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II

(Non-legislative acts)

REGULATIONS

COUNCIL REGULATION (EU) No 870/2013

of 9 July 2013

amending Regulation (EC) No 2866/98 as regards the conversion rate to the euro for Latvia

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 140(3) thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Central Bank,

Whereas:

- (1) Council Regulation (EC) No 2866/98 of 31 December 1998 on the conversion rates between the euro and the currencies of the Member States adopting the euro ⁽¹⁾ determines the conversion rates as from 1 January 1999.
- (2) According to Article 4 of the 2003 Act of Accession, Latvia is a Member State with a derogation as defined in Article 139(1) of the Treaty on the Functioning of the European Union.
- (3) Pursuant to Council Decision 2013/387/EU of 9 July 2013 on the adoption by Latvia of the euro on 1 January 2014 ⁽²⁾, Latvia fulfils the necessary conditions

for the adoption of the euro and the derogation in favour of Latvia is abrogated with effect from 1 January 2014.

- (4) The introduction of the euro in Latvia requires the adoption of the conversion rate between the euro and the Latvian lats. This conversion rate should be set at 0,702804 lats per 1 euro, which corresponds to the current central rate of the lats in the exchange rate mechanism (ERM II).
- (5) Regulation (EC) No 2866/98 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

In Article 1 of Regulation (EC) No 2866/98, the following line is inserted between the conversion rates applicable to the Cyprus pound and the Luxembourg franc:

‘= 0,702804 Latvian lats’.

Article 2

This Regulation shall enter into force on 1 January 2014.

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

Done at Brussels, 9 July 2013.

For the Council

The President

R. ŠADŽIUS

⁽¹⁾ OJ L 359, 31.12.1998, p. 1.

⁽²⁾ OJ L 195, 18.7.2013, p. 24.

COUNCIL IMPLEMENTING REGULATION (EU) No 871/2013**of 2 September 2013**

extending the definitive anti-dumping duty imposed by Implementing Regulation (EU) No 511/2010 on imports of molybdenum wire, containing by weight at least 99,95 % of molybdenum, of which the maximum cross-sectional dimension exceeds 1,35 mm but does not exceed 4,0 mm, originating in the People's Republic of China to imports of molybdenum wire, containing by weight at least 97 % of molybdenum, of which the maximum cross-sectional dimension exceeds 1,35 mm but does not exceed 4,0 mm, originating in the People's Republic of China

THE COUNCIL OF THE EUROPEAN UNION,

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

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 13 thereof,

Having regard to the proposal from the European Commission after having consulted the Advisory Committee,

Whereas:

1. PROCEDURE**1.1. Existing measures**

- (1) In December 2009, the European Commission ('the Commission'), by Regulation (EU) No 1247/2009 ⁽²⁾ ('the provisional anti-dumping Regulation'), imposed a provisional anti-dumping duty on imports of molybdenum wire, containing by weight at least 99,95 % of molybdenum, of which the maximum cross-sectional dimension exceeds 1,35 mm but does not exceed 4,0 mm, originating in the People's Republic of China ('PRC').
- (2) In June 2010, the Council, by Implementing Regulation (EU) No 511/2010 ⁽³⁾, imposed a definitive anti-dumping duty of 64,3 % on the same imports. These measures will hereinafter be referred to as 'the measures in force' and the investigation that led to the measures in force will be hereinafter referred to as 'the original investigation'.

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

⁽²⁾ Commission Regulation (EU) No 1247/2009 of 17 December 2009 imposing a provisional anti-dumping duty on imports of certain molybdenum wires originating in the People's Republic of China (OJ L 336, 18.12.2009, p. 16).

⁽³⁾ Council Implementing Regulation (EU) No 511/2010 of 14 June 2010 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain molybdenum wires originating in the People's Republic of China (OJ L 150, 16.6.2010, p. 17).

- (3) In January 2012, following an anti-circumvention investigation pursuant to Article 13 of the basic Regulation, by Implementing Regulation (EU) No 14/2012 ⁽⁴⁾ the Council extended the measures in force to imports of the product concerned consigned from Malaysia, whether declared as originating in Malaysia or not.

