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⁽¹⁾ Text with EEA relevance

II

(Non-legislative acts)

REGULATIONS

COUNCIL IMPLEMENTING REGULATION (EU) No 1306/2011

of 12 December 2011

**clarifying the scope of the definitive anti-dumping duties imposed by Regulation (EC) No 261/2008
on imports of certain compressors originating in the People's Republic of China**

THE COUNCIL OF THE EUROPEAN UNION,

of China ('measure concerned' and or 'definitive Regulation'). The measure concerned expired on 21 March 2010 ⁽⁴⁾.

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

2. Reopening of the original investigation

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community ⁽¹⁾ ('the basic Regulation') and in particular Article 9 and Article 14, paragraph 3 thereof,

- (3) The original investigation was reopened on the Commission's own initiative after some importers of compressors originating in the People's Republic of China ('the PRC') have raised concerns on the anti-dumping duties applicable to imports of so-called mini-compressors, i.e. compressors without a tank, capable of operating on a 12 V power supply ('mini-compressors').

Having regard to the proposal submitted by the European Commission ('the Commission') after having consulted the Advisory Committee,

- (4) Although mini-compressors fall within the literal definition of the product concerned as specified by Article 1 of the definitive Regulation, the information at the Commission's disposal indicated that mini-compressors appear to be distinct from the other compressors subject to the measure concerned ('other compressors subject to the measure concerned').

Whereas:

A. PROCEDURE**1. Original investigation and anti-dumping duty**

- (1) On 21 December 2006, the Commission announced, by a notice published in the *Official Journal of the European Union* ⁽²⁾, the initiation of an anti-dumping proceeding with regard to imports of certain compressors originating in the People's Republic of China ('the original investigation').

- (5) Therefore, it was considered appropriate to partially reopen the investigation as far as a clarification of the scope of the product is concerned, with the conclusion thereon possibly having retroactive effect as of the date of the imposition of the measure concerned.

- (2) The Council, by Regulation (EC) No 261/2008 ⁽³⁾, imposed a definitive anti-dumping duty on imports of certain compressors originating in the People's Republic

3. Present investigation

- (6) After consulting the Advisory Committee, the Commission announced by a notice published in the *Official Journal of the European Union* ⁽⁵⁾ the partial reopening of the anti-dumping investigation concerning imports of certain compressors originating in the PRC initiated pursuant to Article 5 of the basic Regulation.

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

⁽²⁾ OJ C 314, 21.12.2006, p. 2.

⁽³⁾ OJ L 81, 20.3.2008, p. 1.

⁽⁴⁾ OJ C 73, 23.3.2010, p. 39.

⁽⁵⁾ OJ C 98, 30.3.2011, p. 22.

- (7) The Commission officially advised all the parties that cooperated in the original investigation as well as the authorities of the PRC of the initiation of the proceeding. Interested parties were given an opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.
- (8) All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.
- (9) Submissions were received from 15 interested parties, including 11 importers of mini-compressors, one EU producer and one Chinese exporter of mini-compressors, one EU producer of compressors (one of the complainants in the original investigation) and its related exporter of compressors from the PRC.
- (10) Given that the present reopening of the investigation is limited to the clarification of the product scope definitive Regulation, no investigation period was set for the purpose of this partial reopening.
- (11) All interested parties were informed of the essential facts and considerations on the basis of which the present conclusions were reached. In accordance with Article 20(5) of the basic Regulation, parties were granted a period within which they can make representations subsequent to the disclosure. The oral and written comments submitted by the parties were considered and, where appropriate, the findings have been modified accordingly.

B. PRODUCT UNDER INVESTIGATION

- (12) The product under investigation is the same as defined in Article 1 of the definitive Regulation, i.e. reciprocating compressors (excluding reciprocating compressor pumps), giving a flow not exceeding 2 cubic metres per minute.
- (13) The product is currently falling within CN codes ex 8414 40 10, ex 8414 80 22, ex 8414 80 28 and ex 8414 80 51.
- (14) The present reopening of the investigation was intended to determine whether so-called mini-compressors, i.e. compressors without a tank and capable of operating on a 12 V power supply, are covered by the product definition of Article 1 of the definitive Regulation.

C. RESULTS OF THE INVESTIGATION

1. Methodology

- (15) In order to assess whether mini-compressors are covered by the product definition of Article 1 of the definitive Regulation, it was examined whether mini-compressors and other compressors subject to the measure concerned shared the same basic physical and technical characteristics and end-uses. In this regard, the interchangeability between mini-compressors and other compressors subject to the measure concerned in the Union was also assessed. In addition, it was examined whether the original investigation actually covered and analysed mini-compressors.

2. Basic physical and technical characteristics

- (16) The present reopened investigation established that mini-compressors consist of an electric motor that drives a pump which continuously pushes air out through the connected air hose with varying air pressure. Mini-compressors are not equipped with a tank, typically do not have a pressure regulator and are capable of operating on a 12 V direct current power supply. They are relatively small and their weight would normally not exceed 2-3 kg as they need to be easily portable. Mini-compressors have a maximum operating time (normally up to 20 minutes) and give an airflow normally not exceeding 50 l/min.
- (17) On the other hand, the definitive Regulation, further to the definition in its Article 1 and repeated in recital 12 above, contains detailed information about other compressors subject to the measure concerned. In particular, in recital 17, the definitive Regulation specified that 'A compressor is typically made up of a pump, driven by an electric motor either directly or through a belt mechanism. In most cases the pressurised air is pumped into a tank and exits through a pressure regulator and a rubber hose. Compressors, in particular the larger ones, can have wheels to make them mobile'. The tank and pressure regulator in such compressors provide for a steady airflow. Normally, such compressors are relatively big and their weight would be of at least 25 kg and often more. They are designed to work with alternating current of 120 V and above, they have no limited working time and give airflow of up to 2 000 l/min.
- (18) Consequently, it is concluded that mini-compressors and other compressors subject to the measure concerned do not share the same basic physical and technical characteristics.

3. Basic end-uses and interchangeability

- (19) The present reopened investigation established that mini-compressors are predominantly used in automotive sector and are designed to inflate tyres and are often sold as part of a tyre-repair-kit together with a sealant

that can be pumped into a punctured tyre. Some mini-compressors are also used as a household application inflating toys, balls, air mattresses or other inflatable objects.

- (20) On the other hand the definitive Regulation specified in recital 19 that 'The product concerned is used for driving air-powered tools or for spraying, cleaning, or inflating tyres and other objects'. Such compressors can be used for some semi-professional activities or in the 'do-it-yourself' segment for driving air-powered tools or for spraying or painting or cleaning. Those applications are possible due to a steady flow of air that can be regulated. Such a feature is not provided for in mini-compressors.
- (21) The information gathered showed that mini-compressors are normally priced at a level significantly lower than that for other compressors. Mini-compressors are intended for different customers and are distributed via different channels than other compressors subject to the measure concerned. Moreover, while mini-compressors are normally sold as part of a tyre repair kit (replacing a spare tyre) either together with a car or in specialist automotive shops or in supermarkets (for alternative uses like inflating toys), other compressors subject to the measure concerned are normally to be found only in specialist 'do-it-yourself' shops.
- (22) Given the above, it is concluded that mini-compressors and other compressors subject to the measure concerned have different end-uses, target different markets and are in principle not interchangeable.

4. Product investigated in the original investigation

- (23) None of the parties that cooperated in the original investigation (three EU producers, 14 exporting producers in the PRC and one unrelated importer in the EU) was involved in manufacturing and/or trading mini-compressors. It is apparent from the original investigation that the relevant information was at that time not collected with regard to mini-compressors.
- (24) Thus, it seems that although mini-compressors were not explicitly excluded, the investigation at that time did not intend to include mini-compressors.
- (25) This is also confirmed by the statement of one of the complainants in the original investigation. Following a request from the Commission, it clearly stated that in its view mini-compressors were not meant to be covered by the complaint and the resulting anti-dumping proceeding.

- (26) Given the above, it is concluded that mini-compressors were not investigated in the framework of the original investigation.

