principal repayment weighted by the portion of principal repaid at each repayment date.
-

DIRECTIVES

DIRECTIVE 2011/89/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 16 November 2011

amending Directives 98/78/EC, 2002/87/EC, 2006/48/EC and 2009/138/EC as regards the supplementary supervision of financial entities in a financial conglomerate

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

a stand alone, consolidated or group basis, without duplicating or affecting the group and regardless of the legal structure of the group.

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 53(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank ⁽¹⁾,

Acting in accordance with the ordinary legislative procedure ⁽²⁾,

Whereas:

- (1) Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate ⁽³⁾ provides competent authorities in the financial sector with supplementary powers and tools for the supervision of groups composed of many regulated entities, which are active in different sectors of the financial markets. Such groups (financial conglomerates), are exposed to risks (group risks) which include: the risks of contagion, where risks spread from one end of the group to another; risk concentration, where the same type of risk materialises in various parts of the group at the same time; the complexity of managing many different legal entities; potential conflicts of interest; and the challenge of allocating regulatory capital to all the regulated entities which are part of the financial conglomerate, thereby avoiding the multiple use of capital. Financial conglomerates should therefore be subject to supervision supplementary to supervision on

- (2) It is appropriate to ensure consistency between the aims of Directive 2002/87/EC, on the one hand, and Council Directives 73/239/EEC ⁽⁴⁾ and 92/49/EEC ⁽⁵⁾ and Directives 98/78/EC ⁽⁶⁾, 2002/83/EC ⁽⁷⁾, 2004/39/EC ⁽⁸⁾, 2005/68/EC ⁽⁹⁾, 2006/48/EC ⁽¹⁰⁾, 2006/49/EC ⁽¹¹⁾, 2009/65/EC ⁽¹²⁾, 2009/138/EC ⁽¹³⁾ and 2011/61/EU ⁽¹⁴⁾ of the European Parliament and of the Council, on the other, in order to enable appropriate supplementary supervision of insurance and banking groups, including where they are part of a mixed financial holding structure.

⁽⁴⁾ First Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance (OJ L 228, 16.8.1973, p. 3).

⁽⁵⁾ Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance (third non-life insurance Directive) (OJ L 228, 11.8.1992, p. 1).

⁽⁶⁾ Directive 98/78/EC of the European Parliament and of the Council of 27 October 1998 on the supplementary supervision of insurance and reinsurance undertakings in an insurance or reinsurance group (OJ L 330, 5.12.1998, p. 1).

⁽⁷⁾ Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance (OJ L 345, 19.12.2002, p. 1).

⁽⁸⁾ Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments (OJ L 145, 30.4.2004, p. 1).

⁽⁹⁾ Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance (OJ L 323, 9.12.2005, p. 1).

⁽¹⁰⁾ Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (OJ L 177, 30.6.2006, p. 1).

⁽¹¹⁾ Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions (OJ L 177, 30.6.2006, p. 201).

⁽¹²⁾ Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32).

⁽¹³⁾ Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1).

⁽¹⁴⁾ Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers (OJ L 174, 1.7.2011, p. 1).

⁽¹⁾ OJ C 62, 26.2.2011, p. 1.

⁽²⁾ Position of the European Parliament of 5 July 2011 (not yet published in the Official Journal) and decision of the Council of 8 November 2011.

⁽³⁾ OJ L 35, 11.2.2003, p. 1.

- (3) It is necessary that financial conglomerates are identified throughout the Union according to the extent to which they are exposed to group risks, on the basis of common guidelines to be issued by the European Supervisory Authority (European Banking Authority) established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council⁽¹⁾ (EBA), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council⁽²⁾ (EIOPA) and the European Supervisory Authority (European Securities and Markets Authority) established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council⁽³⁾ (ESMA) in accordance with Article 56 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010, through the Joint Committee of the European Supervisory Authorities (Joint Committee). It is also important that the requirements regarding the waiving of the application of supplementary supervision are applied in a risk-based manner in accordance with those guidelines. This is of particular importance in the case of the larger, internationally operating financial conglomerates.
- (4) The comprehensive and adequate monitoring of group risks in large, complex, internationally operating financial conglomerates, as well as the supervision of the group-wide capital policies of such groups, is only possible when competent authorities gather supervisory information and plan supervisory measures beyond the national scope of their mandate. It is therefore necessary that competent authorities coordinate supplementary supervision on internationally operating financial conglomerates among the competent authorities which are regarded as most relevant for the supplementary supervision of a financial conglomerate. The colleges of financial conglomerates' relevant competent authorities should act in accordance with the supplementary nature of Directive 2002/87/EC, and as such should not duplicate or replace but should, rather, add value to the activities of existing colleges relevant to the banking and insurance subgroups within those financial conglomerates. A college should be set up for a financial conglomerate only where neither a banking nor an insurance sectoral college is in place.
- (5) In order to ensure appropriate regulatory oversight, it is necessary that the legal structure and the governance and organisational structure, including all regulated entities, non-regulated subsidiaries and significant branches of banks, insurance undertakings and financial conglomerates with cross-border activities, are monitored by EBA, EIOPA, ESMA (hereinafter collectively referred to as 'the ESAs') and the Joint Committee, as appropriate, and that information is made available to the relevant competent authorities.
- (6) In order to ensure effective supplementary supervision of regulated entities in a financial conglomerate, in particular where the head office of one of its subsidiaries is in a third country, the undertakings to which this Directive applies should include any undertaking, in particular any credit institution which has its registered office in a third country and which would require authorisation if its registered office were in the Union.
- (7) The supplementary supervision of large, complex, internationally operating financial conglomerates requires coordination throughout the Union, in order to contribute to the stability of the internal market for financial services. To that end, competent authorities need to agree upon the supervisory approaches to be applied to those financial conglomerates. The ESAs should issue, in accordance with Article 56 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010, through the Joint Committee, common guidelines for those common supervisory approaches, thus ensuring a comprehensive prudential framework of the supervisory tools and powers available in the banking, insurance, securities and financial conglomerates directives. The guidelines provided for in Directive 2002/87/EC should reflect the supplementary nature of supervision thereunder, and complement the sector-specific supervision as provided for by Directives 73/239/EEC, 92/49/EEC, 98/78/EC, 2002/83/EC, 2004/39/EC, 2006/48/EC, 2006/49/EC, 2009/138/EC and 2011/61/EU.
- (8) There is a genuine need to monitor and control potential group risks, posed to the financial conglomerate, arising from participations in other companies. For those cases where the specific supervisory powers provided for by Directive 2002/87/EC appear to be insufficient, the supervisory community should develop alternative methods to address and appropriately take into account these risks, preferably by work conducted by the ESAs through the Joint Committee. If a participation is the only element of identification of a financial conglomerate, supervisors should be allowed to assess whether the group is exposed to group risks and waive the need for supplementary supervision, if appropriate.
- (9) With regard to certain group structures, supervisors have been left without powers in the current crisis since the regimes provided for in the relevant directives have forced them to choose either sector-specific or supplementary supervision. While a complete review of Directive 2002/87/EC should be undertaken in the context of the G20 work on financial conglomerates, the necessary supervisory powers should be provided for as soon as possible.
- (10) It is appropriate to ensure consistency between the aims of Directive 2002/87/EC and Directive 98/78/EC. Directive 98/78/EC should therefore be amended to define and include mixed financial holding companies. In
- ⁽¹⁾ OJ L 331, 15.12.2010, p. 12.
⁽²⁾ OJ L 331, 15.12.2010, p. 48.
⁽³⁾ OJ L 331, 15.12.2010, p. 84.

order to ensure timely coherent supervision, Directive 98/78/EC should be amended, notwithstanding the imminent application of Directive 2009/138/EC, which should be amended to the same effect.

(11) While stress testing should occur regularly for the banking and insurance subgroups of a financial conglomerate, it is the role of the coordinator appointed in accordance with Directive 2002/87/EC to decide the appropriateness, parameters and timing of a stress test for an individual financial conglomerate as a whole. For Union-wide stress tests, carried out by the ESAs in a sector-specific context, the role of the Joint Committee should be to ensure that such stress tests occur in a consistent manner across sectors. For these reasons, the ESAs, through the Joint Committee, should be able to develop supplementary parameters for Union-wide stress tests, capturing the specific group risks that typically materialise in financial conglomerates and should be able to publish the results of those tests, where permitted by sectoral legislation. Experience from previous Union-wide stress tests should be taken into account. For example, stress tests should take account of liquidity and solvency risks of financial conglomerates.

(12) The Commission should further develop a coherent and conclusive system of supervision of financial conglomerates. The upcoming complete review of Directive 2002/87/EC should cover non-regulated entities, in particular special purpose vehicles, and should develop a risk-based application of the waivers available to supervisors in determining a financial conglomerate while limiting the use of such waivers. Having regard to the sectoral Directives, the review should also consider systemically relevant financial conglomerates, the size, inter-connectedness or complexity of which make them particularly vulnerable. Such conglomerates should be identified by analogy with the evolving standards of the Financial Stability Board and of the Basel Committee on Banking Supervision. The Commission should consider proposing regulatory action in this field.

(13) It is appropriate to ensure consistency between the aims of Directive 2002/87/EC and Directive 2006/48/EC. Directive 2006/48/EC should therefore be amended to define and include mixed financial holding companies.

(14) The restored availability of powers at the mixed financial holding company level implies that certain provisions of Directives 98/78/EC, 2002/87/EC, 2006/48/EC or 2009/138/EC apply simultaneously at that level. Those provisions may be equivalent to each other, especially as

regards the qualitative elements of the supervisory review processes. For example, identical fit and proper requirements for the management of holding companies are provided for by Directives 98/78/EC, 2002/87/EC, 2006/48/EC and 2009/138/EC. To avoid an overlap between those provisions and to ensure the effectiveness of top-level supervision, supervisors should be able to apply a particular provision only once, while complying with the equivalent provision in all other applicable directives. Where provisions do not have identical wording, they should be regarded as equivalent if they are similar in substance, in particular in terms of risk-based supervision. When assessing equivalence, supervisors should check, within colleges, whether, in regard to each applicable directive, the scope is covered and the objectives are achieved, without lowering supervisory standards. It should be possible for equivalence assessments to evolve in the course of changing supervisory frameworks and practices. Equivalence assessments should therefore be subject to an open, evolutionary process. That process should allow for case-by-case solutions so that all the relevant features of a particular group are taken into account. To ensure consistency within the supervisory framework for a particular group and to obtain a level playing field among all financial conglomerates within the Union, appropriate supervisory cooperation is necessary. To that end, the ESAs, through the Joint Committee, should develop guidelines aimed at the convergence of equivalence assessments and work towards issuing binding technical standards.

(15) In order to improve the supplementary supervision of financial entities in a financial conglomerate, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU) should be delegated to the Commission in respect of technical adaptations to be made to Directive 2002/87/EC as regards the definitions, the alignment of terminology and the calculation methods set out in that Directive. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and the Council.

(16) Since the objective of this Directive, namely improving the supplementary supervision of financial entities in a financial conglomerate, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of this Directive, 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.

- (17) Directives 98/78/EC, 2002/87/EC, 2006/48/EC and 2009/138/EC should therefore be amended,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 98/78/EC

Directive 98/78/EC is amended as follows:

- (1) Article 1 is amended as follows:

- (a) point (j) is replaced by the following:

‘(j) “mixed-activity insurance holding company” means a parent undertaking, other than an insurance undertaking, a non-member-country insurance undertaking, a reinsurance undertaking, a non-member-country reinsurance undertaking, an insurance holding company or a mixed financial holding company, which includes at least one insurance undertaking or a reinsurance undertaking among its subsidiary undertakings;’

- (b) the following point is added:

‘(m) “mixed financial holding company” means a mixed financial holding company as defined in Article 2(15) of Directive 2002/87/EC;’

- (2) Article 2(2) is replaced by the following:

‘2. Every insurance undertaking or reinsurance undertaking the parent undertaking of which is an insurance holding company, a mixed financial holding company, a non-member-country insurance or a non-member-country reinsurance undertaking shall be subject to supplementary supervision in the manner prescribed in Article 5(2) and Articles 6, 8 and 10;’

- (3) the following Article is inserted:

‘Article 2a

Level of application with regard to mixed financial holding companies

1. Where a mixed financial holding company is subject to equivalent provisions under this Directive and under Directive 2002/87/EC, in particular in terms of risk-based supervision, the competent authority responsible for exercising supplementary supervision may, after consulting the other competent authorities concerned, apply only the relevant provision of Directive 2002/87/EC to that mixed financial holding company.