1.2. Request

- (4) In November 2012, the Commission received a request pursuant to Articles 13(3) and 14(5) of the basic Regulation to investigate the possible circumvention of the anti-dumping measures imposed on certain molybdenum wires originating in the PRC by imports of certain slightly modified molybdenum wires, containing by weight 97 % or more but less than 99,95 % of molybdenum, originating in the PRC, and to make such imports subject to registration.
- (5) The request was lodged by Plansee SE ('Plansee'), a Union producer of certain molybdenum wires that participated in the original investigation.
- (6) The request contained sufficient prima facie evidence that the anti-dumping measures on imports of certain molybdenum wires originating in the PRC are being circumvented by means of imports of a certain slightly modified molybdenum wires, containing by weight 97 % or more but less than 99,95 % of molybdenum, originating in the PRC.
- 1.3. Initiation**
- (7) Having determined, after the consulting the Advisory Committee, that sufficient prima facie evidence existed for the initiation of an investigation pursuant to Articles 13(3) and 14(5) of the basic Regulation, the

⁽⁴⁾ Council Implementing Regulation (EU) No 14/2012 of 9 January 2012 extending the definitive anti-dumping duty imposed by Implementing Regulation (EU) No 511/2010 on imports of certain molybdenum wires originating in the People's Republic of China to imports of certain molybdenum wires consigned from Malaysia, whether declared as originating in Malaysia or not and terminating the investigation in respect of imports consigned from Switzerland (OJ L 8, 12.1.2012, p. 22).

Commission initiated an investigation by Regulation (EU) No 1236/2012⁽¹⁾ (the initiating Regulation) of the possible circumvention of anti-dumping measures imposed on imports of certain molybdenum wires originating in the PRC and also directed the customs authorities to register imports into the Union of molybdenum wire, containing by weight 97 % or more but less than 99,95 % of molybdenum, of which the maximum cross-sectional dimension exceeds 1,35 mm but does not exceed 4,0 mm and currently falling within CN code ex 8102 96 00 (TARIC code 8102 96 00 30), originating in the PRC, as from 21 December 2012.

1.4. Product concerned and product under investigation

- (8) The product concerned is the same as defined in the original investigation, namely molybdenum wire, containing by weight at least 99,95 % of molybdenum, of which the maximum cross-sectional dimension exceeds 1,35 mm but does not exceed 4,0 mm ('pure molybdenum') originating in the PRC currently falling within CN code ex 8102 96 00.
- (9) The product under investigation, namely the product allegedly circumventing, is the same as that defined in recital 7 containing by weight 97 % or more but less than 99,95 % of molybdenum, of which the maximum cross-sectional dimension exceeds 1,35 mm but does not exceed 4,0 mm originating in the PRC.

1.5. Investigation and parties concerned by the investigation

- (10) The Commission officially advised the authorities of the PRC of the initiation of the investigation and sent questionnaires to the exporting producers in the PRC and importers in the Union known to be concerned. Interested parties were given the opportunity to make themselves and their views known in writing and to request a hearing within the time limit set in the initiating Regulation. All parties were informed that non-cooperation might lead to the application of Article 18 of the basic Regulation and to findings being based on facts available.
- (11) Two exporting producers submitted a questionnaire reply to the Commission. One of these companies, who also cooperated during the original investigation, is a genuine exporting producer of the product under investigation. As regards the second one, this company did not report any sales of the product under investigation. Therefore, its submission was disregarded.

⁽¹⁾ Commission Regulation (EU) No 1236/2012 of 19 December 2012 initiating an investigation concerning the possible circumvention of anti-dumping measures imposed by Council Implementing Regulation (EU) No 511/2010 on imports of certain molybdenum wires originating in the People's Republic of China by imports of certain slightly modified molybdenum wires, containing by weight 97 % or more but less than 99,95 % of molybdenum, originating in the People's Republic of China, and making such imports subject to registration (OJ L 350, 20.12.2012, p. 51).

- (12) Four importers submitted a questionnaire reply to the Commission. One of them did not report any imports of the product under investigation and turned out to be a user of molybdenum wire.

- (13) The Commission carried out on-spot investigations at the two premises of the cooperating Chinese exporting producer:

— Jinduicheng Molybdenum Co., Ltd, No 88, Jinye 1st Road, Hi-Tech Industry Developing Zone, Xi'an, Shaanxi Province, P.R. China ('JDC'),

— Jinduicheng GuangMing Co., Ltd, No 104 Mihe Road, Zhoucun District, Zibo City, P.R. China,

and at the premises of the following Union importer:

— GTV Verschleißschutz GmbH, Vor der Neuwiese 7, D-57629 Luckenbach, Germany ('GTV').