D. CONCLUSION ON THE PRODUCT SCOPE

- (27) The above findings show that mini-compressors and other compressors subject to the measure concerned do not share the same basic physical and technical characteristics and end-uses. They have different end-uses, target different markets and are in principle not interchangeable. In addition, mini-compressors were not investigated in the framework of the original investigation. On this basis, it is concluded that mini-compressors and other compressors are two different products.
- (28) Almost all parties that came forward in the present reopened investigation requested that mini-compressors should be excluded from the product scope of the original measure.
- (29) On the other hand, the cooperating EU producer of mini-compressors argued that the original measure encompassed its products and that it rightfully protected its interests. Consequently, it claimed that anti-dumping duty should be collected on mini-compressors retroactively and in the future, as the injurious dumping of mini-compressors continues to take place.
- (30) In this regard, it is noted that neither this producer nor any other producer of mini-compressors cooperated in the original investigation. Further, as concluded above in recital 26, mini-compressors were not investigated at the time of the original investigation. It is also noted that as established by the present reopened investigation significant differences exist between mini-compressors and compressors investigated in the original investigation. Consequently, the position of the said EU producer of mini-compressors cannot alter the findings in the present reopened investigation.
- (31) With regard to the claim about continued injurious dumping of mini-compressors and possible imposition of anti-dumping measures, it should be noted that, as explained in recitals 23 to 26 above, mini-compressors were not investigated in the original investigation and that a determination whether injurious dumping took or is taking place cannot be addressed by the present reopened investigation, which is limited to the clarification of the product scope of the original measure.

- (32) Following disclosure, the EU producer of mini-compressors repeated his position and suggested that the retroactive exclusion of mini-compressors from the measures would result in retroactive fortification of their competitors in the PRC and would distort the competition.
- (33) In this regard, it is reiterated that the reopened investigation did not analyse the market situation for mini-compressors and did not envisage doing so. It simply aimed at clarifying if mini-compressors are different from the compressors investigated in the original investigation. The outcome is also not supposed to distort any market situation but to provide clarity with regard to applicable duties.
- (34) Following disclosure, one cooperating importer was suggesting that mini-compressors are in fact only pumps and any duty on compressors is per definition not applicable to pumps that were explicitly excluded from the product scope of the original measure.
- (35) In this respect, it should be noted that the present reopened investigation does not support such an interpretation and that mini-compressors are clearly — from a technical point of view — compressors as they move the air from one place to another (as pumps do) but also compress the air in the object that they are connected to.
- (36) Given the above, it is concluded that mini-compressors (i.e. compressors without a tank and capable of operating on a 12 V power supply) are distinct from compressors investigated in the original investigation.
- (37) Since mini-compressors did not fall within the scope of the original investigation the anti-dumping duty should not have been applied to imports of mini-compressors. Consequently, the scope of application of the measure concerned should be clarified retroactively by an amendment to the definitive Regulation.

E. RETROACTIVE APPLICATION

- (38) Since the present reopening of the investigation is limited to the clarification of the product scope and since mini-compressors were not covered by the original investigation and the consequent anti-dumping measure, it is considered appropriate that the findings be applied from the date of the entry into force of the definitive Regulation.
- (39) Consequently, any definitive anti-dumping duty paid or entered into the accounts pursuant to Regulation (EC) No

261/2008 on imports of mini-compressors originating in the PRC should be repaid or remitted. The repayment or remission must be requested from national customs authorities in accordance with applicable customs legislation. Moreover, in order to avoid that the importers concerned could not claim such repayment due to the deadlines in that legislation, in case those deadlines have expired before or on the date of publication of this Regulation, or if they expire within six months after that date, they are hereby extended so as to expire six months after the date of publication of this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

Article 1(1) of Regulation (EC) No 261/2008 shall be replaced by the following:

‘1. A definitive anti-dumping duty is hereby imposed on imports of reciprocating compressors (excluding reciprocating compressor pumps), giving a flow not exceeding 2 cubic metres per minute, falling within CN codes ex 8414 40 10, ex 8414 80 22, ex 8414 80 28 and ex 8414 80 51, (TARIC codes 8414 40 10 10, 8414 80 22 19, 8414 80 22 99, 8414 80 28 11, 8414 80 28 91, 8414 80 51 19 and 8414 80 51 99) and originating in the People's Republic of China. So-called mini-compressors, i.e. compressors without a tank and capable of operating on a 12 V power supply and falling within the abovementioned CN codes shall not be covered by the definitive anti-dumping duty.’.

Article 2

For goods not covered by Article 1(1) of Regulation (EC) No 261/2008 as amended by this Regulation, the definitive anti-dumping duty paid or entered into the accounts pursuant to Article 1(1) of Regulation (EC) No 261/2008 in its initial version shall be repaid or remitted.

Repayment and remission shall be requested from national customs authorities in accordance with applicable customs legislation. In cases where the time limits provided for in Article 236(2) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code⁽¹⁾ have expired before or on the date of publication of this Regulation, or if they expire within six months after that date, they are hereby extended so as to expire six months after the date of publication of this Regulation.

⁽¹⁾ OJ L 302, 19.10.1992, p. 1.

Article 3

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Union* and shall apply retroactively from 21 March 2008.

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

Done at Brussels, 12 December 2011.

For the Council
The President
S. NOWAK

COMMISSION IMPLEMENTING REGULATION (EU) No 1307/2011**of 14 December 2011****establishing the standard import values for determining the entry price of certain fruit and vegetables**

THE EUROPEAN COMMISSION,

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

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

Having regard to Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors ⁽²⁾, and in particular Article 136(1) thereof,

Whereas:

Implementing Regulation (EU) No 543/2011 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in Annex XVI, Part A thereto,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 136 of Implementing Regulation (EU) No 543/2011 are fixed in the Annex hereto.

Article 2

This Regulation shall enter into force on 15 December 2011.

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

Done at Brussels, 14 December 2011.

*For the Commission,
On behalf of the President,
José Manuel SILVA RODRÍGUEZ
Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 157, 15.6.2011, p. 1.

ANNEX

Standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	AL	58,0
	MA	66,8
	TN	79,2
	TR	95,8
	ZZ	75,0
0707 00 05	EG	170,1
	TR	157,0
	ZZ	163,6
0709 90 70	MA	41,9
	TR	147,3
	ZZ	94,6
0805 10 20	AR	27,1
	BR	41,5
	CL	30,5
	MA	56,3
	TR	61,0
	ZA	56,4
	ZZ	45,5
0805 20 10	MA	65,2
	TR	79,7
	ZZ	72,5
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	IL	87,9
	TR	83,9
	ZZ	85,9
0805 50 10	TR	49,9
	ZZ	49,9
0808 10 80	CA	109,9
	CL	90,0
	US	117,1
	ZA	80,2
	ZZ	99,3
0808 20 50	CN	70,9
	ZZ	70,9

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

COMMISSION IMPLEMENTING REGULATION (EU) No 1308/2011

of 14 December 2011

fixing allocation coefficient, rejecting further applications and closing the period for submitting applications for available quantities of out-of-quota sugar to be sold on the Union market at reduced surplus levy during marketing year 2011/2012

THE EUROPEAN COMMISSION,

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

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

Having regard to Commission Implementing Regulation (EU) No 1240/2011 of 30 November 2011 laying down exceptional measures as regards the release of out-of-quota sugar and isoglucose on the Union market at reduced surplus levy during marketing year 2011/2012 ⁽²⁾, and in particular Article 5 thereof,

Whereas:

- (1) The quantities covered by certificate applications for out-of-quota sugar submitted from 4 December 2011 to 7 December 2011 and notified to the Commission exceed the limit set in Article 1 of Implementing Regulation (EU) No 1240/2011.
- (2) Therefore, in accordance with Article 5 of Implementing Regulation (EU) No 1240/2011, it is necessary to fix an allocation coefficient, which the Member States shall

apply to the quantities covered by each notified certificate application, to close the periods for submitting the applications.

- (3) In order to act before the issuing of certificates applied for, this Regulation should enter into force on the day of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS REGULATION:

Article 1

The quantities for which certificates applications for out-of-quota sugar have been submitted under Implementing Regulation (EU) No 1240/2011 from 4 December 2011 to 7 December 2011 and notified to the Commission shall be multiplied by an allocation coefficient of 21,680216 %.

Applications for certificates submitted from 8 December 2011 to 15 December 2011 are hereby rejected.

The periods for submitting applications for certificates are closed as from 15 December 2011.

Article 2

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

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

Done at Brussels, 14 December 2011.

For the Commission,
On behalf of the President,
José Manuel SILVA RODRÍGUEZ
Director-General for Agriculture and
Rural Development

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 318, 1.12.2011, p. 9.

COMMISSION IMPLEMENTING REGULATION (EU) No 1309/2011**of 14 December 2011****fixing allocation coefficient, rejecting further applications and closing the period for submitting applications for available quantities of out-of-quota isoglucose to be sold on the Union market at reduced surplus levy during marketing year 2011/2012**

THE EUROPEAN COMMISSION,

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

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

Having regard to Commission Implementing Regulation (EU) No 1240/2011 of 30 November 2011 laying down exceptional measures as regards the release of out-of-quota sugar and isoglucose on the Union market at reduced surplus levy during marketing 2011/2012 ⁽²⁾, and in particular Article 5 thereof,

Whereas:

- (1) The quantities covered by certificate applications for out-of-quota isoglucose submitted from 4 December 2011 to 7 December 2011 and notified to the Commission exceed the limit set in Article 1 of Implementing Regulation (EU) No 1240/2011.
- (2) Therefore, in accordance with Article 5 of Implementing Regulation (EU) No 1240/2011 it is necessary to fix an allocation coefficient, which the Member States shall apply to the quantities covered by each notified certificate

application, to reject the applications which have not yet been notified and to close the periods for submitting the applications.