2. Where a mixed financial holding company is subject to equivalent provisions under this Directive and under Directive 2006/48/EC, in particular in terms of risk-based supervision, the competent authority responsible for exercising supplementary supervision may, in agreement with the consolidating supervisor in the banking and investment services sector, apply only the provision of the directive relating to the most significant sector as determined in accordance with Article 3(2) of Directive 2002/87/EC.

3. The competent authority responsible for exercising supplementary supervision shall inform the European Supervisory Authority (European Banking Authority) established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council (*) (EBA), and the European Supervisory Authority (European Insurance and Occupational Pensions Authority) established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council (**) (EIOPA) of the decisions taken under paragraphs 1 and 2. EBA, EIOPA and the European Supervisory Authority (European Securities and Markets Authority) established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council (***) shall, through the Joint Committee of the European Supervisory Authorities (Joint Committee), develop guidelines aimed at converging supervisory practices and shall develop draft regulatory technical standards, which they shall submit to the Commission within three years of the adoption of those guidelines.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010 respectively.

(*) OJ L 331, 15.12.2010, p. 12.

(**) OJ L 331, 15.12.2010, p. 48.

(***) OJ L 331, 15.12.2010, p. 84;’

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

‘1. The exercise of supplementary supervision in accordance with Article 2 shall in no way imply that the competent authorities are required to play a supervisory role in relation to the non-member-country insurance undertaking, non-member-country reinsurance undertaking, insurance holding company, mixed financial holding company or mixed-activity insurance holding company taken individually;’

- (5) Article 4(2) is replaced by the following:

‘2. Where insurance undertakings or reinsurance undertakings authorised in two or more Member States have as their parent undertaking the same insurance holding company, non-member-country insurance undertaking, non-member-country reinsurance undertaking, mixed financial holding company or mixed-activity insurance holding company, the competent authorities of the Member States concerned may reach an agreement as to which of them is to be responsible for exercising supplementary supervision;’

(6) Article 10 is replaced by the following:

'Article 10

Insurance holding companies, mixed financial holding companies, non-member-country insurance undertakings and non-member-country reinsurance undertakings

1. In relation to Article 2(2), Member States shall require the method of supplementary supervision to be applied in accordance with Annex II. The calculation shall include all related undertakings of the insurance holding company, mixed financial holding company, non-member-country insurance undertaking or non-member-country reinsurance undertaking.

2. If, on the basis of the calculation referred to in paragraph 1, the competent authorities conclude that the solvency of a subsidiary insurance or reinsurance undertaking of the insurance holding company, mixed financial holding company, non-member-country insurance undertaking or non-member-country reinsurance undertaking is, or may be, jeopardised, they shall take appropriate measures at the level of that insurance or reinsurance undertaking.;

(7) Annexes I and II are amended in accordance with Annex I to this Directive.

Article 2

Amendments to Directive 2002/87/EC

Directive 2002/87/EC is amended as follows:

(1) Articles 1 and 2 are replaced by the following:

'Article 1

Subject matter

This Directive lays down rules for supplementary supervision of regulated entities which have obtained an authorisation in accordance with Article 6 of Directive 73/239/EEC, Article 4 of Directive 2002/83/EC (*), Article 5 of Directive 2004/39/EC (**), Article 3 of Directive 2005/68/EC (***), Article 6 of Directive 2006/48/EC (****), Article 5 of Directive 2009/65/EC (*****), Article 14 of Directive 2009/138/EC (*****), or Articles 6 to 11 of Directive 2011/61/EU (*****), and which are part of a financial conglomerate.

This Directive also amends the relevant sectoral rules which apply to entities regulated by those Directives.

Article 2

Definitions

For the purposes of this Directive:

(1) "credit institution" means a credit institution within the meaning of Article 4(1) of Directive 2006/48/EC;

(2) "insurance undertaking" means an insurance undertaking within the meaning of Article 13(1), (2) or (3) of Directive 2009/138/EC;

(3) "investment firm" means an investment firm within the meaning of point 1 of Article 4(1) of Directive 2004/39/EC, including the undertakings referred to in Article 3(1)(d) of Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions (*****), or an undertaking the registered office of which is in a third country and which would require authorisation under Directive 2004/39/EC if its registered office were in the Union;

(4) "regulated entity" means a credit institution, an insurance undertaking, a reinsurance undertaking, an investment firm, an asset management company or an alternative investment fund manager;

(5) "asset management company" means a management company within the meaning of Article 2(1)(b) of Directive 2009/65/EC or an undertaking the registered office of which is in a third country and which would require authorisation under that Directive if its registered office were within the Union;

(5a) "alternative investment fund manager" means a manager of alternative investment funds within the meaning of Article 4(1)(b), (l) and (ab) of Directive 2011/61/EU or an undertaking the registered office of which is in a third country and which would require authorisation under that Directive if its registered office were within the Union;

(6) "reinsurance undertaking" means a reinsurance undertaking within the meaning of Article 13(4), (5) or (6) of Directive 2009/138/EC or a special purpose vehicle within the meaning of Article 13(26) of Directive 2009/138/EC;

(7) "sectoral rules" means Union legislation relating to the prudential supervision of regulated entities, in particular Directives 2004/39/EC, 2006/48/EC, 2006/49/EC and 2009/138/EC;

(8) "financial sector" means a sector composed of one or more of the following entities:

(a) a credit institution, a financial institution or an ancillary services undertaking within the meaning of Article 4(1), (5) or (21) of Directive 2006/48/EC (hereinafter referred to collectively as "the banking sector");

(b) an insurance undertaking, a reinsurance undertaking or an insurance holding company within the meaning of Article 13(1), (2), (4) or (5) or of Article 212(1)(f) of Directive 2009/138/EC (hereinafter referred to collectively as "the insurance sector");

- (c) an investment firm within the meaning of Article 3(1)(b) of Directive 2006/49/EC (hereinafter referred to collectively as “the investment services sector”);
- (9) “parent undertaking” means a parent undertaking as defined in Article 1 of Seventh Council Directive 83/349/EEC of 13 June 1983 on consolidated accounts (*****), or any undertaking which, in the opinion of the competent authorities, effectively exercises a dominant influence over another undertaking;
- (10) “subsidiary undertaking” means a subsidiary undertaking as defined in Article 1 of Directive 83/349/EEC or any undertaking over which, in the opinion of the competent authorities, a parent undertaking effectively exercises a dominant influence or all subsidiaries of such subsidiary undertakings;
- (11) “participation” means a participation within the meaning of the first sentence of Article 17 of Fourth Council Directive 78/660/EEC of 25 July 1978 on the annual accounts of certain types of companies (*****), or the direct or indirect ownership of 20 % or more of the voting rights or capital of an undertaking;
- (12) “group” means a group of undertakings which consists of a parent undertaking, its subsidiaries and the entities in which the parent undertaking or its subsidiaries hold a participation, or undertakings linked to each other by a relationship within the meaning of Article 12(1) of Directive 83/349/EEC, including any subgroup thereof;
- (12a) “control” means the relationship between a parent undertaking and a subsidiary undertaking as set out in Article 1 of Directive 83/349/EEC, or a similar relationship between a natural or legal person and an undertaking;
- (13) “close links” means a situation in which two or more natural or legal persons are linked by control or participation, or a situation in which two or more natural or legal persons are permanently linked to the same person by a control relationship;
- (14) “financial conglomerate” means a group or subgroup, where a regulated entity is at the head of the group or subgroup, or where at least one of the subsidiaries in that group or subgroup is a regulated entity, and which meets the following conditions:
- (a) where there is a regulated entity at the head of the group or subgroup:
- (i) that entity is a parent undertaking of an entity in the financial sector, an entity which holds a participation in an entity in the financial sector, or an entity linked with an entity in the financial sector by a relationship within the meaning of Article 12(1) of Directive 83/349/EEC;
- (ii) at least one of the entities in the group or subgroup is within the insurance sector and at least one is within the banking or investment services sector; and
- (iii) the consolidated or aggregated activities of the entities in the group or subgroup within the insurance sector and of the entities within the banking and investment services sector are both significant within the meaning of Article 3(2) or (3) of this Directive; or
- (b) where there is no regulated entity at the head of the group or subgroup:
- (i) the group's or subgroup's activities occur mainly in the financial sector within the meaning of Article 3(1) of this Directive;
- (ii) at least one of the entities in the group or subgroup is within the insurance sector and at least one is within the banking or investment services sector; and
- (iii) the consolidated or aggregated activities of the entities in the group or subgroup within the insurance sector and of the entities within the banking and investment services sector are both significant within the meaning of Article 3(2) or (3) of this Directive;
- (15) “mixed financial holding company” means a parent undertaking, other than a regulated entity, which, together with its subsidiaries — at least one of which is a regulated entity which has its registered office in the Union — and other entities, constitutes a financial conglomerate;
- (16) “competent authorities” means the national authorities of the Member States which are empowered by law or regulation to supervise credit institutions, insurance undertakings, reinsurance undertakings, investment firms, asset management companies or alternative investment fund managers whether on an individual or group-wide basis;

(17) “relevant competent authorities” means:

- (a) Member States’ competent authorities responsible for the sectoral group-wide supervision of any of the regulated entities in a financial conglomerate, in particular of the ultimate parent undertaking of a sector;
- (b) the coordinator appointed in accordance with Article 10 if different from the authorities referred to in point (a);
- (c) where appropriate, other competent authorities relevant to the opinion of the authorities referred to in points (a) and (b);

(18) “intra-group transactions” means all transactions by which regulated entities within a financial conglomerate rely directly or indirectly on other undertakings within the same group or on any natural or legal person linked to the undertakings within that group by close links, for the fulfilment of an obligation, whether or not contractual, and whether or not for payment;

(19) “risk concentration” means all risk exposures with a loss potential which is large enough to threaten the solvency or the financial position in general of the regulated entities in a financial conglomerate, whether such exposures are caused by counterparty risk/credit risk, investment risk, insurance risk, market risk, other risks, or a combination or interaction of such risks.

Until the entry into force of any regulatory technical standards adopted in accordance with Article 21a(1)(b), the opinion referred to in point (17)(c) shall, in particular, take into account the market share of the regulated entities of the financial conglomerate in other Member States, in particular if it exceeds 5 %, and the importance in the financial conglomerate of any regulated entity established in another Member State.

(*) Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life insurance (OJ L 345, 19.12.2002, p. 1).

(**) Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments (OJ L 145, 30.4.2004, p. 1).

(***) Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance (OJ L 323, 9.12.2005, p. 1).

(****) Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (OJ L 177, 30.6.2006, p. 1).

(*****) Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32).

(*****) Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1).

(*****) Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers (OJ L 174, 1.7.2011, p. 1).

(*****) OJ L 177, 30.6.2006, p. 201.

(*****) OJ L 193, 18.7.1983, p. 1.

(*****) OJ L 222, 14.8.1978, p. 11.;

(2) Article 3 is amended as follows:

(a) paragraphs 1, 2 and 3 are replaced by the following:

‘1. For the purposes of determining whether the activities of a group mainly occur in the financial sector, within the meaning of Article 2(14)(b)(i), the ratio of the balance sheet total of the regulated and non-regulated financial sector entities in the group to the balance sheet total of the group as a whole should exceed 40 %.