- (14) The three other importers were not visited, but their submissions were duly examined in the course of the investigation.

1.6. Investigation and reporting periods

- (15) The investigation period was set from 1 January 2008 to 30 September 2012 ('IP') in order to investigate the alleged change in the pattern of trade. The reporting period ('RP') covered the period from 1 October 2011 to 30 September 2012 in order to investigate if the imports are made at prices below the non-injurious price established in the investigation that led to the existing measures and the existence of dumping.

2. RESULTS OF THE INVESTIGATION

2.1. General considerations

- (16) In accordance with Article 13(1) of the basic Regulation, the assessment of the existence of possible circumvention practices was made by analysing successively:

- (1) whether there was a change in pattern of trade between the PRC and the Union;
- (2) if this change stemmed from a practice, process or work for which there was insufficient due cause or economic justification other than the imposition of the duty;
- (3) if there was evidence of injury or that remedial effects of the duty were being undermined in terms of the prices and/or quantities of the product under investigation; and
- (4) whether there was evidence of dumping in relation to the normal values previously established for the like product, if necessary in accordance with the provisions of Article 2 of the basic Regulation.

2.2. Slight modification and essential characteristics

- (17) The investigation has shown that the product under investigation is a wire made of molybdenum (between 99,6 % and 99,7 %) and usually lanthanum (La) (between 0,25 % and 0,35 %). This alloy contains also other chemicals elements and is known as a 'doped molybdenum' or 'MoLa' or 'ML'. The product concerned and the product under investigation both currently fall under CN code 8102 96 00. As explained below, the investigation did not find any difference in the production process of the product under investigation and the product concerned, other than the addition of a low percentage of lanthanum to pure molybdenum at the blending step. In addition, the cooperating exporting producer confirmed that the cost of production of the product under investigation is similar to the cost of the product concerned. This implies that there is no economic benefit for the exporting producer to produce the product under investigation other than avoidance of the measures in force. Furthermore, it was found that the users of the product concerned switched to the product under investigation after the imposition of the provisional measures, which implies that there is no difference between the product concerned and the product under consideration for the users.
- (18) As mentioned in recital 15 of the provisional anti-dumping Regulation, the product concerned is mainly used as coating in the manufacturing of automotive parts (i.e. gear boxes), aircraft parts or as electrical contacts. The most traded diameters of the product concerned are 2,31 mm and 3,17 mm, used for flame or arc spraying.
- (19) Three parties argued that the product under investigation and the product concerned have different essential characteristics. At the request of two of them, a confrontational hearing with GTV, JDC and Plansee, chaired by the Hearing Officer, took place in April 2013. As explained in detail below, during the hearing the main focus was on the alleged technical differences between the product concerned and the product under investigation, and the economic justification for importation of the latter into the Union market.
- (20) GTV and JDC argued during the hearing and in writing that the product under investigation has different essential physical characteristics which differ significantly from the product concerned. More specifically, they claimed that the ductility, namely the ability of the material to be drawn out longitudinally to a reduced section without fracture under the action of a tensile force, the elongation parameters and the coating properties of the product under investigation are especially improved compared to the product concerned.
- (21) In support of this claim, the two parties submitted a number of articles and studies which aimed to show that alloying molybdenum and lanthanum leads to a product with better resistance to brittle failure and better elongation than the product concerned. These parties also claimed that information published on the Plansee's web site provides evidence that the product under investigation has improved properties compared to the product concerned.
- (22) Regarding the product's characteristics, in order to evaluate whether the product under investigation and the product concerned have different essential characteristics, Plansee proposed to mandate an independent institute to compare the product concerned and the product under investigation.
- (23) After the hearing, the above request was assessed on the basis of the evidence collected during the investigation, in particular the purchase orders sent by importers to the exporting producer, the explanations provided by the exporting producer about its production process, the chemical content and elongation and tensility characteristics mentioned on certificates of qualities, the commercial invoices issued by the exporting producer and the absence of any commercial information related to the improved characteristic of the product under investigation compared to the product concerned sent to any customer. All the information confirmed that better properties were not requested by the customers nor provided by the producer of the product under investigation. Therefore, it was concluded that an expert's opinion is not necessary. In consequence, this request was rejected.
- (24) In this aspect, the investigation has confirmed that the improved qualities mentioned above in recital 20 depend on the content of lanthanum and on whether an optimised production processes is being used. However, the cooperating exporting producer did not demonstrate that it put in place the optimised production processes for the product under investigation exported to the Union during the IP. The claim was therefore rejected as unfounded.
- (25) One party claimed that the product under investigation has improved coating properties. However, the party did not submit sufficient evidence to support this statement. The claim was therefore rejected as unfounded.
- (26) Two parties claimed that fracture toughness is improved for the product under investigation. This means that the wire never breaks when unrolled inside a spraying machine. However, these parties were asked to provide supporting documentation but failed in doing this. In the absence of any supporting evidence, this claim was disregarded.
- (27) In the light of the above, it has been concluded that the product under investigation has no different properties compared to the product concerned.
- (28) Furthermore, the evidence collected during the verification visits shows that users/importers did not specifically request the product with the claimed better physical characteristics as described above in recital 20 when placing their orders. None of them requested a specific content of lanthanum but did request at least 99 % of pure molybdenum. Only one customer