- (3) In order to act before the issuing of certificates applied for, this Regulation should enter into force on the day of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS REGULATION:

Article 1

The quantities for which certificates applications for out-of-quota isoglucose have been submitted under Implementing Regulation (EU) No 1240/2011 from 4 December 2011 to 7 December 2011 and notified to the Commission shall be multiplied by an allocation coefficient of 99,290780 %.

Applications for certificates submitted from 8 December 2011 to 15 December 2011 are hereby rejected.

The periods for submitting applications for certificates are closed as from 15 December 2011.

Article 2

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

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

Done at Brussels, 14 December 2011.

*For the Commission,
On behalf of the President,
José Manuel SILVA RODRÍGUEZ
Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 318, 1.12.2011, p. 9.

DECISIONS

POLITICAL AND SECURITY COMMITTEE DECISION BiH/18/2011

of 2 December 2011

on the appointment of an EU Force Commander for the European Union military operation in Bosnia and Herzegovina

(2011/836/CFSP)

THE POLITICAL AND SECURITY COMMITTEE,

Having regard to the Treaty on European Union, and in particular the third paragraph of Article 38 thereof,

Having regard to Council Joint Action 2004/570/CFSP of 12 July 2004 on the European Union military operation in Bosnia and Herzegovina ⁽¹⁾, and in particular Article 6(1) thereof,

Whereas:

- (1) Pursuant to Article 6(1) of Joint Action 2004/570/CFSP, the Council authorised the Political and Security Committee (PSC) to take further decisions on the appointment of the EU Force Commander.
- (2) By Decision 2009/836/CFSP ⁽²⁾, the PSC appointed Major General Bernhard BAIR as EU Force Commander for the European Union military operation in Bosnia and Herzegovina.
- (3) The EU Operation Commander has recommended to appoint Brigadier General Robert BRIEGER as the new EU Force Commander for the European Union military operation in Bosnia and Herzegovina.
- (4) The EU Military Committee has supported the recommendation.

(5) In accordance with Article 5 of the Protocol (No 22) on the position of Denmark annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark does not participate in the elaboration and the implementation of decisions and actions of the Union which have defence implications.

(6) The Copenhagen European Council on 12 and 13 December 2002 adopted a Declaration stating that the 'Berlin plus' arrangements and the implementation thereof will apply only to those Member States which are also either NATO members or parties to the 'Partnership for Peace', and which have consequently concluded bilateral security agreements with NATO,

HAS ADOPTED THIS DECISION:

Article 1

Brigadier General Robert BRIEGER is hereby appointed EU Force Commander for the European Union military operation in Bosnia and Herzegovina.

Article 2

This Decision shall take effect on 6 December 2011.

Done at Brussels, 2 December 2011.

For the Political and Security Committee

The Chairperson

O. SKOOG

⁽¹⁾ OJ L 252, 28.7.2004, p. 10.

⁽²⁾ OJ L 299, 14.11.2009, p. 17.

COMMISSION IMPLEMENTING DECISION

of 12 December 2011

correcting Decision 2010/399/EU excluding from European Union financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD)

*(notified under document C(2011) 9130)***(only the Slovenian text is authentic)**

(2011/837/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1258/1999 of 17 May 1999 on the financing of the common agricultural policy ⁽¹⁾, and in particular Article 7(4) thereof,

Having regard to Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy ⁽²⁾, and in particular Article 31 thereof,

Having consulted the Committee on the Agricultural Funds,

Whereas:

(1) By Decision 2010/399/EU ⁽³⁾ the Commission excluded from European Union financing an amount of EUR 2 280 860,00 for Slovenia, concerning rural development measures agri-environment and less-favoured areas, as regards amounts which had not yet been recovered from the beneficiaries as of 23 June 2009. The above figure resulted from data which had been supplied by Slovenia to the Commission. Slovenia was informed that any recoveries of those amounts made after 23 June 2009 shall neither be declared nor reimbursed to the Commission.

(2) When submitting the final declaration of expenditure and final payment claim to the European Commission for the closure of the Transitional Rural Development programmes Slovenia incorrectly included amounts recovered and which were subjected to the abovementioned financial correction in their final declarations. On the basis of the amounts supplied by Slovenia, the Commission Decision 2009/984/EU ⁽⁴⁾ laying down the final balance to be paid or recovered at programme closure in the field of transitional rural development programmes financed by the European Agricultural Guidance and Guarantee Fund (EAGGF) by the Czech Republic, Hungary and Slovenia was adopted.

(3) After receipt of the recovery order for the correction from Decision 2010/399/EU Slovenia informed the Commission that part of the correction has been already deducted in Decision 2009/984/EU. After a thorough analysis and confirmation by the Slovenia Paying Agency's Certification Body, an overlap of EUR 2 170 331,88 was confirmed.

(4) Therefore Slovenia is liable to the Commission only for the difference between the amount of the original correction of EUR 2 280 860 in Decision 2010/399/EU and the amount of the recoveries declared in Decision 2009/984/EU of EUR 2 170 331,88. This difference equals EUR 110 528,12. The original recovery order will be replaced with a new one with the amount of EUR 110 528,12.

(5) Decision 2010/399/EU should therefore be corrected accordingly,

HAS ADOPTED THIS DECISION:

Article 1

All entries in the Annex to Decision 2010/399/EU concerning Slovenia shall be replaced by those set out in the Annex to this Decision.

Article 2

This Decision is addressed to the Republic of Slovenia.

Done at Brussels, 12 December 2011.

For the Commission

Dacian CIOLOȘ

Member of the Commission

⁽¹⁾ OJ L 160, 26.6.1999, p. 103.

⁽²⁾ OJ L 209, 11.8.2005, p. 1.

⁽³⁾ OJ L 184, 17.7.2010, p. 6.

⁽⁴⁾ OJ L 338, 19.12.2009, p. 95.

ANNEX

BUDGET ITEM 6 5 0 0

MS	Measure	FY	Reason	Type Correction	%	Currency	Amount	Deductions	Financial impact
SI	Rural Development - Transitional Instrument	2005	late application of the verification and recovery procedures	one-off		EUR	- 1 354 253,00	- 1 263 363,80	- 90 889,20
SI	Rural Development - Transitional Instrument	2006	late application of the verification and recovery procedures	one-off		EUR	- 926 607,00	- 906 968,08	- 19 638,92
Total SI							- 2 280 860,00	- 2 170 331,88	- 110 528,12

COMMISSION IMPLEMENTING DECISION

of 13 December 2011

amending Decision 2008/855/EC as regards the period of application of animal health control measures relating to classical swine fever in certain Member States*(notified under document C(2011) 9128)***(Text with EEA relevance)**

(2011/838/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Council Directive 89/662/EEC of 11 December 1989 concerning veterinary checks in intra-Community trade with a view to the completion of the internal market ⁽¹⁾, and in particular Article 9(4) thereof,Having regard to Council Directive 90/425/EEC of 26 June 1990 concerning veterinary and zootechnical checks applicable in intra-Community trade in certain live animals and products with a view to the completion of the internal market ⁽²⁾, and in particular Article 10(4) thereof,

Whereas:

- (1) Commission Decision 2008/855/EC of 3 November 2008 concerning animal health control measures relating to classical swine fever in certain Member States ⁽³⁾ lays down certain control measures applicable in relation to classical swine fever in the Member States or regions thereof as set out in the Annex to that Decision.
- (2) Decision 2008/855/EC is to apply until 31 December 2011. In the light of the disease situation, in particular as regard wild boar in certain regions of Bulgaria,

Germany, Hungary and Romania, it is appropriate to extend the period of application of that Decision until 31 December 2013.

- (3) Decision 2008/855/EC should therefore be amended accordingly.
- (4) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS DECISION:

Article 1

In Article 15 of Decision 2008/855/EC, the date '31 December 2011' is replaced by '31 December 2013'.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 13 December 2011.

For the Commission

John DALLI

Member of the Commission⁽¹⁾ OJ L 395, 30.12.1989, p. 13.⁽²⁾ OJ L 224, 18.8.1990, p. 29.⁽³⁾ OJ L 302, 13.11.2008, p. 19.