2. For the purposes of determining whether activities in different financial sectors are significant within the meaning of Article 2(14)(a)(iii) or (14)(b)(iii), for each financial sector the average of the ratio of the balance sheet total of that financial sector to the balance sheet total of the financial sector entities in the group and the ratio of the solvency requirements of the same financial sector to the total solvency requirements of the financial sector entities in the group should exceed 10 %.

For the purposes of this Directive, the smallest financial sector in a financial conglomerate is the sector with the smallest average and the most important financial sector in a financial conglomerate is the sector with the highest average. For the purposes of calculating the average and for the measurement of the smallest and the most important financial sectors, the banking sector and the investment services sector shall be considered together.

Asset management companies shall be added to the sector to which they belong within the group. If they do not belong exclusively to one sector within the group, they shall be added to the smallest financial sector.

Alternative investment fund managers shall be added to the sector to which they belong within the group. If they do not belong exclusively to one sector within the group, they shall be added to the smallest financial sector.

3. Cross-sectoral activities shall also be presumed to be significant within the meaning of Article 2(14)(a)(iii) or (14)(b)(iii) if the balance sheet total of the smallest financial sector in the group exceeds EUR 6 billion.

If the group does not reach the threshold referred to in paragraph 2 of this Article, the relevant competent authorities may decide by common agreement not to regard the group as a financial conglomerate. They may also decide not to apply the provisions of Article 7, 8, or 9, if they are of the opinion that the inclusion of the group in the scope of this Directive or the application of such provisions is not necessary or would be inappropriate or misleading with respect to the objectives of supplementary supervision.

Decisions taken in accordance with this paragraph shall be notified to the other competent authorities and shall, save in exceptional circumstances, be made public by the competent authorities.

3a. If the group reaches the threshold referred to in paragraph 2 of this Article, but the smallest sector does not exceed EUR 6 billion, the relevant competent authorities may decide by common agreement not to regard the group as a financial conglomerate. They may also decide not to apply the provisions of Article 7, 8, or 9, if they are of the opinion that the inclusion of the group in the scope of this Directive or the application of such provisions is not necessary or would be inappropriate or misleading with respect to the objectives of supplementary supervision.

Decisions taken in accordance with this paragraph shall be notified to the other competent authorities and shall, save in exceptional circumstances, be made public by the competent authorities.;

(b) paragraph 4 is amended as follows:

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

‘(a) exclude an entity when calculating the ratios, in the cases referred to in Article 6(5), unless the entity moved from a Member State to a third country and there is evidence that the entity changed its location in order to avoid regulation.’;

(ii) the following point is added:

‘(c) exclude one or more participations in the smaller sector if such participations are decisive for the identification of a financial conglomerate, and are collectively of negligible interest with respect to the objectives of supplementary supervision.’;

(c) paragraph 5 is replaced by the following:

‘5. For the application of paragraphs 1 and 2, the relevant competent authorities may, in exceptional cases and by common agreement, replace the criterion based on balance sheet total with one or more of the following parameters or add one or

more of these parameters, if they are of the opinion that those parameters are of particular relevance for the purpose of supplementary supervision under this Directive: income structure, off-balance sheet activities, total assets under management.’;

(d) the following paragraphs are added:

‘8. The European Supervisory Authority (European Banking Authority) established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council (*) (EBA), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council (**) (EIOPA) and the European Supervisory Authority (European Securities and Markets Authority) established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council (***) (ESMA) (hereinafter collectively referred to as “the ESA”) shall, through the Joint Committee of the ESA (Joint Committee), issue common guidelines aimed at the convergence of supervisory practices with regard to the application of paragraphs 2, 3, 3a, 4 and 5 of this Article.

9. The competent authorities shall, on an annual basis, reassess waivers of the application of supplementary supervision and shall review the quantitative indicators set out in this Article and risk-based assessments applied to financial groups.

(*) OJ L 331, 15.12.2010, p. 12.

(**) OJ L 331, 15.12.2010, p. 48.

(***) OJ L 331, 15.12.2010, p. 84.’;

(3) Article 4 is amended as follows:

(a) in paragraph 1, the second subparagraph is replaced by the following:

‘For that purpose:

- competent authorities which have authorised regulated entities in the group shall cooperate closely,
- if a competent authority is of the opinion that a regulated entity authorised by that competent authority is a member of a group which may be a financial conglomerate and which has not already been identified in accordance with this Directive, the competent authority shall communicate its view to the other competent authorities concerned and to the Joint Committee.’;

(b) in paragraph 2, the second subparagraph is replaced by the following:

‘The coordinator shall also inform the competent authorities which have authorised regulated entities in the group, the competent authorities of the Member State in which the mixed financial holding company has its head office and the Joint Committee.’;

(c) paragraph 3 is replaced by the following:

‘3. The Joint Committee shall publish and keep up-to-date on its website the list of financial conglomerates defined in accordance with Article 2(14). That information shall be available by hyperlink on each of the ESA’s websites.

The name of each regulated entity referred to in Article 1 which is part of a financial conglomerate shall be entered on a list, which the Joint Committee shall publish and keep up-to-date on its website.’;

(4) Article 5 is amended as follows:

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

‘(b) every regulated entity, the parent undertaking of which is a mixed financial holding company which has its head office in the Union’;

(b) paragraph 3 is replaced by the following:

‘3. Every regulated entity which is not subject to supplementary supervision in accordance with paragraph 2, the parent undertaking of which is a regulated entity or a mixed financial holding company which has its head office in a third country, shall be subject to supplementary supervision at the level of the financial conglomerate to the extent and in the manner prescribed in Article 18.’;

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

‘In order to apply such supplementary supervision, at least one of the entities must be a regulated entity as referred to in Article 1 and the conditions set out in Article 2(14)(a)(ii) or (14)(b)(ii) and Article 2(14)(a)(iii) or (14)(b)(iii) must be met. The relevant competent authorities shall take their decision, taking into account the objectives of the supplementary supervision as provided for by this Directive.’;

(5) in Article 6, paragraphs 3 and 4 are replaced by the following:

‘3. For the purposes of calculating the capital adequacy requirements referred to in the first subparagraph of paragraph 2, the following entities shall be included in the scope of supplementary supervision in accordance with Annex I:

- (a) a credit institution, a financial institution or an ancillary services undertaking;
- (b) an insurance undertaking, a reinsurance undertaking or an insurance holding company;
- (c) an investment firm;
- (d) a mixed financial holding company.

4. When calculating the supplementary capital adequacy requirements with regard to a financial conglomerate by applying method 1 (Accounting consolidation) referred to in Annex I to this Directive, the own funds and the solvency requirements of the entities in the group shall be calculated by applying the corresponding sectoral rules on the form and extent of consolidation as laid down in particular in Articles 133 and 134 of Directive 2006/48/EC and Article 221 of Directive 2009/138/EC.

When applying method 2 (Deduction and aggregation) referred to in Annex I, the calculation shall take account of the proportion of the subscribed capital which is directly or indirectly held by the parent undertaking or undertaking which holds a participation in another entity of the group.’;

(6) Article 7 is amended as follows:

(a) paragraph 3 is replaced by the following:

‘3. Pending further coordination of Union legislation, Member States may set quantitative limits, allow their competent authorities to set quantitative limits, or adopt other supervisory measures which would achieve the objectives of supplementary supervision, with regard to any risk concentration at the level of a financial conglomerate.’;

(b) the following paragraph is added:

‘5. The ESA shall, through the Joint Committee, issue common guidelines aimed at the convergence of supervisory practices with regard to the application of supplementary supervision of risk concentration as provided for in paragraphs 1 to 4 of this Article. In order to avoid duplication, the guidelines shall ensure that the application of the supervisory tools as provided for in this Article is aligned to the application of Articles 106 to 118 of Directive 2006/48/EC and of Article 244 of Directive 2009/138/EC. They shall issue specific common guidelines on the application of paragraphs 1 to 4 of this Article to participations of the financial conglomerate in cases where national company law provisions obstruct the application of Article 14(2) of this Directive.’;

(7) Article 8 is amended as follows:

(a) paragraph 3 is replaced by the following:

‘3. Pending further coordination of Union legislation, Member States may set quantitative limits and qualitative requirements, allow their competent authorities to set quantitative limits or qualitative requirements, or take other supervisory measures that would achieve the objectives of supplementary supervision, with regard to intra-group transactions of regulated entities within a financial conglomerate.’;

(b) the following paragraph is added:

‘5. The ESA shall, through the Joint Committee, issue common guidelines aimed at the convergence of supervisory practices with regard to the application of supplementary supervision of intra-group transactions as provided for in paragraphs 1 to 4 of this Article. In order to avoid duplication, the guidelines shall ensure that the application of the supervisory tools, as provided for in this Article, is aligned to the application of Article 245 of Directive 2009/138/EC. They shall issue specific common guidelines on the application of paragraphs 1 to 4 of this Article to participations of the financial conglomerate in cases where national company law provisions obstruct the application of Article 14(2) of this Directive.’;

(8) Article 9 is amended as follows:

(a) paragraph 4 is replaced by the following:

‘4. The Member States shall ensure that, in all undertakings included in the scope of supplementary supervision pursuant to Article 5, there are adequate internal control mechanisms for the production of any data and information which would be relevant for the purposes of the supplementary supervision.

The Member States shall require the regulated entities, at the level of the financial conglomerate, to regularly provide their competent authority with details on their legal structure and governance and organisational structure including all regulated entities, non-regulated subsidiaries and significant branches.

The Member States shall require the regulated entities to disclose publicly, at the level of the financial conglomerate, on an annual basis, either in full or by way of references to equivalent information, a description of their legal structure and governance and organisational structure.’;

(b) the following paragraph is added:

‘6. Competent authorities shall align the application of the supplementary supervision of internal control mechanisms and risk management processes as provided for in this Article with the supervisory review processes as provided for by Article 124 of Directive 2006/48/EC and Article 248 of Directive 2009/138/EC. To this end, the ESA shall, through the Joint Committee, issue common guidelines aimed at the convergence of supervisory practices with regard to the application of supplementary supervision of internal control mechanisms and risk management processes as provided for in this Article, as well as on the consistency with the supervisory review processes as provided for by Article 124 of Directive 2006/48/EC and Article 248 of Directive 2009/138/EC. They shall issue specific common

guidelines for the application of this Article to participations of the financial conglomerate, in cases where national company law provisions obstruct the application of Article 14(2) of this Directive.’;

(9) the following Article is inserted:

‘Article 9b

Stress testing

1. Member States may require that the coordinator ensure appropriate and regular stress testing of financial conglomerates. They shall require the relevant competent authorities to cooperate fully with the coordinator.

2. For the purpose of Union-wide stress tests the ESA may, through the Joint Committee and in cooperation with the European Systemic Risk Board, established by Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on the European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board (*), develop supplementary parameters that capture the specific risks associated with financial conglomerates, in accordance with Regulation (EU) No 1093/2010, Regulation (EU) No 1094/2010 and Regulation (EU) No 1095/2010. The coordinator shall communicate the results of the stress tests to the Joint Committee.