requested specific physical characteristics for the parameters of elongation and tensility. In this case, the exporting producer tested these parameters and provided this customer with certificates of quality. As these certificates were also delivered for the product concerned, it was possible to compare the two products for these parameters. The comparison showed that the requirements for elongation and tensility were identical for both products.

- (29) In addition, the investigation showed that the exporting producer did not inform the market or their customers on the alleged advantages of the product under investigation over the product concerned and did not market the slightly modified MoLa wires as a new or different product.
- (30) Based on a patent registered by Plansee in January 1996, one party claimed that the product concerned and the product under investigation are different products. Analysis of this claim showed that the patent does not concern the product under investigation but the use of a molybdenum alloy as a lead-in conductor for lamps, electron tubes and similar components. Furthermore, the diameters of this product type are lower than the diameters defined for the product under investigation. In addition, as mentioned above in recital 24, the alleged improved qualities of MoLa over the product concerned depend on the use of an optimised production process. The claim is therefore rejected.
- (31) Therefore, it has to be concluded that from a customer's point of view, the product concerned and the product under investigation are very similar.
- (32) One party claimed that the commercial offers published on Plansee's web site show that they offered the product under investigation not only in the field of thermal spraying but also in various other domains (i.e. lamp components and wire cutting industries). However, Plansee commented that the commercial information published on its web site indicates the diameters for which they are able to supply. In addition, the investigation showed that Plansee's sales for other domains are very limited (i.e. less than 2 % in quantity compared with the sales of the product concerned) and that an optimised production processes was used. Therefore, this claim was rejected.
- (33) One party claimed that Plansee was already producing the product under investigation when it lodged the complaint which led to the initiation of the original investigation and since Plansee considers that the product under investigation and the product concerned share the same essential characteristics, they should have included it in the scope of the original investigation. However, as explained above in recital 32, the investigation confirmed that this particular MoLa wire is different from the product under investigation. The product diameters are generally below 1 mm and it is mainly used in the lighting industry. Moreover, as mentioned below in Table 1, the imports of the product under investigation started only after provisional

measures were imposed on the product concerned. Therefore, in the absence of any imports of the product under investigation during the IP of the original investigation, there were no reasons to include this product in the product scope. The claim is therefore rejected as unfounded.

- (34) One party claimed that the expansion of the range from 99,95 % down to 97 % will cover all kinds of molybdenum alloys, and in consequence these products would not be available on the Union market (i.e. for example for the redrawing market). Firstly, this party did not present any evidence supporting this statement. Secondly, the investigation has shown that only one exporting producer was exporting MoLa to the Union during the IP and no other alloys which would be covered by the definition of the product under investigation. Thirdly, the investigation showed that the market in the Union for redrawing and sales of molybdenum alloys is very limited. Finally, the extension of the measures will not make it impossible to import the product under investigation. The claim was therefore rejected.
- (35) As far as the questions of whether or not the modification mentioned in recital 19 altered the essential characteristics of the product concerned, the information provided by the cooperating parties, analysed in recitals 24 to 34, revealed that the product under investigation has the same basic physical characteristics and uses as the product concerned.
- (36) In consequence, it was found that there are no relevant physical characteristics differences between the product under investigation and the product concerned. Therefore, it was concluded that the product under investigation is considered as a like product within the meaning of Article 1(4) of the basic Regulation.
- (37) Therefore, it has to be concluded that the product under investigation is only slightly modified compared to the product concerned, imported for no other economic justification but to circumvent the anti-dumping duties in place.