III

(Other acts)

EUROPEAN ECONOMIC AREA

EFTA SURVEILLANCE AUTHORITY DECISION

No 532/09/COL

of 16 December 2009

amending, for the 76th time, the procedural and substantive rules in the field of State aid by introducing a new chapter on criteria for the analysis of the compatibility of State aid for the employment of disadvantaged and disabled workers subject to individual notification

THE EFTA SURVEILLANCE AUTHORITY ⁽¹⁾,

HAVING REGARD to the Agreement on the European Economic Area ⁽²⁾, and in particular Articles 61 to 63 and Protocol 26 thereof,

HAVING REGARD to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice ⁽³⁾, and in particular Article 24 and Article 5(2)(b) thereof,

RECALLING the Procedural and Substantive Rules in the Field of State Aid adopted on 19 January 1994 by the Authority ⁽⁴⁾,

Whereas:

Pursuant to Article 24 of the Surveillance and Court Agreement, the Authority shall give effect to the provisions of the EEA Agreement concerning State aid,

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

The European Commission published a Communication on the criteria for the analysis of the compatibility of State aid for the employment of disadvantaged and disabled workers subject to individual notification ⁽⁵⁾ on 11 August 2009,

That Communication is also of relevance for the European Economic Area,

Uniform application of the EEA State aid rules is to be ensured throughout the European Economic Area,

According to point II under the heading 'GENERAL' at the end of Annex XV to the EEA Agreement, the Authority, after consultation with the Commission, is to adopt acts corresponding to those adopted by the Commission,

The Authority consulted the Commission by a way of letter on the subject dated 27 November 2009 (Event No 538332) and the EFTA States by a way of letter on the subject dated 16 October 2009 (Event Nos 5333819, 533835 and 533836),

HAS ADOPTED THIS DECISION:

Article 1

The State Aid Guidelines shall be amended by introducing a new chapter on criteria for the analysis of the compatibility of State aid for the employment of disadvantaged and disabled workers subject to individual notification. The new chapter is contained in the Annex to this Decision.

⁽¹⁾ Hereinafter referred to as 'the Authority'.

⁽²⁾ Hereinafter referred to as 'the EEA Agreement'.

⁽³⁾ Hereinafter referred to as 'the Surveillance and Court Agreement'.

⁽⁴⁾ Guidelines on the application and interpretation of Articles 61 and 62 of the EEA Agreement and Article 1 of Protocol 3 to the Surveillance and Court Agreement, adopted and issued by the Authority on 19.1.1994, published in the *Official Journal of the European Union* (hereinafter referred to as 'OJ') L 231, 3.9.1994, p. 1 and EEA Supplement No 32 of 3.9.1994, p. 1 (hereinafter referred to as 'the State Aid Guidelines'). The updated version of the State Aid Guidelines is published on the Authority's website: <http://www.eftasurv.int/state-aid/legal-framework/state-aid-guidelines/>

⁽⁵⁾ OJ C 188, 11.8.2009, p. 6.

Article 2

Only the English version is authentic.

Done at Brussels, 16 December 2009.

For the EFTA Surveillance Authority

Per SANDERUD
President

Kristján Andri STEFÁNSSON
College Member

ANNEX

CRITERIA FOR THE ANALYSIS OF THE COMPATIBILITY OF STATE AID FOR THE EMPLOYMENT OF DISADVANTAGED AND DISABLED WORKERS SUBJECT TO INDIVIDUAL NOTIFICATION ⁽¹⁾**1. Introduction**

1. The promotion of employment and social policy are among the aims of the EEA Agreement and of the EFTA States ⁽²⁾. Unemployment, and in particular structural unemployment of certain categories of workers, remains a problem in some parts of the EFTA States. State aid in the form of subsidies to wage costs, where wage cost means the total amount actually payable by the beneficiary of the aid in respect of the employment concerned, comprising: (a) the gross wage, before tax; and (b) the compulsory contributions, such as social security charges; and (c) child care and parent care costs ('wage subsidies'), can provide additional incentives to undertakings to increase their levels of employment of disadvantaged and disabled workers. The objective of such aid is thus to encourage the recruitment of the targeted categories of worker.
2. This Chapter gives guidance on the criteria the EFTA Surveillance Authority (hereinafter referred to as 'the Authority') will apply for the assessment of State aid in form of wage subsidies that needs to be notified individually pursuant to Article 6(1)(h) and (i) of the Act referred to at point 1j of Annex XV to the EEA Agreement (*Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General Block Exemption Regulation)*) ⁽³⁾, as adapted to the EEA Agreement by Protocol 1 thereto ⁽⁴⁾ (hereinafter referred to as 'the General Block Exemption Regulation'). This guidance is intended to make the Authority's reasoning transparent and to create predictability and legal certainty.
3. This guidance applies to State aid in the form of wage subsidies for disadvantaged workers, severely disadvantaged workers and disabled workers within the meaning of Article 2(18), (19) and (20) of the General Block Exemption Regulation. Any individual measure, whether granted ad hoc or on the basis of a scheme, will be subject to this guidance when its grant equivalent exceeds EUR 5 million per undertaking per year for the employment of disadvantaged workers and severely disadvantaged workers (hereinafter referred to together as 'disadvantaged workers') and EUR 10 million per undertaking per year for the employment of disabled workers ⁽⁵⁾.
4. The criteria set out in this guidance will not be applied mechanically. The level of the Authority's assessment and the kind of information it may require will be proportional to the risk of distortion of competition. The scope of the analysis will depend on the nature of the case.

2. Positive effects on the aid**2.1. Existence of an objective of common interest**

5. Certain categories of workers experience particular difficulty in finding jobs, because employers consider them to be less productive or have prejudices against them. This perceived or real lower productivity may be due either to lack of recent experience in employment (for example, young workers or long-term unemployed) or to a permanent disability. Because of their perceived or real lower productivity, the workers are likely to be excluded from the labour market unless employers are offered compensation for their employment.
6. It is socially desirable that all categories of workers are integrated in the labour market. This means that a share of the domestic income may be redistributed to the categories of workers concerned by the measures. State aid may help disadvantaged and disabled workers to enter the labour market or stay in the labour market by covering the extra costs resulting from their perceived or real lower productivity.
7. EFTA States should demonstrate that the aid will address the objective of common interest. In its analysis, the Authority will, among other things, consider the following elements:
 - (a) the number and categories of workers concerned by the measure;

⁽¹⁾ This Chapter corresponds to the Communication from the Commission of the European Communities – Criteria for the analysis of the compatibility of State aid for the employment of disadvantaged and disabled workers subject to individual notification (OJ C 188, 11.8.2009, p. 6).

⁽²⁾ Article 66 et seq. of the EEA Agreement and Article 5 of Protocol 31 on social policy to the EEA Agreement.

⁽³⁾ OJ L 214, 9.8.2008, p. 3.

⁽⁴⁾ Joint Committee Decision No 120/2008 of 7.11.2008 (OJ L 339, 18.12.2008, p. 111, and EEA Supplement No 79, 18.12.2008, p. 20) entered into force on 8.11.2008.

⁽⁵⁾ Due to their specific nature, individual measures applying to the compensation for the additional cost of employing disabled workers and additional costs incurred by social enterprises of which the grant equivalent exceeds EUR 10 million per undertaking per year will be assessed on the basis of Article 61(3)(c) of the EEA Agreement. For ad-hoc aid for the employment of disadvantaged workers below EUR 5 million and ad-hoc aid to large undertakings for the employment of disabled workers below EUR 10 million, the Authority will *mutatis mutandis* apply the principles as outlined in this guidance, though in a less detailed manner.

- (b) employment rates of the categories of workers concerned by the measure on the national and/or regional level and in the undertaking or undertakings concerned;
- (c) unemployment rates for the categories of workers concerned by the measure on the national and/or regional level;
- (d) particularly marginalised sub-groups within the broader categories of disabled and disadvantaged workers.

2.2. *State aid as an appropriate policy instrument*

8. State aid in the form of wage subsidies is not the only policy instrument available to EFTA States to encourage employment of disadvantaged and disabled workers. EFTA States can also use general measures such as reduction of the taxation of labour and social costs, boosting investment in education and training, measures to provide guidance and counselling, assistance and training for the unemployed and improvements in labour law.
9. Where the EFTA State has considered other policy options, and the advantages of using a selective instrument such as State aid for a specific undertaking are established, the measures concerned are considered to constitute an appropriate instrument. The Authority will in particular take account of any impact assessment of the proposed measure the EFTA State may have made.