(*) OJ L 331, 15.12.2010, p. 1.’;

(10) Article 10(2)(b) is amended as follows:

(a) in point (ii), the first paragraph is replaced by the following:

‘(ii) where at least two regulated entities which have their registered office in the Union have as their parent the same mixed financial holding company, and one of those entities has been authorised in the Member State in which the mixed financial holding company has its head office, the task of coordinator shall be exercised by the competent authority of the regulated entity authorised in that Member State.’;

(b) point (iii) is replaced by the following:

‘(iii) where at least two regulated entities which have their registered office in the Union have as their parent the same mixed financial holding company and none of those entities has been authorised in the Member State in which the mixed financial holding company has its head office, the task of coordinator shall be exercised by the competent authority which authorised the regulated entity with the largest balance sheet total in the most important financial sector.’;

(11) Article 11 is amended as follows:

(a) paragraph 3 is replaced by the following:

‘3. Without prejudice to the possibility of delegating specific supervisory competences and responsibilities as provided for by Union legislative acts, the presence of a coordinator entrusted with specific tasks concerning the supplementary supervision of regulated entities in a financial conglomerate shall not affect the tasks and responsibilities of the competent authorities as provided for by the sectoral rules.’;

(b) the following paragraph is added:

‘4. The required cooperation under this Section and the exercise of the tasks listed in paragraphs 1, 2 and 3 of this Article and in Article 12 and, subject to confidentiality requirements and Union law, the appropriate coordination and cooperation with relevant third-country supervisory authorities where appropriate, shall be fulfilled through colleges, established pursuant to Article 131a of Directive 2006/48/EC or Article 248(2) of Directive 2009/138/EC.

The coordination arrangements referred to in the second subparagraph of paragraph 1 shall be separately reflected in the written coordination arrangements in place pursuant to Article 131 of Directive 2006/48/EC or Article 248 of Directive 2009/138/EC. The coordinator, as Chair of a college established pursuant to Article 131a of Directive 2006/48/EC or Article 248(2) of Directive 2009/138/EC, shall decide which other competent authorities participate in a meeting or in any activity of that college.’;

(12) in the second subparagraph of Article 12(1), point (a) is replaced by the following:

‘(a) identification of the group’s legal structure and the governance and organisational structure, including all regulated entities, non-regulated subsidiaries and significant branches belonging to the financial conglomerate, the holders of qualifying holdings at the ultimate parent level, as well as of the competent authorities of the regulated entities in the group’;

(13) in Article 12a, the following paragraph is added:

‘3. The coordinators shall provide the Joint Committee with the information referred to in Article 9(4) and point (a) of the second subparagraph of Article 12(1). The Joint Committee shall make available to the competent authorities information regarding the legal structure and the governance and organisational structure of financial conglomerates.’;

(14) the following Article is inserted:

‘Article 12b

Common guidelines

1. The ESA shall, through the Joint Committee, develop common guidelines on how risk-based assessments of financial conglomerates are to be conducted by the competent authority. Those guidelines shall, in particular, ensure that risk-based assessments include appropriate tools in order to assess group risks posed to the financial conglomerates.

2. The ESA shall, through the Joint Committee, issue common guidelines aimed at developing supervisory practices allowing for supplementary supervision of mixed financial holding companies to appropriately complement the group supervision under Directives 98/78/EC and 2009/138/EC or, as appropriate, consolidated supervision under Directive 2006/48/EC. Those guidelines shall allow all relevant risks to be incorporated in the supervision, while eliminating potential supervisory and prudential overlaps.’;

(15) Article 18 is amended as follows:

(a) the title is replaced by the following:

‘Parent undertakings in a third country’;

(b) paragraph 3 is replaced by the following:

‘3. Competent authorities may apply other methods which ensure appropriate supplementary supervision of the regulated entities in a financial conglomerate. Those methods shall be agreed by the coordinator, after consulting the other relevant competent authorities. The competent authorities may in particular require the establishment of a mixed financial holding company which has its head office in the Union, and apply this Directive to the regulated entities in the financial conglomerate headed by that holding company. The competent authorities shall ensure that those methods achieve the objective of supplementary supervision under this Directive and shall notify the other competent authorities involved and the Commission thereof.’;

(16) Article 19 is replaced by the following:

‘Article 19

Cooperation with third-country competent authorities

Article 39(1) and (2) of Directive 2006/48/EC, Article 10a of Directive 98/78/EC and Article 264 of Directive 2009/138/EC shall apply *mutatis mutandis* to the negotiation of agreements with one or more third countries regarding the means of exercising supplementary supervision of regulated entities in a financial conglomerate.’;

(17) the title of Chapter III is replaced by the following:

‘DELEGATED ACTS AND IMPLEMENTING MEASURES’;

(18) Article 20 is replaced by the following:

‘Article 20

Powers conferred on the Commission

The Commission shall be empowered to adopt delegated acts in accordance with Article 21c concerning the technical adaptations to be made to this Directive in the following areas:

- (a) a more precise formulation of the definitions laid down in Article 2 in order to take account of developments in financial markets for the application of this Directive;
- (b) the alignment of terminology and the framing of definitions in this Directive in accordance with subsequent Union acts on regulated entities and related matters;
- (c) a more precise definition of the calculation methods set out in Annex I in order to take account of developments on financial markets and prudential techniques.

Those measures shall not include the subject matter of the power delegated to and conferred on the Commission with regard to the items listed in Article 21a.’;

(19) in Article 21, paragraphs 2, 3 and 5 are deleted;

(20) Article 21a is amended as follows:

- (a) in the first subparagraph of paragraph 1, the following point is added:

‘(d) Article 6(2) in order to ensure a uniform format (with instructions) for, and determine the frequency of and, where appropriate, the dates for reporting.’;

- (b) the following paragraph is inserted:

‘1a. In order to ensure consistent application of Articles 2, 7 and 8 and Annex II, the ESA shall, through the Joint Committee, develop draft regulatory technical standards to establish a more precise formulation of the definitions set out in Article 2 and to coordinate the provisions adopted pursuant to Articles 7 and 8 and Annex II.

The Joint Committee shall submit those draft regulatory technical standards to the Commission by 1 January 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010 respectively.’;

- (c) the following paragraph is added:

‘3. Within two years of the adoption of any implementing technical standards in accordance with paragraph 2(a), Member States shall require a uniform format for and shall determine the frequency of, and the dates for, reporting of the calculations referred to in this Article.’;

(21) the following Articles are inserted in Chapter III:

‘Article 21b

Common Guidelines

The ESA shall, through the Joint Committee, issue the common guidelines referred to in Article 3(8), Article 7(5), Article 8(5), Article 9(6), the third subparagraph of Article 11(1), Article 12b and Article 21(4) in accordance with the procedure laid down in Article 56 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010 respectively.

Article 21c

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The delegation of power referred to in Article 20 shall be conferred on the Commission for a period of four years from 9 December 2011. The Commission shall draw up a report in respect of the delegated power at the latest six months before the end of the four-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3. The delegation of power referred to in Article 20 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect on the day following the publication of the decision in the *Official Journal of the European Union* or on a later date specified therein. It shall not affect the validity of any delegated acts already in force.

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

5. A delegated act adopted pursuant to Article 20 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of the notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or the Council.’;

(22) in Article 30, the first subparagraph is replaced by the following:

‘Pending further coordination of sectoral rules, Member States shall provide for the inclusion of asset management companies:

- (a) within the scope of consolidated supervision of credit institutions and investment firms, or in the scope of supplementary supervision of insurance undertakings in an insurance group;
- (b) where the group is a financial conglomerate, in the scope of supplementary supervision within the meaning of this Directive; and
- (c) within the identification process in accordance with Article 3(2).’

(23) the following Article is inserted:

‘Article 30a

Alternative investment fund managers

1. Pending further coordination of sectoral rules, Member States shall provide for the inclusion of alternative investment fund managers:

- (a) within the scope of consolidated supervision of credit institutions and investment firms, or within the scope of supplementary supervision of insurance undertakings in an insurance group;
- (b) where the group is a financial conglomerate, within the scope of supplementary supervision within the meaning of this Directive; and
- (c) within the identification process in accordance with Article 3(2).

2. For the application of paragraph 1, Member States shall determine, or give their competent authorities the power to decide, according to which sectoral rules (banking sector, insurance sector or investment services sector) alternative investment fund managers are to be included in the consolidated or supplementary supervision referred to in point (a) of paragraph 1. For the purposes of this paragraph, the relevant sectoral rules regarding the form and extent of the inclusion of financial institutions shall apply *mutatis mutandis* to alternative investment fund managers. For the purposes of supplementary supervision referred to in point (b) of paragraph 1, the alternative investment fund manager shall be treated as part of whichever sector it is included in by virtue of point (a) of paragraph 1.

Where an alternative investment fund manager is part of a financial conglomerate, references to regulated entities, and to competent and relevant competent authorities shall therefore, for the purposes of this Directive, be understood as including, respectively, alternative investment fund managers and the competent authorities responsible for

the supervision of alternative investment fund managers. This applies *mutatis mutandis* as regards groups as referred to in point (a) of paragraph 1.’

(24) Annex I is amended in accordance with Annex II to this Directive.

Article 3

Amendments to Directive 2006/48/EC

Directive 2006/48/EC is amended as follows:

(1) paragraph 2 of Article 1 is replaced by the following:

‘2. Article 39 and Articles 124 to 143 shall apply to financial holding companies, mixed financial holding companies and mixed-activity holding companies which have their head office in the Union.’

(2) Article 4 is amended as follows:

(a) points (14) to (17) are replaced by the following:

‘(14) “parent credit institution in a Member State” means a credit institution which has a credit institution or a financial institution as a subsidiary or which holds a participation in such an institution, and which is not itself a subsidiary of another credit institution authorised in the same Member State, or of a financial holding company or mixed financial holding company established in the same Member State;

(15) “parent financial holding company in a Member State” means a financial holding company which is not itself a subsidiary of a credit institution authorised in the same Member State, or of a financial holding company or mixed financial holding company established in the same Member State;

(15a) “parent mixed financial holding company in a Member State” means a mixed financial holding company which is not itself a subsidiary of a credit institution authorised in the same Member State, or of a financial holding company or mixed financial holding company established in the same Member State;

(16) “EU parent credit institution” means a parent credit institution in a Member State which is not a subsidiary of another credit institution authorised in any Member State, or of a financial holding company or mixed financial holding company established in any Member State;

(17) "EU parent financial holding company" means a parent financial holding company in a Member State which is not a subsidiary of a credit institution authorised in any Member State or of another financial holding company or mixed financial holding company established in any Member State;

(17a) "EU parent mixed financial holding company" means a parent mixed financial holding company in a Member State which is not a subsidiary of a credit institution authorised in any Member State or of another financial holding company or mixed financial holding company established in any Member State;

(b) the following point is inserted:

'(19a) "mixed financial holding company" means a mixed financial holding company as defined in Article 2(15) of Directive 2002/87/EC';

(c) point (48) is replaced by the following:

'(48) "consolidating supervisor" means the competent authority responsible for the exercise of supervision on a consolidated basis of EU parent credit institutions and credit institutions controlled by EU parent financial holding companies or EU parent mixed financial holding companies';

(3) Article 14 is replaced by the following:

'Article 14

Every authorisation shall be notified to EBA. The name of each credit institution to which authorisation has been granted shall be entered on a list, which EBA shall publish and keep up-to-date on its website. The competent authority responsible for supervision on a consolidated basis shall provide the competent authorities concerned and EBA with all information regarding the banking group in accordance with Article 12(3), Article 22(1) and Article 73(3), in particular regarding the legal structure and the governance and organisational structure of the group.'

(4) Article 39 is amended as follows:

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

'(b) credit institutions established in third countries, the parent undertakings of which, whether credit institutions, financial holding companies or mixed financial holding companies, have their head office in the Union.';

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

'(a) that the competent authorities of the Member States are able to obtain the information necessary for supervision on the basis of the consolidated financial situations of credit insti-

tutions, financial holding companies or mixed financial holding companies situated in the Union which have as subsidiaries credit institutions or financial institutions established in a third country, or hold participation in such institutions';

(5) paragraph 2 of Article 69 is replaced by the following:

'2. The Member States may exercise the option provided for in paragraph 1 where the parent undertaking is a financial holding company or mixed financial holding company established in the same Member State as the credit institution, provided that it is subject to the same supervision as that applicable to credit institutions, and in particular to the standards laid down in Article 71(1).';

(6) paragraph 2 of Article 71 is replaced by the following:

'2. Without prejudice to Articles 68, 69 and 70, credit institutions controlled by a parent financial holding company in a Member State or a parent mixed financial holding company in a Member State shall comply, to the extent and in the manner prescribed in Article 133, with the obligations laid down in Articles 75, 120, 123 and Section 5 on the basis of the consolidated financial situation of that financial holding company or mixed financial holding company.