2.3. Change in the pattern of trade

2.3.1. Imports of molybdenum wires into the Union

- (38) Information about the Union imports could not be directly obtained from Eurostat data, as the CN code under which the product under investigation is declared includes also other products than the product under investigation. Therefore, in the absence of specific import statistics for the product under investigation, Eurostat data was adjusted in accordance with the method suggested in the request. Accordingly, the volume of imports of the product under investigation into the Union was established on the basis of an estimation of Union consumption of molybdenum wires

adjusted by the total Union production of the product concerned. This method was found to be reliable to obtain data relating to the product under investigation.

imports of the product under investigation during the IP and was thus considered to be representative for the total Union imports of molybdenum wires.

(39) As mentioned in recital 11, only one exporting producer in the PRC cooperated with the investigation. However, on the basis of the comparison of the information given by this exporting producer with the adjusted Eurostat data mentioned in the previous recital, it was established that this company represented most of the total Union

(40) As shown in the table below, the imports into the Union of the product concerned stopped entirely after the imposition of the definitive measures in June 2010 and were immediately replaced by imports of the product under investigation.

Table 1

Evolution of the imports of the product concerned and product under investigation originating in the PRC

Imports to the EU	2008	2009	1.1.2010 (*) -16.6.2010	17.6.2010 (**) -31.12.2010	2010	2011	RP (***)
Total Imports (tonnes indexed) ⁽¹⁾	100	31	10	17	27	128	99
Total Imports (%)	100	100	100	100	100	100	100
Product Concerned (%)	100	100	20	0	7	0	0
Product Under Investigation (%)	0	0	80	100	93	100	100

⁽¹⁾ Indexed on the basis of volume in kg reported by the cooperating exporting producer (i.e. 2008 = 100). Refer to recital 39. Imports = Product concerned + Product under investigation.

(*) Period corresponding to the imposition of the provisional measures.

(**) Period corresponding to the imposition of the definitive measures.

(***) RP = reporting period from 1 October 2011 to 30 September 2012.

Source: JDC submission.

(41) The investigation confirmed that parties which purchased the product under investigation after the imposition of the provisional duty were purchasing the product concerned before the imposition of the measures. These parties purchased 99,8 % of the total quantity of the product under investigation during the RP.

(42) Two interested parties claimed that as early as in 2007, they started a project to develop the product under investigation in the PRC and thus the exports of the product under investigation was not linked to the imposition of the measures on the product concerned. However, the investigation did not confirm the materiality of such a project. Altogether, one e-mail, the minutes of one phone conference and the export of a sample of the product under investigation for further analysis were provided. Furthermore, this project did not result in any sales of

the product under investigation to the Union before the imposition of the provisional measures on the product concerned, namely in October 2010. Nevertheless, the fact that a project was allegedly initiated in 2007 does not change the finding that the product concerned and the product under investigation are similar. The conclusion reached in the investigation that there was no economic justification for the export of the product under investigation than the imposition of the measures on the product concerned also remain valid.

(43) The investigation also showed that no sales of the product under investigation were made to other countries than the Union and that only limited quantities were sold in the Chinese market during the IP as shown in Table 2 below.

Table 2

Product under investigation market

	2008	2009	1.1.2010- 16.6.2010	17.6.2010- 31.12.2010	2010	2011	1.10.2011- 30.9.2012
Total Turnover (indexed) ⁽¹⁾	100	96	863	1 529	2 392	11 168	8 123
Total Turnover (%)	100	100	100	100	100	100	100
Domestic sales (PRC) (%)	100	100	5	4	4,2	0,4	2

	2008	2009	1.1.2010- 16.6.2010	17.6.2010- 31.12.2010	2010	2011	1.10.2011- 30.9.2012
EU sales (%)	0	0	95	96	95,8	99,6	98
Other countries sales (%)	0	0	0	0	0	0	0

(¹) Methodology as described for Table 1.

Source: JDC submission.

(44) Based on the above, the claim is rejected.