2.3. *Incentive effect and necessity of the aid*

10. State aid for the employment of disadvantaged and disabled workers must result in the aid beneficiary changing its behaviour so that the aid results in a net increase in the number of disadvantaged or disabled employees in the undertaking concerned. Newly recruited disadvantaged or disabled employees should only fill newly created posts or posts that have fallen vacant following voluntary departure, disability, retirement on grounds of age, voluntary reduction of working time or lawful dismissal for misconduct. Posts resulting from redundancy are not to be filled with subsidised disadvantaged or disabled workers. Thus, State aid cannot be used to replace workers in respect of whom the undertaking no longer receives a subsidy and who have consequently been dismissed.
11. EFTA States should demonstrate to the Authority the existence of the incentive effect and the necessity of the aid. First, the beneficiary must have submitted an application for the aid to the EFTA State concerned before the categories of workers concerned by the measures were employed. Second, the EFTA State must demonstrate that the aid is paid in respect of a disadvantaged or disabled worker in an undertaking, where the recruitment would have not occurred without the aid.
12. In its analysis, the Authority will consider, among other things, the following elements:
 - (a) internal documents of the aid beneficiary on employment costs in relation to the categories of workers concerned by the measure for two scenarios: with aid and without aid;
 - (b) existing or past wage subsidies in the undertaking concerned: categories and number of workers subject to subsidies;
 - (c) annual turnover of the categories of workers concerned by the measure.

2.4. *Proportionality of the aid*

13. The EFTA State must demonstrate that the aid is necessary and the amount is kept to the minimum in order to achieve the objective of the aid.

EFTA States should provide evidence that the aid amount does not exceed the net additional costs of employing the categories of workers concerned by the measure compared to the costs of employing workers who are not disadvantaged or disabled ⁽¹⁾.

In any case, aid intensities must never exceed those laid down in Articles 40 ⁽²⁾ and 41 ⁽³⁾ of the General Block Exemption Regulation. Eligible costs, to which aid intensities are to be applied, must be calculated in accordance with Articles 40 ⁽⁴⁾ and 41 ⁽⁵⁾ of the General Block Exemption Regulation.

⁽¹⁾ Net additional costs take into account the costs corresponding to the employment of the targeted categories of disadvantaged or disabled workers (for example, due to lower productivity) and benefits, which the aid beneficiary extracts from this employment (for example, due to an improvement of the image of the undertaking).

⁽²⁾ The aid intensity for disadvantaged workers must not exceed 50 % of the eligible costs.

⁽³⁾ The aid intensity for disabled workers must not exceed 75 % of the eligible costs.

⁽⁴⁾ For the employment of disadvantaged workers eligible costs are the wage costs over a maximum period of 12 months following recruitment. However, where the worker concerned is a severely disadvantaged worker, eligible costs are the wage costs over a maximum period of 24 months following recruitment.

⁽⁵⁾ For the employment of disabled workers eligible costs are the wage costs over any given duration during which the disabled worker is being employed.

3. Negative effects on the aid

14. If the aid is proportionate to achieve the objective of the aid, the negative effects of the aid are likely to be limited and an analysis of the negative effects may not be necessary. However, in some cases, even where the aid is necessary and proportionate for a specific undertaking to increase the employment of categories of workers concerned by the measure, the aid may result in a change in the behaviour of the beneficiary which significantly distorts competition. In those cases the Authority will conduct an analysis of the distortion of competition. The extent of the distortion of competition caused by the aid can vary depending on the characteristics of the aid and of the markets affected ⁽¹⁾.
15. The aid characteristics that may affect the likelihood and the extent of the distortion are:
 - (a) selectivity;
 - (b) the size of the aid;
 - (c) the repetition and duration of the aid;
 - (d) the effect of the aid on the undertaking's costs.
16. For example, an aid scheme used to encourage undertakings in general in an EFTA State to employ more disadvantaged or disabled workers is likely to have a different effect on the market than a large amount of aid given ad hoc to a single undertaking to enable it to increase its employment of a certain category of workers. The latter is likely to distort competition more significantly as the aid beneficiary's competitors become less able to compete. The distortion will be even greater if the labour costs in the beneficiary's business represent a high share of the total costs.
17. In assessing the market characteristics, which can give a much more accurate picture of the likely impact of an aid, the Authority will among other things consider:
 - (a) the structure of the market;
 - (b) the characteristics of the sector or industry;
 - (c) the situation on the national/regional labour market.
18. The structure of the market will be assessed through the concentration of the market, the size of undertakings ⁽²⁾, importance of product differentiation ⁽³⁾, and barriers to entry and exit. Market shares and concentration ratios will be calculated once the relevant market has been defined. In general, the fewer undertakings there are, the larger their share of the market, and the less competition one would expect to observe ⁽⁴⁾. If the affected market is concentrated with high barriers to entry ⁽⁵⁾ and the aid beneficiary is a major player on it then it is more likely that competitors will have to alter their behaviour in response to the aid, for example postpone or abandon the introduction of a new product or technology or exit the market all together.
19. The Authority will also look at the characteristics of the sector, such as the existence of overcapacity and whether the markets in the industry are growing ⁽⁶⁾, mature or declining. For example, the presence of overcapacity or of mature markets in an industry may increase the risk of aid leading to inefficiency and displacement of output among undertakings which do not have subsidised workers.
20. Finally, the measure will be placed in the context of the situation on the labour market, that is to say, unemployment and employment rates, wage levels, and labour law.
21. Wage subsidies may in particular cases lead to the distortions of competition discussed in paragraphs 22 to 27.

Substitution and displacement effect

22. The substitution effect relates to the situation where jobs given to a certain category of workers simply replace jobs for other categories. A wage subsidy which targets a specific subgroup of workers splits the labour force into subsidised workers and unsubsidised workers, and may induce undertakings to replace unsubsidised workers with subsidised workers. This occurs because relative wage costs for subsidised and unsubsidised workers are changed ⁽⁷⁾.

⁽¹⁾ A number of markets can be affected by the aid, because the impact of the aid may not be restricted to the markets where the aid beneficiary is active but can extend to other markets, for example input markets.

⁽²⁾ Size of the undertaking can be expressed in the terms of market shares as well as turnover and/or employment.

⁽³⁾ The lower the degree of product differentiation, the greater the effect of the aid on competitors' profits will be.

⁽⁴⁾ However, some markets are competitive despite there being few undertakings present.

⁽⁵⁾ However, granting aid sometimes helps to overcome entry barriers and allows new undertakings to enter a market.

⁽⁶⁾ The existence of growing markets will usually lead to a less pronounced effect of the aid on competitors.

⁽⁷⁾ Such substitution effect depends on the elasticity of demand for labour, both for subsidised and unsubsidised workers.

23. Since undertakings which employ subsidised workers compete in the same markets for goods or services as those which do not employ subsidised workers, wage subsidies can contribute to the reduction of jobs elsewhere in the economy. Such a situation occurs when an undertaking employing subsidised workers increases output, but displaces output among undertakings which do not employ subsidised workers and, as a result, the aid crowds out unsubsidised employment.

Market entry and exit

24. Employment costs form part of the normal operating costs of any undertaking. It is therefore particularly important that aid should have a positive effect on employment and should not merely enable undertakings to reduce costs which they would otherwise bear. For example, wage subsidies reduce the ongoing costs of production and thus would make entry more appealing and enable undertakings with otherwise poor commercial prospects to enter a market or introduce new products to the detriment of more efficient competitors.
25. The availability of State aid may also affect an undertaking's decision to leave a market where it is already operating. Wage subsidies could reduce the size of losses and enable an undertaking to stay in the market for longer — which may mean that other, more efficient undertakings that do not receive aid are forced to exit instead.

Investment incentives

26. In the markets where wage subsidies are granted, undertakings are discouraged from competing and may reduce their investments and attempts to increase efficiency and innovation. The aid beneficiary may delay the introduction of new less labour-intensive technologies because of a change in relative costs for labour-intensive and technology-intensive production methods. Manufacturers of competing or complementary products may also decrease or delay their investment. As a consequence, the overall investment level in the industry concerned will decline.

Effect on trade flows

27. Wage subsidies within a particular region may result in some territories benefiting from more favourable production conditions than others. This may result in the displacement of trade flows in favour of the regions where such aid is given.