Where more than one credit institution is controlled by a parent financial holding company in a Member State or by a parent mixed financial holding company in a Member State, the first subparagraph shall apply only to the credit institution to which supervision on a consolidated basis applies in accordance with Articles 125 and 126.';

(7) paragraph 2 of Article 72 is replaced by the following:

'2. Credit institutions controlled by an EU parent financial holding company or by an EU parent mixed financial holding company shall comply with the obligations laid down in Chapter 5 on the basis of the consolidated financial situation of that financial holding company or that mixed financial holding company.

Significant subsidiaries of EU parent financial holding companies or EU parent mixed financial holding companies shall disclose the information specified in Annex XII, Part 1, point 5, on an individual or sub-consolidated basis.';

(8) the following Article is inserted:

'Article 72a

1. Where a mixed financial holding company is subject to equivalent provisions under this Directive and under Directive 2002/87/EC, in particular in terms of risk-based supervision, the consolidating supervisor may, after consulting the other competent authorities responsible for the supervision of subsidiaries, apply only the relevant provision of Directive 2002/87/EC to that mixed financial holding company.

2. Where a mixed financial holding company is subject to equivalent provisions under this Directive and under Directive 2009/138/EC, in particular in terms of risk-based supervision, the consolidating supervisor may, in agreement with the group supervisor in the insurance sector, apply to that mixed financial holding company only the provision of the Directive relating to the most significant financial sector as determined under Article 3(2) of Directive 2002/87/EC.

3. The consolidating supervisor shall inform EBA and the European Supervisory Authority (European Insurance and Occupational Pensions Authority) established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council (*) (EIOPA) of the decisions taken under paragraphs 1 and 2 of this Article. EBA, EIOPA and the European Supervisory Authority (European Securities and Markets Authority) established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council (**) (ESMA) shall, through the Joint Committee of the European Supervisory Authorities (Joint Committee), develop guidelines aimed at converging supervisory practices and shall develop draft regulatory technical standards, which they shall submit to the Commission within three years of the adoption of the guidelines.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010 respectively.

(*) OJ L 331, 15.12.2010, p. 48.

(**) OJ L 331, 15.12.2010, p. 84.;

(9) paragraph 2 of Article 73 is replaced by the following:

‘2. Competent authorities shall require subsidiary credit institutions to apply the requirements laid down in Articles 75, 120 and 123 and Section 5 of this Directive on a sub-consolidated basis if those credit institutions, or their parent undertaking where that parent undertaking is a financial holding company or mixed financial holding company, have a credit institution, a financial institution or an asset management company as defined in Article 2(5) of Directive 2002/87/EC as a subsidiary established in a third country, or hold a participation in such an undertaking.’;

(10) in Article 80(7), point (a) is replaced by the following:

‘(a) the counterparty is an institution or a financial holding company, mixed financial holding company, financial institution, asset management company or ancillary services undertaking subject to appropriate prudential requirements’;

(11) Article 84 is amended as follows:

(a) in paragraph 2, the second subparagraph is replaced by the following:

‘Where an EU parent credit institution and its subsidiaries or an EU parent financial holding company and its subsidiaries or an EU parent mixed financial holding company and its subsidiaries use the IRB Approach on a unified basis, the competent authorities may allow the minimum requirements of Part 4 of Annex VII to be met by the parent and its subsidiaries considered together.’;

(b) paragraph 6 is replaced by the following:

‘6. Where the IRB Approach is intended to be used by the EU parent credit institution and its subsidiaries, or by the EU parent financial holding company and its subsidiaries, or the EU parent mixed financial holding company and its subsidiaries, the competent authorities of the different legal entities shall cooperate closely as provided for in Articles 129 to 132.’;

(12) in Article 89(1), point (e) is replaced by the following:

‘(e) exposures of a credit institution to a counterparty which is its parent undertaking, its subsidiary or a subsidiary of its parent undertaking provided that the counterparty is an institution or a financial holding company, mixed financial holding company, financial institution, asset management company or ancillary services undertaking subject to appropriate prudential requirements or an undertaking linked by a relationship within the meaning of Article 12(1) of Directive 83/349/EEC and exposures between credit institutions which meet the requirements set out in Article 80(8);’;

(13) paragraphs 3 and 4 of Article 105 are replaced by the following:

‘3. Where an Advanced Measurement Approach is intended to be used by an EU parent credit institution and its subsidiaries or by the subsidiaries of an EU parent financial holding company or an EU parent mixed financial holding company, the competent authorities of the different legal entities shall cooperate closely as provided for in Articles 129 to 132. The application shall include the elements listed in Part 3 of Annex X.

4. Where an EU parent credit institution and its subsidiaries or the subsidiaries of an EU parent financial holding company or an EU parent mixed financial holding company use an Advanced Measurement Approach on a unified basis, the competent authorities may allow the qualifying criteria set out in Part 3 of Annex X to be met by the parent and its subsidiaries considered together.’;

(14) paragraph 2 of Article 122a is replaced by the following:

‘2. Where an EU parent credit institution, an EU parent financial holding company or an EU parent mixed financial holding company, or one of its subsidiaries, as an originator or a sponsor, securitises exposures from several credit institutions, investment firms or other financial institutions which are included in the scope of supervision on a consolidated basis, the requirement referred to in paragraph 1 may be satisfied on the basis of the consolidated situation of the related EU parent credit institution, EU parent financial holding company or EU parent mixed financial holding company. This paragraph shall apply only where credit institutions, investment firms or financial institutions which created the securitised exposures have committed themselves to adhere to the requirements set out in paragraph 6 and deliver, in a timely manner, to the originator or sponsor and to the EU parent credit institution, the EU parent financial holding company or the EU parent mixed financial holding company the information needed to satisfy the requirements referred to in paragraph 7.’;

(15) paragraph 2 of Article 125 is replaced by the following:

‘2. Where the parent of a credit institution is a parent financial holding company in a Member State a parent mixed financial holding company in a Member State, an EU parent financial holding company or an EU parent mixed financial holding company, supervision on a consolidated basis shall be exercised by the competent authorities that authorised that credit institution under Article 6.’;

(16) Article 126 is replaced by the following:

Article 126

1. Where credit institutions authorised in two or more Member States have as their parent the same parent financial holding company in a Member State, the same parent mixed financial holding company in a Member State, the same EU parent financial holding company or the same EU parent mixed financial holding company, supervision on a consolidated basis shall be exercised by the competent authorities of the credit institution authorised in the Member State in which the financial holding company or mixed financial holding company is established.

Where the parents of credit institutions authorised in two or more Member States comprise more than one financial holding company or mixed financial holding company which have their head offices in different Member States and there is a credit institution in each of those Member States, supervision on a consolidated basis shall be exercised by the competent authority of the credit institution with the largest balance sheet total.

2. Where more than one credit institution authorised in the Union has as its parent the same financial holding company or the same mixed financial holding company and none of those credit institutions has been authorised in the Member State in which the financial holding company or the mixed financial holding company is established, supervision on a consolidated basis shall be

exercised by the competent authority that authorised the credit institution with the largest balance sheet total, which shall be considered, for the purposes of this Directive, as the credit institution controlled by an EU parent financial holding company or an EU parent mixed financial holding company.

3. In particular cases, the competent authorities may by common agreement waive the criteria referred to in paragraphs 1 and 2 if their application would be inappropriate, taking into account the credit institutions and the relative importance of their activities in different countries, and appoint a different competent authority to exercise supervision on a consolidated basis. Before agreeing on such a waiver, the competent authorities shall give the EU parent credit institution the EU parent financial holding company, the EU parent mixed financial holding company, or the credit institution with the largest balance sheet total, as appropriate, an opportunity to state its opinion.

4. The competent authorities shall notify the Commission and EBA of any waiver under paragraph 3.’;

(17) Article 127 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. Member States shall adopt any measures necessary, where appropriate, to include financial holding companies or mixed financial holding companies in consolidated supervision. Without prejudice to Article 135, the consolidation of the financial situation of the financial holding company or the mixed financial holding company shall not in any way imply that the competent authorities are required to play a supervisory role in relation to the financial holding company or mixed financial holding company on a stand alone basis.’;

(b) paragraph 3 is replaced by the following:

‘3. Member States shall provide that their competent authorities responsible for exercising supervision on a consolidated basis may ask the subsidiaries of a credit institution, a financial holding company or a mixed financial holding company, which are not included within the scope of supervision on a consolidated basis for the information referred to in Article 137. In such a case, the procedures for transmitting and verifying the information laid down in that Article shall apply.’;

(18) Article 129 is amended as follows:

(a) in the first subparagraph of paragraph 1, the introductory part is replaced by the following:

‘1. In addition to the obligations provided for in this Directive, the competent authority responsible for the exercise of supervision on a consolidated basis of EU parent credit institutions and credit institutions controlled by EU parent financial holding companies or EU parent mixed financial holding companies shall carry out the following tasks’;

- (b) in paragraph 2, the first subparagraph is replaced by the following:

‘2. In the case of applications for the permissions referred to in Article 84(1), Article 87(9) and Article 105 and in Part 6 of Annex III respectively, submitted by an EU parent credit institution and its subsidiaries, or jointly by the subsidiaries of an EU parent financial holding company or an EU parent mixed financial holding company, the competent authorities shall work together, in full consultation, to decide whether or not to grant the permission sought and to determine the terms and conditions, if any, to which such permission should be subject.’;

- (c) in paragraph 3:

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

‘3. The consolidating supervisor and the competent authorities responsible for the supervision of subsidiaries of an EU parent credit institution, an EU parent financial holding company or an EU parent mixed financial holding company shall do everything within their power to reach a joint decision on the application of Articles 123 and 124 to determine the adequacy of the consolidated level of own funds held by the group with respect to its financial situation and risk profile and the required level of own funds for the application of Article 136(2) to each entity within the banking group and on a consolidated basis.’;

- (ii) the fifth subparagraph is replaced by the following:

‘The decision on the application of Articles 123 and 124 and Article 136(2) shall be taken by the respective competent authorities responsible for supervision of subsidiaries of an EU parent credit institution, an EU parent financial holding company or an EU parent mixed financial holding company on an individual or sub-consolidated basis after duly considering the views and reservations expressed by the consolidating supervisor. If, at the end of the four-month period, any of the competent authorities concerned has referred the matter to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the competent authorities shall defer their decision and await any decision that EBA shall take in accordance with Article 19(3) of that Regulation, and shall take its decision in conformity with the decision of EBA. The four-month period shall be deemed the conciliation period within the meaning of that Regulation. EBA shall take its decision within one month. The matter shall not be referred to EBA after the end of the four-month period or after a joint decision has been reached.’;

- (iii) the ninth subparagraph is replaced by the following:

‘The joint decision referred to in the first subparagraph and any decision taken in the absence of a joint decision in accordance with the fourth and fifth subparagraphs, shall be updated on an annual basis or, in exceptional circumstances, where a competent authority responsible for the supervision of subsidiaries of an EU parent credit institution, an EU parent financial holding company or an EU parent mixed financial holding company makes a written and fully reasoned request to the consolidating supervisor to update the decision on the application of Article 136(2). In the latter case, the update may be addressed on a bilateral basis between the consolidating supervisor and the competent authority making the request.’;

- (19) in Article 131a(2), the sixth subparagraph is replaced by the following:

‘The following may participate in colleges of supervisors:

- (a) the competent authorities responsible for the supervision of subsidiaries of an EU parent credit institution, an EU parent financial holding company or an EU parent mixed financial holding company;
- (b) the competent authorities of a host country where significant branches as referred to in Article 42a are established;
- (c) central banks as appropriate; and
- (d) third-country competent authorities where appropriate and subject to confidentiality requirements that are equivalent, in the opinion of all the competent authorities, to Articles 44 to 52.’;

- (20) Article 132(1) is amended as follows:

- (a) the fifth subparagraph is replaced by the following:

‘In particular, competent authorities responsible for consolidated supervision of EU parent credit institutions and credit institutions controlled by EU parent financial holding companies or by EU parent mixed financial holding companies shall provide the competent authorities in other Member States who supervise subsidiaries of those parent undertakings with all relevant information. In determining the extent of relevant information, the importance of those subsidiaries within the financial system in those Member States shall be taken into account.’;

(b) in the sixth subparagraph, point (a) is replaced by the following:

‘(a) identification of the legal structure and the governance and organisational structure of the group, including all regulated entities, non-regulated subsidiaries and significant branches belonging to the group, the parent undertakings, in accordance with Article 12(3), Article 22(1) and Article 73(3), as well as identification of the competent authorities of the regulated entities in the group;’

(21) Article 135 is replaced by the following:

‘Article 135

The Member States shall require that persons who effectively direct the business of a financial holding company or a mixed financial holding company be of sufficiently good repute and have sufficient experience to perform those duties.’;

(22) in Article 139(3), the first subparagraph is replaced by the following:

‘3. Member States shall authorise the exchange between their competent authorities of the information referred to in paragraph 2, on the understanding that, in the case of financial holding companies, mixed financial holding companies, financial institutions or ancillary services undertakings, the collection or possession of information shall not in any way imply that the competent authorities are required to play a supervisory role in relation to those institutions or undertakings standing alone.’;

(23) Article 140 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. Where a credit institution, financial holding company, mixed financial holding company or a mixed activity holding company controls one or more subsidiaries which are insurance companies or other undertakings providing investment services which are subject to authorisation, the competent authorities and the authorities entrusted with the public task of supervising insurance undertakings or those other undertakings providing investment services shall cooperate closely. Without prejudice to their respective responsibilities, those authorities shall provide one another with any information likely to simplify their task and to allow supervision of the activity and overall financial situation of the undertakings they supervise.’;

(b) paragraph 3 is replaced by the following:

‘3. The competent authorities responsible for supervision on a consolidated basis shall establish lists of the financial holding companies or mixed financial holding companies referred to in Article 71(2). Those lists shall be communicated to the competent authorities of the other Member States, to EBA and to the Commission.’;

(24) Articles 141 and 142 are replaced by the following:

‘Article 141

Where, in applying this Directive, the competent authorities of one Member State wish in specific cases to verify the information concerning a credit institution, a financial holding company, a financial institution, an ancillary services undertaking, a mixed activity holding company, a mixed financial holding company, a subsidiary as referred to in Article 137 or a subsidiary as referred to in Article 127(3), situated in another Member State, they shall ask the competent authorities of that other Member State to have that verification carried out. The authorities which receive such a request shall, within the framework of their competence, act upon it either by carrying out the verification themselves, by allowing the authorities who made the request to carry it out, or by allowing an auditor or expert to carry it out. The competent authority which made the request may participate in the verification when it does not carry out the verification itself.

Article 142

Without prejudice to their criminal law provisions, Member States shall ensure that penalties or measures aimed at ending observed breaches or the causes of such breaches may be imposed on financial holding companies, mixed financial holding companies and mixed activity holding companies, or their effective managers, that infringe laws, regulation or administrative provisions brought into force to transpose Articles 124 to 141 and this Article. The competent authorities shall cooperate closely to ensure that those penalties or measures produce the desired results, especially when the central administration or main establishment of a financial holding company or of a mixed financial holding company or of a mixed activity holding company is not located in the same Member State as its registered office.’;

(25) Article 143 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. Where a credit institution, the parent undertaking of which is a credit institution or a financial holding company, or a mixed financial holding company, which has its head office in a third country, is not subject to consolidated supervision under Articles 125 and 126, the competent authorities shall verify whether the credit institution is subject to consolidated supervision by a third-country competent authority which is equivalent to that governed by the principles laid down in this Directive.

The verification shall be carried out by the competent authority which would be responsible for consolidated supervision if paragraph 3 were to apply, at the request of the parent undertaking or of any of the regulated entities authorised in the Union or on its own initiative. The competent authority shall consult the other competent authorities involved.’;

- (b) in paragraph 3, the third subparagraph is replaced by the following:

‘Competent authorities may in particular require the establishment of a financial holding company or a mixed financial holding company which has its head office in the Union, and may apply the provisions on consolidated supervision to the consolidated position of that financial holding company or mixed financial holding company.’;

- (26) the following Article is inserted:

Article 146a

The Member States shall require credit institutions to disclose publicly, at the level of the banking group, on an annual basis, either in full or by way of references to equivalent information, a description of their legal structure, and their governance and organisational structure.’;

- (27) Annex X is amended in accordance with Annex III to this Directive.

Article 4

Amendments to Directive 2009/138/EC

Directive 2009/138/EC is amended as follows:

- (1) in Article 212(1), points (f) and (g) are replaced by the following:

‘(f) “insurance holding company” means a parent undertaking which is not a mixed financial holding company and the main business of which is to acquire and hold participations in subsidiary undertakings, where those subsidiary undertakings are exclusively or mainly insurance or reinsurance undertakings, or third-country insurance or reinsurance undertakings, at least one of such subsidiary undertakings being an insurance or reinsurance undertaking;

(g) “mixed-activity insurance holding company” means a parent undertaking other than an insurance undertaking, a third-country insurance undertaking, a reinsurance undertaking, a third-country reinsurance undertaking, an insurance holding company or a mixed financial holding company, which includes at least one insurance or reinsurance undertaking among its subsidiary undertakings;

(h) “mixed financial holding company” means a mixed financial holding company as defined in Article 2(15) of Directive 2002/87/EC.’;

- (2) in Article 213, paragraphs 2 and 3 are replaced by the following:

‘2. Member States shall ensure that supervision at the level of the group applies to the following:

(a) insurance or reinsurance undertakings, which are a participating undertaking in at least one insurance undertaking, reinsurance undertaking, third-country insurance undertaking or third-country reinsurance undertaking, in accordance with Articles 218 to 258;

(b) insurance or reinsurance undertakings, the parent undertaking of which is an insurance holding company or a mixed financial holding company which has its head office in the Union, in accordance with Articles 218 to 258;

(c) insurance or reinsurance undertakings, the parent undertaking of which is an insurance holding company or a mixed financial holding company which has its head office in a third country or a third-country insurance or reinsurance undertaking, in accordance with Articles 260 to 263;

(d) insurance or reinsurance undertakings, the parent undertaking of which is a mixed-activity insurance holding company, in accordance with Article 265.

3. In the cases referred to in points (a) and (b) of paragraph 2, where the participating insurance or reinsurance undertaking or the insurance holding company or mixed financial holding company which has its head office in the Union is either a related undertaking of, or is itself a regulated entity or a mixed financial holding company which is subject to supplementary supervision in accordance with Article 5(2) of Directive 2002/87/EC, the group supervisor may, after consulting the other supervisory authorities concerned, decide not to carry out the supervision of risk concentration referred to in Article 244 of this Directive, the supervision of intra-group transactions referred to in Article 245 of this Directive, or both, at the level of that participating insurance or reinsurance undertaking or that insurance holding company or mixed financial holding company.

4. Where a mixed financial holding company is subject to equivalent provisions under this Directive and under Directive 2002/87/EC, in particular in terms of risk-based supervision, the group supervisor may, after consulting the other supervisory authorities concerned, apply only the relevant provisions of Directive 2002/87/EC to that mixed financial holding company.

5. Where a mixed financial holding company is subject to equivalent provisions under this Directive and under Directive 2006/48/EC, in particular in terms of risk-based supervision, the group supervisor may, in agreement with the consolidating supervisor in the banking and investment services sector, apply only the provisions of the Directive relating to the most significant sector as determined in accordance with Article 3(2) of Directive 2002/87/EC.

6. The group supervisor shall inform the European Supervisory Authority (European Banking Authority) established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council (*) (EBA) and the European Supervisory Authority (European Insurance and Occupational Pensions Authority) established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council (EIOPA) (**) of the decisions taken under paragraphs 4 and 5. EBA, EIOPA and the European Supervisory Authority (European Securities and Markets Authority) established by Regulation (EU) No 1095/2010 (***) (ESMA) shall, through the Joint Committee of the European Supervisory Authorities (Joint Committee), develop guidelines aimed at converging supervisory practices and shall develop draft regulatory technical standards, which they shall submit to the Commission within three years of the adoption of those guidelines.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010 respectively.

(*) OJ L 331, 15.12.2010, p. 12.

(**) OJ L 331, 15.12.2010, p. 48.

(***) OJ L 331, 15.12.2010, p. 84.;

- (3) Article 214(1) is replaced by the following:

‘1. The exercise of group supervision in accordance with Article 213 shall not imply that the supervisory authorities are required to play a supervisory role in relation to the third-country insurance undertaking, the third-country reinsurance undertaking, the insurance holding company, the mixed financial holding company or the mixed-activity insurance holding company taken individually, without prejudice to Article 257 as far as insurance holding companies or mixed financial holding companies are concerned.’;

- (4) in Article 215, paragraphs 1 and 2 are replaced by the following:

‘1. Where the participating insurance or reinsurance undertaking or the insurance holding company or the mixed financial holding company referred to in Article 213(2)(a) and (b) is itself a subsidiary undertaking of another insurance or reinsurance undertaking or of another insurance holding company or of another mixed financial holding company which has its head office in the Union, Articles 218 to 258 shall apply only at the level of the ultimate parent insurance or reinsurance undertaking, insurance holding company or mixed financial holding company which has its head office in the Union.

2. Where the ultimate parent insurance or reinsurance undertaking or insurance holding company or mixed financial holding company which has its head office in the Union, as referred to in paragraph 1, is a subsidiary undertaking of an undertaking which is subject to supplementary supervision in accordance with Article 5(2) of Directive 2002/87/EC, the group supervisor may, after consulting the other supervisory authorities concerned, decide not to carry out the supervision of risk concentration referred to in Article 244, the supervision of intra-group transactions referred to in Article 245, or both, at the level of that ultimate parent undertaking or company.’;

- (5) Article 216(1) is replaced by the following:

‘1. Where the participating insurance or reinsurance undertaking or the insurance holding company or the mixed financial holding company which has its head office in the Union, as referred to in Article 213(2)(a) and (b), does not have its head office in the same Member State as the ultimate parent undertaking at Union level referred to in Article 215, Member States may allow their supervisory authorities to decide, after consulting the group supervisor and that ultimate parent undertaking at Union level, to subject the ultimate parent insurance or reinsurance undertaking, insurance holding company or mixed financial holding company at national level to group supervision.’;

- (6) Article 219 is replaced by the following:

‘Article 219

Frequency of calculation

1. The group supervisor shall ensure that the calculations referred to in Article 218(2) and (3) are carried out at least annually, by the participating insurance or reinsurance undertaking, by the insurance holding company or by the mixed financial holding company.

The relevant data for and the results of that calculation shall be submitted to the group supervisor by the participating insurance or reinsurance undertaking or, where the group is not headed by an insurance or reinsurance undertaking, by the insurance holding company or the mixed financial holding company or by the undertaking in the group identified by the group supervisor after consulting the other supervisory authorities concerned and the group itself.

2. The insurance undertaking, reinsurance undertaking, insurance holding company and mixed financial holding company shall monitor the group Solvency Capital Requirement on an ongoing basis. Where the risk profile of the group deviates significantly from the assumptions underlying the last reported group Solvency Capital Requirement, the group Solvency Capital Requirement shall be recalculated without delay and reported to the group supervisor.

Where there is evidence to suggest that the risk profile of the group has altered significantly since the date on which the group Solvency Capital Requirement was last reported, the group supervisor may require a recalculation of the group Solvency Capital Requirement.';

- (7) Article 226 is replaced by the following:

'Article 226

Intermediate insurance holding companies

1. When calculating the group solvency of an insurance or reinsurance undertaking which holds a participation in a related insurance undertaking, a related reinsurance undertaking, a third-country insurance undertaking or a third-country reinsurance undertaking, through an insurance holding company or a mixed financial holding company, the situation of such an insurance holding company or mixed financial holding company shall be taken into account.

For the sole purpose of that calculation, the intermediate insurance holding company or intermediate mixed financial holding company shall be treated as if it were an insurance or reinsurance undertaking subject to the rules laid down in Subsections 1, 2 and 3 of Section 4 of Chapter VI of Title I in respect of the Solvency Capital Requirement and were subject to the same conditions as are laid down in Subsections 1, 2 and 3 of Section 3 of Chapter VI of Title I in respect of own funds eligible for the Solvency Capital Requirement.

2. In cases where an intermediate insurance holding company or intermediate mixed financial holding company holds subordinated debt or other eligible own funds subject to limitation in accordance with Article 98, they shall be recognised as eligible own funds up to the amounts calculated by application of the limits set out in Article 98 to the total eligible own funds outstanding at group level as compared to the Solvency Capital Requirement at group level.

Any eligible own funds of an intermediate insurance holding company or intermediate mixed financial holding company, which would require prior authorisation from the supervisory authority in accordance with Article 90 if they were held by an insurance or reinsurance undertaking, may be included in the calculation of the group solvency only in so far as they have been duly authorised by the group supervisor.';

- (8) in Article 231(1), the first subparagraph is replaced by the following:

'1. In the case of an application for permission to calculate the consolidated group Solvency Capital

Requirement, as well as the Solvency Capital Requirement of insurance and reinsurance undertakings in the group, on the basis of an internal model, submitted by an insurance or reinsurance undertaking and its related undertakings, or jointly by the related undertakings of an insurance holding company or a mixed financial holding company, the supervisory authorities concerned shall cooperate to decide whether or not to grant that permission and to determine the terms and conditions, if any, to which such permission is subject.';

- (9) Article 233(5) is replaced by the following:

'5. In the case of an application for permission to calculate the Solvency Capital Requirement of insurance and reinsurance undertakings in the group on the basis of an internal model, submitted by an insurance or reinsurance undertaking and its related undertakings, or jointly by the related undertakings of an insurance holding company or mixed financial holding company, Article 231 shall apply *mutatis mutandis*.';

- (10) in Section 1 of Chapter II of Title III the title of Subsection 5 is replaced by the following:

'Supervision of group solvency for insurance and reinsurance undertakings that are subsidiaries of an insurance holding company or a mixed financial holding company';

- (11) Article 235 is replaced by the following:

'Article 235

Group solvency of an insurance holding company or a mixed financial holding company

1. Where insurance and reinsurance undertakings are subsidiaries of an insurance holding company or mixed financial holding company, the group supervisor shall ensure that the calculation of the solvency of the group is carried out at the level of the insurance holding company or mixed financial holding company applying Article 220(2) to Article 233.

2. For the purpose of that calculation, the parent undertaking shall be treated as if it were an insurance or reinsurance undertaking subject to the rules laid down in Subsections 1, 2 and 3 of Section 4 of Chapter VI of Title I as regards the Solvency Capital Requirement and subject to the same conditions as laid down in Subsections 1, 2 and 3 of Section 3 of Chapter VI of Title I as regards the own funds eligible for the Solvency Capital Requirement.';

(12) Article 243 is replaced by the following:

‘Article 243

Subsidiaries of an insurance holding company and mixed financial holding company

Articles 236 to 242 shall apply *mutatis mutandis* to insurance and reinsurance undertakings which are the subsidiary of an insurance holding company or mixed financial holding company.’;

(13) Article 244(2) is replaced by the following:

‘2. Member States shall require insurance and reinsurance undertakings or insurance holding companies or mixed financial holding companies to report on a regular basis and at least annually to the group supervisor any significant risk concentration at the level of the group, unless Article 215(2) applies.

The necessary information shall be submitted to the group supervisor by the insurance or reinsurance undertaking which is at the head of the group or, where the group is not headed by a insurance or reinsurance undertaking, by the insurance holding company, the mixed financial holding company or the insurance or reinsurance undertaking in the group identified by the group supervisor after consulting the other supervisory authorities concerned and the group.

The risk concentrations referred to in the first subparagraph shall be subject to supervisory review by the group supervisor.’;

(14) Article 245(2) is replaced by the following:

‘2. Member States shall require insurance and reinsurance undertakings, insurance holding companies and mixed financial holding companies to report on a regular basis and at least annually to the group supervisor all significant intra-group transactions by insurance and reinsurance undertakings within a group, including those performed with a natural person with close links to an undertaking in the group, unless Article 215(2) applies.

In addition, Member States shall require reporting of very significant intra-group transactions as soon as practicable.

The necessary information shall be submitted to the group supervisor by the insurance or reinsurance undertaking which is at the head of the group or, where the group is not headed by an insurance or reinsurance undertaking,

by the insurance holding company, the mixed financial holding company or the insurance or reinsurance undertaking in the group identified by the group supervisor after consulting the other supervisory authorities concerned and the group.

The intra-group transactions shall be subject to supervisory review by the group supervisor.’;

(15) in Article 246(4), the first, second and third subparagraphs are replaced by the following:

‘4. Member States shall require the participating insurance undertaking or reinsurance undertaking, the insurance holding company or the mixed financial holding company to undertake at the level of the group the assessment required by Article 45. The own-risk and solvency assessment conducted at group level shall be subject to supervisory review by the group supervisor in accordance with Chapter III.

Where the calculation of the solvency at the level of the group is carried out in accordance with method 1, as referred to in Article 230, the participating insurance or reinsurance undertaking, the insurance holding company or the mixed financial holding company shall provide to the group supervisor a proper understanding of the difference between the sum of the Solvency Capital Requirements of all the related insurance or reinsurance undertakings of the group and the group consolidated Solvency Capital Requirement.

The participating insurance or reinsurance undertaking, the insurance holding company or the mixed financial holding company may, subject to the agreement of the group supervisor, undertake any assessments required pursuant to Article 45 at the level of the group and at the level of any subsidiary in the group at the same time, and may produce a single document covering all the assessments.’;

(16) in Article 247(2), point (b) is replaced by the following:

‘(b) where a group is not headed by an insurance or reinsurance undertaking, by the following supervisory authority:

(i) where the parent of an insurance or reinsurance undertaking is an insurance holding company or mixed financial holding company, the supervisory authority which has authorised that insurance or reinsurance undertaking,

- (ii) where more than one insurance or reinsurance undertaking which have their head offices in the Union have as their parent the same insurance holding company or mixed financial holding company, and one of those undertakings has been authorised in the Member State in which the insurance holding company or mixed financial holding company has its head office, the supervisory authority of the insurance or reinsurance undertaking authorised in that Member State,
- (iii) where the group is headed by more than one insurance holding company or mixed financial holding company which have their head offices in different Member States and there is an insurance or reinsurance undertaking in each of those Member States, the supervisory authority of the insurance or reinsurance undertaking with the largest balance sheet total,
- (iv) where more than one insurance or reinsurance undertaking which have their head offices in the Union have as their parent the same insurance holding company or mixed financial holding company and none of those undertakings has been authorised in the Member State in which the insurance holding company or mixed financial holding company has its head office, the supervisory authority which authorised the insurance or reinsurance undertaking with the largest balance sheet total, or
- (v) where the group is a group without a parent undertaking, or in any circumstances not referred to in points (i) to (iv), the supervisory authority which authorised the insurance or reinsurance undertaking with the largest balance sheet total.;

(17) in Article 249(1), the following subparagraph is added:

'The group supervisor shall provide the supervisory authorities concerned and EIOPA with information regarding the group, in accordance with Article 19, Article 51(1) and Article 254(2), in particular regarding the legal structure and the governance and organisational structure of the group.;

(18) in Article 256, paragraphs 1 and 2 are replaced by the following:

'1. Member States shall require participating insurance and reinsurance undertakings, insurance holding companies and mixed financial holding companies to disclose publicly, on an annual basis, a report on solvency and financial condition at the level of the group. Articles 51, 53, 54 and 55 shall apply *mutatis mutandis*.

2. A participating insurance or reinsurance undertaking, an insurance holding company or a mixed financial holding company may, subject to the agreement of the group supervisor, provide a single report on its solvency and financial condition which shall comprise the following:

- (a) the information at the level of the group to be disclosed in accordance with paragraph 1;
- (b) the information for any of the subsidiaries within the group, which information must be individually identifiable and must be disclosed in accordance with Articles 51, 53, 54 and 55.

Before granting the agreement in accordance with the first subparagraph, the group supervisor shall consult and duly take into account any views and reservations of the members of the college of supervisors.;

(19) Article 257 is replaced by the following:

'Article 257

Administrative, management or supervisory body of insurance holding companies and mixed financial holding companies

Member States shall require that all persons who effectively run the insurance holding company or the mixed financial holding company are fit and proper to perform their duties.

Article 42 shall apply *mutatis mutandis*.;

(20) in Article 258, paragraphs 1 and 2 are replaced by the following:

'1. Where the insurance or reinsurance undertakings in a group do not comply with the requirements provided for in Articles 218 to 246 or where the requirements are met but solvency may nevertheless be jeopardised or where the intra-group transactions or the risk concentrations are a threat to the financial position of the insurance or reinsurance undertakings, measures necessary to rectify the situation as soon as possible shall be adopted by:

- (a) the group supervisor with respect to insurance holding companies and mixed financial holding companies;
- (b) the supervisory authorities with respect to insurance and reinsurance undertakings.

Where, in the case referred to in point (a) of the first subparagraph, the group supervisor is not one of the supervisory authorities of the Member State in which the insurance holding company or mixed financial holding company has its head office, the group supervisor shall inform those supervisory authorities of its findings with a view to enabling them to take the necessary measures.

Where, in the case referred to in point (b) of the first subparagraph, the group supervisor is not one of the supervisory authorities of the Member State in which the insurance or reinsurance undertaking has its head office, the group supervisor shall inform those supervisory authorities of its findings with a view to enabling them to take the necessary measures.

Without prejudice to paragraph 2, Member States shall determine the measures which may be taken by their supervisory authorities with respect to insurance holding companies and mixed financial holding companies.

The supervisory authorities concerned, including the group supervisor, shall, where appropriate, coordinate their measures.

2. Without prejudice to their criminal law provisions, Member States shall impose sanctions on or adopt measures relating to insurance holding companies and mixed financial holding companies which infringe laws, regulations or administrative provisions brought into force to transpose this Title, or in relation to the person effectively managing those companies. The supervisory authorities shall cooperate closely to ensure that such sanctions or measures are effective, in particular where the central administration or main establishment of an insurance holding company or mixed financial holding company is not located in the same Member State as its head office.;

(21) Article 262 is replaced by the following:

‘Article 262

Parent undertakings registered in a third country: absence of equivalence

1. Where the verification carried out in accordance with Article 260 shows that there is no equivalent supervision, Member States shall apply to the insurance and reinsurance undertakings, *mutatis mutandis*, either Articles 218 to 258, with the exception of Articles 236 to 243, or one of the methods set out in paragraph 2 of this Article.

The general principles and methods set out in Articles 218 to 258 shall apply at the level of the insurance holding company, mixed financial holding company, third-country insurance undertaking or third-country reinsurance undertaking.