4. Balancing and decision

28. The last step in the analysis is to evaluate the extent to which the positive effects of the aid outweigh its negative effects. This will be done on a case-by-case basis for all individual measures. In order to balance the positive and the negative effects, the Authority will assess them and make an overall assessment of their impact on producers and consumers in each of the markets affected. Unless quantitative information is readily available the Authority will use qualitative information for the purposes of the assessment.
29. The Authority is likely to take a more positive stance and therefore accept a higher degree of distortion of competition if the aid is necessary and well-targeted to achieve the objective of the aid and is limited to the net extra costs of compensating for the lower productivity of the categories of workers concerned by the measure.
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EFTA SURVEILLANCE AUTHORITY DECISION

No 57/11/COL

of 2 March 2011

amending, for the 82nd time, the procedural and substantive rules in the field of State aid by introducing a new chapter on the application, from 1 January 2011, of State aid rules to support measures in favour of banks in the context of the financial crisis

THE EFTA SURVEILLANCE AUTHORITY ('the Authority'),

HAVING REGARD to the Agreement on the European Economic Area ('the EEA Agreement'), in particular to Articles 61,

HAVING REGARD to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice ('the Surveillance and Court Agreement'), in particular to Article 24 and Article 5(2)(b),

WHEREAS under Article 24 of the Surveillance and Court Agreement, the Authority shall give effect to the provisions of the EEA Agreement concerning State aid,

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

WHEREAS, on 1 December 2010, the European Commission adopted a Communication on the application, from 1 January 2011, of State aid rules to support measures in favour of banks in the context of the financial crisis ⁽¹⁾,

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

WHEREAS uniform application of the EEA State aid rules is to be ensured throughout the European Economic Area in line with the objective of homogeneity established in Article 1 of the EEA Agreement,

WHEREAS, according to point II under the heading 'GENERAL' on page 11 of Annex XV to the EEA Agreement, the Authority, after consultation with the Commission, is to adopt acts corresponding to those adopted by the European Commission,

HAVING consulted the European Commission,

HAVING consulted the EFTA States by letters dated 10 February 2011 on the subject,

HAS ADOPTED THIS DECISION:

Article 1

The State Aid Guidelines shall be amended by introducing a new chapter on the application, from 1 January 2011, of State aid rules to support measures in favour of banks in the context of the financial crisis.

The new chapter is set out in the Annex to this Decision.

Article 2

Only the English version of this Decision is authentic.

Done at Brussels, 2 March 2011.

For the EFTA Surveillance Authority

Per SANDERUD
President

Sabine MONAUNI-TÖMÖRDY
College Member

⁽¹⁾ OJ C 329, 7.12.2010, p. 7.

ANNEX

THE APPLICATION, FROM 1 JANUARY 2011, OF STATE AID RULES TO SUPPORT MEASURES IN FAVOUR OF BANKS IN THE CONTEXT OF THE FINANCIAL CRISIS**1. Introduction**

1. Since the beginning of the global financial crisis in the autumn of 2008, the EFTA Surveillance Authority ('the Authority') has adopted four sets of Guidelines⁽¹⁾ which provide detailed guidance on the criteria for the compatibility of State support to financial institutions⁽²⁾ with the requirements of Article 61(3)(b) of the Agreement on the European Economic Area ('the EEA Agreement'). The chapters of the Guidelines in question are the application of State aid rules to measures taken in relation to financial institutions⁽³⁾ ('the Banking Guidelines'); the recapitalisation of financial institutions in the current financial crisis⁽⁴⁾ ('the Recapitalisation Guidelines'); the treatment of impaired assets in the EEA banking sector⁽⁵⁾ ('the Impaired Assets Guidelines') and return to viability and the assessment of restructuring measures in the financial sector in the current crisis under the State aid rules⁽⁶⁾ ('the Restructuring Guidelines'). Three of those four Guidelines, the Banking, Recapitalisation and Impaired Assets Guidelines, set out the prerequisites for the compatibility of the main types of assistance granted by EFTA States — guarantees on liabilities, recapitalisations and asset relief measures — while the Restructuring Guidelines detail the particular features that a restructuring plan (or a viability plan) has to display in the specific context of crisis-related State aid granted to financial institutions on the basis of Article 61(3)(b) of the EEA Agreement.
2. All four chapters of the Guidelines highlight the temporary nature of the acceptability of such aid measures; each states that any such aid measure can only be justified as an emergency response to the unprecedented stress in financial markets and only as long as those exceptional circumstances prevail. The Restructuring Guidelines are valid for restructuring aid notified by 31 December 2010 whilst the other Guidelines do not have an expiry date.
3. These Guidelines set out the parameters for the temporary acceptability of crisis-related assistance to banks as from 1 January 2011.

2. The continued applicability of Article 61(3)(b) EEA and the extension of the Restructuring Guidelines

4. The Authority's Guidelines on crisis-related aid to banks, as well as all individual decisions on aid measures and schemes falling within the scope of those Guidelines, are adopted on the legal basis of Article 61(3)(b) of the EEA Agreement, which exceptionally allows for aid to remedy a serious disturbance in the economy of an EFTA State. In the most acute stage of the crisis, the condition of a serious disturbance was unquestionably met across the EEA in view of the extraordinary stress in financial markets, later combined with an exceptionally severe contraction in the real economy.
5. The economic recovery, which has slowly taken hold since the beginning of 2010, has been proceeding at a somewhat faster pace than expected earlier in 2010. While recovery is still fragile and uneven across the EEA, some states are showing modest or even more robust growth rates. In addition, despite some pockets of vulnerability, in broad terms the health of the banking sector has improved compared with the situation one year ago. As a result, the existence of a serious disturbance in the economy of the EFTA States is no longer as self-evident as in earlier stages of the crisis. While it is aware of those developments, the Authority still considers that the requirements for State aid to be approved pursuant to Article 61(3)(b) of the EEA Agreement are fulfilled in view of the recent reappearance of stress in financial markets and the risk of wider negative spill-over effects, for the reasons set out in these Guidelines.
6. The re-emergence of tensions in sovereign debt markets forcefully illustrates the continued volatility in financial markets. The high level of interconnectedness and interdependence within the financial sector in the EEA has given rise to market concerns about contagion. The high volatility of financial markets and the uncertainty about the economic outlook justifies maintaining, as a safety net, the possibility for EFTA States to argue the need to have recourse to crisis-related support measures on the basis of Article 61(3)(b) of the EEA Agreement.

⁽¹⁾ Guidelines on the application and interpretation of Articles 61 and 62 of the EEA Agreement and Article 1 of Protocol 3 to the Surveillance and Court Agreement, adopted and issued by the Authority on 19.1.1994, published in OJ L 231, 3.9.1994, p. 1 and EEA Supplement No 32, 3.9.1994, p. 1. The Guidelines were last amended on 17 December 2008 ('the State Aid Guidelines'). The updated version of the State Aid Guidelines is published on the Authority's website: <http://www.eftasurv.int/state-aid/legal-framework/state-aid-guidelines/>

⁽²⁾ For the convenience of the reader, financial institutions are referred to simply as 'banks' in this document.

⁽³⁾ Decision 28/09/COL of 29.1.2009.

⁽⁴⁾ Decision 28/09/COL of 29.1.2009.

⁽⁵⁾ Decision 191/09/COL of 22.4.2009.

⁽⁶⁾ Decision 472/09/COL of 25.11.2009.

7. Therefore, the Banking, Recapitalisation and Impaired Assets Guidelines, which provide guidance on the criteria for the compatibility of crisis-related aid to banks on the basis of Article 61(3)(b) of the EEA Agreement — most notably in the form of government guarantees, recapitalisations and asset relief measures — need to stay in place beyond 31 December 2010. In the same vein, the Restructuring Guidelines, which address the follow-up to such support measures, also have to remain applicable beyond that date. The temporal scope of the Restructuring Guidelines — the only one of the four Guidelines with a specified expiry date, 31 December 2010 — should therefore be extended to restructuring aid notified by 31 December 2011.

8. The Guidelines, however, need to be adapted with a view of preparing the transition to the post-crisis regime. In parallel, new, permanent State aid rules for bank rescue and restructuring in normal market conditions will have to be drawn up and should, market conditions permitting, apply as of 1 January 2012. The possible continued need for crisis-induced extraordinary State aid to the financial sector has to be evaluated with that objective in mind. It must be addressed by setting the requirements for the compatibility of such assistance in a way that best prepares for the new regime for the rescue and restructuring of banks based on Article 61(3)(c) of the EEA Agreement.

3. The advancement of the exit process

9. The continued availability of aid measures pursuant to Article 61(3)(b) of the EEA Agreement in the face of exceptional market conditions should not obstruct the process of disengagement from temporary extraordinary support measures for banks. At its meeting on 2 December 2009 the Economic and Financial Affairs Council concluded on the necessity to design a strategy for the phasing out of support measures which should be transparent and duly coordinated among EU Member States to avoid negative spill-over effects but take into account the different specific circumstances across EU Member States ⁽¹⁾. The conclusions further set out that, in principle, the phasing-out process concerning the various forms of assistance to banks should start with the unwinding of government guarantee schemes, encouraging the exit of sound banks and inducing other banks to address their weaknesses.

10. In the following paragraphs, the Authority will set out the steps of a gradual phasing out with regard to recapitalisation and impaired asset measures.

3.1. Tighter conditions for the compatibility of government guarantees under Article 61(3)(b) of the EEA Agreement

11. From 1 January 2011 the Authority will apply tighter conditions for the compatibility of government guarantees under Article 61(3)(b) of the EEA Agreement by introducing an increased guarantee fee and the requirement of a viability plan for beneficiaries that have recourse to new guarantees and exceed a certain threshold of total outstanding guaranteed liabilities both in absolute terms and in relation to total liabilities ⁽²⁾. Considering the current market these conditions appear necessary at present. Government guarantee schemes can therefore be authorised until 30 June 2011, on the basis of the following conditions introduced as of 1 January 2011. The Authority will reassess the conditions for the compatibility of state guarantees beyond 30 June 2011 in the first half of 2011.