For the sole purpose of the group solvency calculation, the parent undertaking shall be treated as if it were an insurance or reinsurance undertaking subject to the same conditions as laid down in Subsections 1, 2 and 3 of Section 3 of Chapter VI of Title I as regards the own

funds eligible for the Solvency Capital Requirement, and to either of the following:

- (a) a Solvency Capital Requirement determined in accordance with the principles of Article 226 where it is an insurance holding company or mixed financial holding company;
- (b) a Solvency Capital Requirement determined in accordance with the principles of Article 227, where it is a third-country insurance undertaking or a third-country reinsurance undertaking.

2. Member States shall allow their supervisory authorities to apply other methods which ensure appropriate supervision of the insurance and reinsurance undertakings in a group. Those methods shall be agreed by the group supervisor, after consulting the other supervisory authorities concerned.

The supervisory authorities may in particular require the establishment of an insurance holding company which has its head office in the Union, or a mixed financial holding company which has its head office in the Union and apply this Title to the insurance and reinsurance undertakings in the group headed by that insurance holding company or mixed financial holding company.

The methods chosen shall allow the objectives of the group supervision as defined in this Title to be achieved and shall be notified to the other supervisory authorities concerned and the Commission.;

(22) in Article 263, the first and second paragraphs are replaced by the following:

‘Where the parent undertaking referred to in Article 260 is itself a subsidiary of an insurance holding company or a mixed financial holding company which has its head office in a third country or of a third-country insurance or reinsurance undertaking, Member States shall apply the verification provided for in Article 260 only at the level of the ultimate parent undertaking which is a third-country insurance holding company, a third-country mixed financial holding company, a third-country insurance undertaking or a third-country reinsurance undertaking.

Supervisory authorities may, however, in the absence of equivalent supervision referred to in Article 260, carry out a new verification at a lower level where a parent undertaking of insurance or reinsurance undertakings exists, whether at the level of a third-country insurance holding company, a third country mixed financial holding company, a third-country insurance undertaking or a third-country reinsurance undertaking.’.

Article 5

Review

The Commission shall fully review Directive 2002/87/EC, including the delegated and implementing acts adopted pursuant thereto. Following that review, the Commission shall send a report to the European Parliament and to the Council by 31 December 2012, addressing, in particular, the scope of that Directive, including whether the scope should be extended by reviewing Article 3, and the application of that Directive to non-regulated entities, in particular special purpose vehicles. The report shall also cover the identification criteria of financial conglomerates owned by wider non-financial groups, whose total activities in the banking sector, insurance sector and investment services sector are materially relevant in the internal market for financial services.

The Commission shall also consider whether the ESAs should, through the Joint Committee, issue guidelines for the assessment of this material relevance.

In the same context, the report shall cover systemically relevant financial conglomerates, whose size, inter-connectedness or complexity make them particularly vulnerable, and which are to be identified by analogy with the evolving standards of the Financial Stability Board and the Basel Committee on Banking Supervision. In addition, that report shall review the possibility to introduce mandatory stress testing. The report shall be followed, if necessary, by appropriate legislative proposals.

Article 6

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Articles 1, 2 and 3 of this Directive by 10 June 2013. They shall communicate immediately to the Commission the text of those measures and a correlation table between those measures and this Directive.

2. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Article 4 of this Directive from 10 June 2013. They shall

communicate immediately to the Commission the text of those measures and a correlation table between those measures and this Directive.

3. By derogation from paragraph 1, Member States shall bring into force by 22 July 2013 the laws, regulations and administrative provisions necessary to comply with Article 2(23) of this Directive, as well as with Article 2(1) and (2)(a) of this Directive in so far as those provisions amend Article 1, Article 2(4), (5a) and (16), and Article 3(2) of Directive 2002/87/EC with regard to alternative investment fund managers. They shall communicate immediately to the Commission the text of those measures and a correlation table between those measures and this Directive.

4. When Member States adopt the measures referred to in this Article, 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.

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

Article 7

Entry into force

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

Article 8

Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 16 November 2011.

For the European Parliament

The President

J. BUZEK

For the Council

The President

W. SZCZUKA

ANNEX I

Annexes I and II to Directive 98/78/EC are amended as follows:

A. Annex I is amended as follows:

(1) in Section 2.1:

(a) the second indent of the fourth paragraph is replaced by the following:

‘— if the insurance undertaking or the reinsurance undertaking is a related undertaking of an insurance holding company or of a mixed financial holding company which has its registered office in the same Member State as the insurance undertaking or the reinsurance undertaking, and both the insurance holding company or mixed financial holding company and the related insurance undertaking or the related reinsurance undertaking are taken into account in the calculation carried out.’;

(b) the fifth paragraph is replaced by the following:

‘Member States may also waive calculation of the adjusted solvency of an insurance undertaking or reinsurance undertaking if it is a related insurance undertaking or a related reinsurance undertaking of another insurance undertaking, another reinsurance undertaking or an insurance holding company or a mixed financial holding company which has its registered office in another Member State, and if the competent authorities of the Member States concerned have agreed to grant exercise of the supplementary supervision to the competent authority of the latter Member State.’;

(2) Section 2.2 is replaced by the following:

‘2.2. Intermediate insurance holding companies and intermediate mixed financial holding companies

When calculating the adjusted solvency of an insurance undertaking or a reinsurance undertaking which holds a participation in a related insurance undertaking, a related reinsurance undertaking, a non-member-country insurance undertaking or a non-member-country reinsurance undertaking, through an insurance holding company or a mixed financial holding company, the situation of the intermediate insurance holding company or the intermediate mixed financial holding company is taken into account. For the sole purpose of this calculation, to be undertaken in accordance with the general principles and methods described in this Annex, this insurance holding company or mixed financial holding company shall be treated as if it were an insurance undertaking or reinsurance undertaking subject to a zero solvency requirement and as if it were subject to the same conditions as are laid down in Article 16 of Directive 73/239/EEC, in Article 27 of Directive 2002/83/EC or in Article 36 of Directive 2005/68/EC in respect of elements eligible for the solvency margin.’.

B. Annex II is amended as follows:

(1) The title is replaced by the following:

‘SUPPLEMENTARY SUPERVISION FOR INSURANCE AND REINSURANCE UNDERTAKINGS THAT ARE SUBSIDIARIES OF AN INSURANCE HOLDING COMPANY, A MIXED FINANCIAL HOLDING COMPANY, A NON-MEMBER-COUNTRY INSURANCE UNDERTAKING OR A NON-MEMBER-COUNTRY REINSURANCE UNDERTAKING’;

(2) in point 1, the first paragraph is replaced by the following:

‘1. In the case of two or more insurance undertakings or reinsurance undertakings as referred to in Article 2(2) which are the subsidiaries of an insurance holding company, a mixed financial holding company, a non-member-country insurance undertaking or a non-member-country reinsurance undertaking and which are established in different Member States, the competent authorities shall ensure that the method described in this Annex is applied in a consistent manner.’;

(3) in point 2, the second and third indents and the subparagraph following the third indent are replaced by the following:

- if that insurance undertaking or reinsurance undertaking and one or more other insurance undertakings or reinsurance undertakings authorised in the same Member State have as their parent undertaking the same insurance holding company, mixed financial holding company, non-member-country insurance undertaking or non-member-country reinsurance undertaking, and the insurance undertaking or reinsurance undertaking is taken into account in the calculation provided for in this Annex carried out for one of these other undertakings,
- if that insurance undertaking or reinsurance undertaking and one or more other insurance undertakings or reinsurance undertakings authorised in other Member States have as their parent undertaking the same insurance holding company, mixed financial holding company, non-member-country insurance undertaking or non-member-country reinsurance undertaking, and an agreement granting the exercise of the supplementary supervision covered by this Annex to the supervisory authority of another Member State has been concluded in accordance with Article 4(2).

Where insurance holding companies, mixed financial holding companies or non-member-country insurance or reinsurance undertakings hold successive participations in the insurance holding company, mixed financial holding company or non-member-country insurance or reinsurance undertaking, Member States may apply the calculations provided for in this Annex only at the level of the ultimate parent undertaking of the insurance undertaking or reinsurance undertaking which is an insurance holding company, a mixed financial holding company, a non-member-country insurance undertaking or a non-member-country reinsurance undertaking;

(4) point 3 is replaced by the following:

3. The competent authorities shall ensure that calculations analogous to those described in Annex I are carried out at the level of the insurance holding company, mixed financial holding company, non-member-country insurance undertaking or non-member-country reinsurance undertaking.

The analogy shall consist in applying the general principles and methods described in Annex I at the level of the insurance holding company, mixed financial holding company, non-member-country insurance undertaking or non-member-country reinsurance undertaking.

For the sole purpose of that calculation, the parent undertaking shall be treated as if it were an insurance undertaking or reinsurance undertaking subject to the following conditions:

- a zero solvency requirement where it is an insurance holding company or mixed financial holding company,
- a solvency requirement determined in accordance with the principles of section 2.3 of Annex I, where it is a non-member-country insurance undertaking or a non-member-country reinsurance undertaking,
- the same conditions as laid down in Article 16(1) of Directive 73/239/EEC or in Article 18 of Directive 79/267/EEC as regards the elements eligible for the solvency margin.

ANNEX II

In Annex I to Directive 2002/87/EC, under 'II. Technical Calculation Methods', Method 3 and Method 4 are replaced by the following:

'Method 3: "Combination method"

Competent authorities may allow a combination of method 1 and method 2.'

ANNEX III

In Directive 2006/48/EC, point 30 of Section 3 of Part 3 of Annex X is replaced by the following:

- ‘30. When an Advanced Measurement Approach is intended to be used by the EU parent credit institution and its subsidiaries, or by the subsidiaries of an EU parent financial holding company or an EU parent mixed financial holding company, the application shall include a description of the methodology used for allocating operational risk capital between the different entities of the group.’.
-

2011 SUBSCRIPTION PRICES (excluding VAT, including normal transport charges)

EU Official Journal, L + C series, paper edition only	22 official EU languages	EUR 1 100 per year
EU Official Journal, L + C series, paper + annual DVD	22 official EU languages	EUR 1 200 per year
EU Official Journal, L series, paper edition only	22 official EU languages	EUR 770 per year
EU Official Journal, L + C series, monthly DVD (cumulative)	22 official EU languages	EUR 400 per year
Supplement to the Official Journal (S series), tendering procedures for public contracts, DVD, one edition per week	multilingual: 23 official EU languages	EUR 300 per year
EU Official Journal, C series — recruitment competitions	Language(s) according to competition(s)	EUR 50 per year

Subscriptions to the *Official Journal of the European Union*, which is published in the official languages of the European Union, are available for 22 language versions. The Official Journal comprises two series, L (Legislation) and C (Information and Notices).

A separate subscription must be taken out for each language version.

In accordance with Council Regulation (EC) No 920/2005, published in Official Journal L 156 of 18 June 2005, the institutions of the European Union are temporarily not bound by the obligation to draft all acts in Irish and publish them in that language. Irish editions of the Official Journal are therefore sold separately.

Subscriptions to the Supplement to the Official Journal (S Series — tendering procedures for public contracts) cover all 23 official language versions on a single multilingual DVD.

On request, subscribers to the *Official Journal of the European Union* can receive the various Annexes to the Official Journal. Subscribers are informed of the publication of Annexes by notices inserted in the *Official Journal of the European Union*.

Sales and subscriptions

Subscriptions to various priced periodicals, such as the subscription to the *Official Journal of the European Union*, are available from our sales agents. The list of sales agents is available at:

http://publications.europa.eu/others/agents/index_en.htm

EUR-Lex (<http://eur-lex.europa.eu>) offers direct access to European Union legislation free of charge. The *Official Journal of the European Union* can be consulted on this website, as can the Treaties, legislation, case-law and preparatory acts.

For further information on the European Union, see: <http://europa.eu>



Publications Office of the European Union
2985 Luxembourg
LUXEMBOURG

EN