3.1.1. Pricing conditions

12. Access to the government guarantees has been subject to a fee, which is determined following the ECB recommendations. In the case of a bond with maturity over one year, the fee comprises a flat charge of 50 basis points augmented by each bank's median five-year senior debt credit default swap ('CDS') spread observed in the period 1 January 2007 to 31 August 2008 ⁽³⁾.

13. The credit risk element in the current pricing model is based upon data that predates the most acute phase of the crisis in 2008. CDS spread differentials across banks are currently significantly higher than pre-crisis and are likely to remain so. Up to now, this has been considered necessary to facilitate banks' access to external funding and thereby safeguard financial stability. However, financial-market developments in the two years since 31 August 2008, including changes in the banks' credit status, are not taken into account. Thus, while access to market financing has generally improved, banks which have been downgraded are still benefiting from their pre-crisis credit rating and perceived creditworthiness. This increases the likelihood of competition distortions. Evidence shows that banks with low rating benefit disproportionately more from guarantees than banks with higher rating because they would normally pay a higher market price due to their low rating.

⁽¹⁾ These conclusions were endorsed by the European Council at its meeting on 11 December 2009. In the same vein, the European Parliament insisted in its Resolution of 9 March 2010 on the Report on Competition Policy 2008 (<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2010-0050>) that state support to financial institutions should not be unduly prolonged and that exit strategies should be elaborated as soon as possible.

⁽²⁾ With a flexibility clause permitting a re-assessment of the situation and appropriate remedies in the event of a severe new shock to the financial markets across the EEA or in one or more EFTA States.

⁽³⁾ See http://www.ecb.int/pub/pdf/other/recommendations_on_guarantees.pdf

14. In order to address these distortions, the pricing of government support should be brought closer to current market conditions, better reflecting individual banks' current creditworthiness. De facto, this requires that the guarantee fee payable by beneficiary institutions would be increased.
15. A coordinated approach among EFTA States should promote a gradual phasing out of guarantee schemes while retaining a certain degree of flexibility to take account of the different situations of EFTA States and their banks. To this end, the Authority considers it appropriate to introduce a minimum increase in the fee for guarantees that should be differentiated according to the beneficiary bank's creditworthiness. The differentiation based on creditworthiness strengthens the price signal for weaker banks, allows to better align the price of guarantees with the risk profile of the beneficiary institution thus lowering distortions of competition between institutions and contributing to the protection of a level playing field across banks in the single market.
16. The approval of the extension of a guarantee scheme ⁽¹⁾ beyond 1 January 2011 would therefore require the fee for a government guarantee ⁽²⁾ to be higher than under the pricing formula recommended by the ECB in October 2008 at least:
 - by 20 basis points for banks with a rating of A+ or A ⁽³⁾,
 - by 30 basis points for banks rated A- ⁽⁴⁾, and
 - by 40 basis points for banks rated below A-. Banks without rating will be considered to belong to the category of banks with a BBB rating ⁽⁵⁾.
17. EFTA States would have the possibility to go beyond these minimum requirements in defining the top-ups for the guarantee fee. As a further element of flexibility allowing EFTA States to adjust the conditions to the specific circumstances prevailing in their financial sectors, the Authority would accept a different model for the calculation of a fee increase provided that it can be unequivocally demonstrated that this formula leads at least to the minimum rise set out above for the banks concerned ⁽⁶⁾.

3.1.2. Viability review of banks still dependent on government debt guarantees

18. At the current juncture in the evolution of market conditions, access to liquidity on the market no longer represents a serious obstacle for banks across the board as in the more acute crisis period. Accordingly, it seems justified to introduce a differentiation in the conditions attached to the use of state guarantees based on the extent to which banks rely on them. While limited usage could be allowed without prompting further scrutiny, a larger usage both in absolute terms and in relation to the bank's total amount of liabilities should trigger the requirement of a viability review as a prerequisite for the conformity of the further extension of guarantee schemes with Article 61(3)(b) EEA. A persistent failure to obtain a considerable proportion of the funding needed without government guarantees may indicate a lack of confidence in the viability of a bank's business model. It should be avoided that a bank retains a heavy reliance on guarantee schemes, which were designed to tackle unprecedented difficulties in access to financing, even when these exceptional circumstances have subsided, thereby possibly allowing that bank to postpone necessary structural adjustments.
19. Therefore, the Authority considers it appropriate that guarantee schemes to be prolonged beyond 1 January 2011 should include a threshold concerning the ratio of total guaranteed liabilities outstanding over total liabilities of a bank and the absolute amount of guaranteed liabilities which, if exceeded, triggers the requirement of a viability review. For any bank that requests government guarantees under a scheme covering new or renewed debt to be issued as from 1 January 2011 which takes or keeps the total amount of outstanding guaranteed liabilities beyond this threshold in relation to both of its elements (absolute and relative size) ⁽⁷⁾ the EFTA State concerned would be required to submit a review demonstrating the bank's long-term viability to the Authority within three months of the granting of guarantees.

⁽¹⁾ Individual notifications of government guarantees outside a scheme will generally require a guarantee fee along the same lines. Where the beneficiary is under restructuring obligations and a lower fee may be justified depending on the specific circumstances this deviation will have to be taken into account in the overall assessment of the restructuring and the measures necessary to minimise distortions of competition.

⁽²⁾ This includes guarantees covering liabilities of one year or less.

⁽³⁾ Or A1 and A2 depending on the rating system employed.

⁽⁴⁾ Or A3 depending on the rating system employed.

⁽⁵⁾ In the case of divergent assessments by different rating agencies the relevant rating for the calculation of the fee increase should be the higher rating. The material time for the rating in the determination of the guarantee fee is the day on which the guarantee is granted in relation to a specific bond issuance by the beneficiary.

⁽⁶⁾ E.g. an update of the CDS reference period stipulated in the ECB recommendations of October 2008 that demonstrably leads to an increase of at least 20 bp for banks rated A+ and A, 30 bp for banks rated A- and 40 bp for banks rated below A-.

⁽⁷⁾ The assessment will be carried out when an EFTA State receives the application for an approval of guarantees for the issuance of new or renewed debt as from 1 January 2011 and will include the amount of debt to be covered by the requested guarantees as well as all existing outstanding guaranteed liabilities in relation to total liabilities/balance sheet at the material time. Outstanding liabilities that exceed the threshold due to issuances before 1 January 2011 do not trigger a viability review unless the bank resorts to the issuance of new debt keeping the guaranteed liabilities above the threshold.

20. This mechanism does not apply to banks that are already in restructuring or are obliged to present a restructuring plan or that are already subject to a pending viability review at the material time. In those scenarios the award of additional State aid will have to be taken into account within the framework of the ongoing restructuring/viability review process ⁽¹⁾.
21. The threshold is set at a ratio of 5 % of outstanding guaranteed liabilities over total liabilities and at a total amount of guaranteed debt of EUR 500 million. The determination of this trigger threshold is based on a comparative analysis which illustrates that the vast majority of banks that use guarantees and are presently not under restructuring obligations (and even a significant proportion of banks that are subject to such obligations) stay well below this level. For the small but not negligible group of banks exceeding this limit, it is warranted to scrutinise whether the considerable reliance on guarantees for funding indicates a more structural weakness of their business models. The trigger function provides an incentive for sound banks to initiate a swift process of return to funding predominantly or exclusively on undistorted market terms. For all banks undergoing a thorough viability review either their long-term viability will be confirmed or doubts in that respect will indicate the need to confront the necessity of a farther-reaching restructuring.
22. In relation to the content to be provided in a viability review exercise, reference can be made to the Restructuring Guidelines which set out that the principles concerning the analysis of a bank's situation with a view to the restoration of long-term viability in a restructuring plan apply by analogy to cases where the aid beneficiary is not under a formal obligation to present a restructuring plan but is nonetheless required to demonstrate long-term viability. In particular the bank will have to demonstrate the solidity of its funding capacity and, where necessary, to undergo a liquidity stress test ⁽²⁾. A viability review should also take account of any factors specific to the beneficiary financial institutions ⁽³⁾ or to the EFTA State concerned ⁽⁴⁾ and the situation of its financial markets that have an impact on the viability assessment and on the indicative value of the ratio of guaranteed liabilities over total liabilities. As a general rule, the more significant the reliance on government guarantees is and the more it is combined with the use of other forms of State assistance and/or a low creditworthiness ⁽⁵⁾ the stronger the indication of a need to undergo changes in the business model in order to ensure long-term viability.
23. The mechanism triggering the requirement of a viability review conveys the signal that banks have to prepare for a return to normal market mechanisms without state support as the financial sector gradually emerges from crisis conditions and represents an incentive for individual institutions to scale down the reliance on government guarantees or to refrain from their use altogether. At the same time, it affords sufficient flexibility to duly take account of potentially diverse circumstances affecting the situation of different banks or national financial markets and also caters for the possibility of an overall deterioration in relation to financial stability which cannot be excluded at this stage given the residual fragility in the recovery of financial markets.

4. Removal of the distinction between sound and distressed banks for the purposes of submitting a restructuring plan

24. At the beginning of the crisis, the Authority established a distinction between unsound/distressed financial institutions and fundamentally sound financial institutions, that is to say, financial institutions suffering from endogenous, structural problems linked, for instance, to their particular business model or investment strategy and financial institutions whose problems merely and largely had to do with the extreme situation in the financial crisis rather than with the soundness of their business model, inefficiency or excessive risk taking. The distinction is defined in particular on the basis of a number of indicators set out in the Recapitalisation Guidelines: capital adequacy, current CDS spreads, current rating of the bank and its outlook as well as, inter alia, the relative size of the recapitalisation. Regarding the latter, the Authority deems aid received under the form of recapitalisation and asset relief measures of more than 2 % of the bank's risk weighted assets to be an indicator to distinguish between fundamentally sound and distressed banks. The recapitalisation of a distressed bank triggers the requirement to submit a restructuring plan to the Authority, while the recapitalisation of a sound bank triggers the requirement to submit a viability plan.

⁽¹⁾ For example, where a bank is already undergoing a viability review because of a recapitalisation and the threshold for guarantees is exceeded, the review has to be extended to address the reasons why the bank continues to rely on state guarantees, to include a liquidity test, and to analyse if and to what extent further use of state guarantee is foreseen.

⁽²⁾ Restructuring Guidelines, point 8 and section 2, also pointing to the related sections in point 40 of the Recapitalisation Guidelines and Annex V to the Impaired Assets Guidelines.

⁽³⁾ Including, for example, a higher ratio of guaranteed debts that is explained by a particular effort to sustain or increase lending to the real economy in the public interest and with the backing of the EFTA State concerned provided that such conduct is compatible with the common market.

⁽⁴⁾ Having due regard to the macro-economic situation of the EFTA State in general and in particular to those elements such as the sovereign risk that have a direct bearing on the terms of access to funding for banks located in the EFTA State.

⁽⁵⁾ As expressed in the beneficiary's rating or CDS spread.

25. The original rationale for establishing that distinction and for setting a range of indicators, including a threshold of 2 % of the bank's risk weighted assets, was the fear that capital needs resulting from impairments, higher expectations of the markets as to the capital levels of banks and temporary difficulties in raising capital on markets would otherwise lead to sound banks diminishing their lending to the real economy in order to avoid having to submit a restructuring plan when having recourse to State resources. At present, however, the banking sector overall faces fewer difficulties in raising capital on the markets or, inter alia, through retained earnings ⁽¹⁾ and can therefore meet their capital needs without recourse to State aid ⁽²⁾. The amount of capital raised by financial institutions on the market has significantly increased over the course of 2009 and 2010, demonstrating renewed access for financial institutions to capital markets as well as anticipation of new regulatory requirements ⁽³⁾.
26. The distinction between sound and distressed banks therefore no longer seems relevant in order to determine which banks should enter into a discussion about their restructuring with the Authority. As a result, banks which still have recourse to the State in 2011 for raising capital or for impaired assets measures should be required to submit to the Authority a restructuring plan showing the bank's determination to undertake the necessary restructuring efforts and return to viability without undue delay. Thus, as of 1 January 2011, a restructuring plan will be required from every beneficiary of a new recapitalisation or an impaired asset measure ⁽⁴⁾.
27. In assessing the restructuring needs of banks, the Authority will take into consideration the specific situation of each institution, the degree to which such a restructuring is necessary to restore viability without further state support as well as prior reliance on State aid. As a general rule, the more significant the reliance on State aid, the stronger the indication of a need to undergo in-depth restructuring in order to ensure long-term viability. In addition, the individual assessment will take account of any specific situation on the markets and will apply the restructuring framework in an appropriately flexible manner in the event of a severe shock endangering financial stability in one or more EFTA States.
28. Requiring a restructuring plan for banks benefiting from structural aid (that is to say, recapitalisation and/or impaired asset measures) — while at the same time accepting that the mere use of refinancing guarantees would still not trigger the requirement to submit a restructuring plan — conveys the signal that banks have to prepare for a return to normal market mechanisms without state support as the financial sector gradually emerges from crisis conditions. It provides an incentive for individual institutions that still need aid to accelerate the necessary restructuring. At the same time, it affords sufficient flexibility to duly take account of potentially diverse circumstances affecting the situation of different banks or national financial markets. It also caters for the possibility of an overall or country-specific deterioration in relation to financial stability, which cannot be excluded at present, given the residual fragility in the situation of financial markets.

5. Temporal scope, general outlook

29. The continued applicability of Article 61(3)(b) of the EEA Agreement and the extension of the Restructuring Guidelines will be from 1 January 2011 until 31 December 2011 ⁽⁵⁾. This extension under changed conditions should also be seen in the context of a gradual transition to a more permanent regime of State aid guidelines for the rescue and restructuring of banks based on Article 61(3)(c) of the EEA Agreement which should, market conditions permitting, apply as of 1 January 2012.

⁽¹⁾ In order to increase capital buffers, banks have decided to sell non-strategic assets such as industrial participations, or to focus on specific geographical sectors. See on this point European Central Bank, 'EU Banking Sector Stability, September 2010'.

⁽²⁾ According to the European Central Bank, banks' overall solvency ratio increased substantially in the course of 2009 in all EU Member States. In addition, information for a sample of large banks in the European Union suggests that the improvement in capital ratios continued into the first half of 2010, supported by an increase in retained earnings as well as by further private capital raising and public capital injections for some banks. See European Central Bank: 'EU Banking Sector Stability, September 2010'.

⁽³⁾ The future regulatory environment drawn up by the Basel Committee on the Banking Supervision (BCBS), so-called Basel III, sets a path for the implementation of the new capital rules which should allow banks to meet the new capital needs over time. In this context, it is interesting to note that, first, most of the largest banks in the European Union have reinforced their capital buffers over the last two years to increase their loss absorption capacity and, second, the other banks in the European Union should have sufficient time (up to 2019) to build up their capital buffer using, inter alia, retained earnings. It should also be noted that the 'transitional arrangements' provided by the new regulatory framework have established a 'grandfathering period' until 1 January 2018 for existing public sector capital injections. Moreover, a quantitative impact assessment done by the Basel Committee, confirmed by Commission calculations, points to a rather moderate impact on bank lending. Therefore, the new capital requirements are not expected to impact the proposal outlined in these Guidelines.

⁽⁴⁾ This will apply to all recapitalisation or impaired asset measures, irrespective of whether they are designed as individual measures or granted in the context of a scheme.

⁽⁵⁾ Existing or new bank support schemes (irrespective of the support instruments they contain: guarantee, recapitalisation, liquidity, asset relief, other) will only be prolonged/approved for a duration of six months to allow for further adjustments, if necessary, in mid-2011.

CORRIGENDA

Corrigendum to Implementing Regulation of the Council (EU) No 400/2010 of 26 April 2010 extending the definitive anti-dumping duty imposed by Regulation (EC) No 1858/2005 on imports of steel ropes and cables originating, inter alia, in the People's Republic of China to imports of steel ropes and cables consigned from the Republic of Korea, whether declared as originating in the Republic of Korea or not, and terminating the investigation in respect of imports consigned from Malaysia

(Official Journal of the European Union L 117 of 11 May 2010)

On page 11, Article 1, table, second column 'Company', fourth entry:

for: 'Cosmo Wire Ltd, 447-1, Koyeon-Ri, Woong Chon-Myon Ulju-Kun, Ulsan',

read: 'Cosmo Wire Ltd, 4-10, Koyeon-Ri, Woong Chon-Myon Ulju-Kun, Ulsan'.

Corrigenda

- ★ **Corrigendum to Implementing Regulation of the Council (EU) No 400/2010 of 26 April 2010 extending the definitive anti-dumping duty imposed by Regulation (EC) No 1858/2005 on imports of steel ropes and cables originating, inter alia, in the People's Republic of China to imports of steel ropes and cables consigned from the Republic of Korea, whether declared as originating in the Republic of Korea or not, and terminating the investigation in respect of imports consigned from Malaysia (OJ L 117, 11.5.2010)** 26

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