2.3.2. Conclusion on the change in pattern of trade

(45) The overall increase of exports of the product under investigation to the Union from the PRC after the imposition of the provisional and the definitive measures and the parallel decrease of the imports of the product concerned constituted a change in pattern of trade between the PRC and the Union.

2.4. Nature of the circumvention practice and insufficient due cause or economic justification

(46) Article 13(1) of the basic Regulation requires that the change in pattern of trade stems from a practice, process or work for which there is insufficient due cause or economic justification other than the imposition of duty.

(47) As mentioned in recital 45, it was concluded that there is a change in pattern of trade.

(48) As mentioned in recitals 28 and 29, it was concluded that neither the exporting producer nor the importers informed the market or their customers on the alleged advantages of the product under investigation over the product concerned and did not market the product under investigation as a new or different product.

(49) Furthermore, both the product concerned and the product under investigation are mainly used as spray wires in the automotive industry, and the end-users of both products are the same.

(50) One party claimed that the product under investigation provides significant improvements when used as spray wire. These improvements have an impact on the productivity of coating gear components, by minimising production interruption due to brittle wire failure. However, the investigation has confirmed that this party did not market the product under investigation nor informed its customers about the alleged different technical characteristics or about the improvements brought by the product under investigation. In addition, the customers did not specifically ask for the improvements. The claim was therefore rejected as unfounded.

(51) One party claimed that one user switched to the product under investigation because of the technical failures of the product concerned. However, this party was asked to

provide supporting documentation but failed in doing this. In the absence of any supporting evidence, this claim was disregarded.

(52) GTV claimed that MoLa used for spray coating provides better results when considering the coating micro hardness. This allows avoiding wear by material transfer from the surface of a component rubbing on a counterpart. This party submitted test results from an independent laboratory showing that micro hardness can be improved with the use of MoLa. However, the methodology used by the independent laboratory did not guarantee the outcome as the test was realised on only one batch of wire while this party claimed that a further test analysis should cover a multitude of batches. In addition, the chemical composition of the sample tested was not analysed which means that there is no guarantee that the batch analysed was actually the product under investigation. The claim was therefore rejected as unfounded.

(53) The investigation did not bring to light any other due cause or economic justification for the imports of the product under investigation other than the avoidance of the payment of the duty in force.

(54) It is therefore concluded that, in the absence of any other sufficient due cause or economic justification within the meaning of the second sentence of Article 13(1) of the basic Regulation, the change in the pattern of trade between the PRC and the Union was due to the imposition of the measures in force.

2.5. Undermining of the remedial effects of the duty in terms of the prices and/or the quantities of the like product

(55) To assess whether the imports of the product under investigation, in terms of quantities and prices, undermined the remedial effects to the measures in force, data provided by one cooperating exporting producer as described in recital 39 were used.

(56) The increase in imports of the product under investigation from the PRC as from the imposition of the provisional measures was significant in terms of quantities. The level of imports into the Union from the PRC in the RP corresponds to the level of imports of the product concerned originating in the PRC to the Union in 2008, before the imposition of measures.

- (57) The comparison of the injury elimination level as established in the original Regulation and the weighted average of exports price showed significant underselling. It was therefore concluded that the remedial effects of the measures in force are being undermined both in terms of quantities and prices.

2.6. Evidence of dumping in relation to the normal value previously established for the like product

- (58) Export prices of the product under investigation have been established on the basis of the verified information provided by the cooperating exporting producer.
- (59) These export prices were found to be slightly lower compared to the export prices of the product concerned previously established in the original investigation. Two interested parties confirmed that there is almost no price difference between the product concerned and the product under investigation.
- (60) Therefore, in accordance with Article 13(1) of the basic Regulation, it was considered appropriate to compare the normal value previously established in the original investigation with the export price of the product under investigation.
- (61) As mentioned in recitals 24 and 25 of the provisional regulation, the USA was considered to be an appropriate market economy analogue country. It is recalled that since the analogue country producer made only marginal sales on the domestic US market, it was found unreasonable to use US domestic sales data for the purposes of determining or constructing normal value. Consequently, the normal value for the PRC was established on the basis of export prices from the USA to other third countries, including the Union.
- (62) One party claimed that the normal value established in the original investigation should be adjusted because the price of molybdenum oxide, which is a decisive factor for the price setting of both the product concerned and the product under investigation, fell sharply in the RP of this investigation. As mentioned above in recital 61, normal value in the original investigation was established on the basis of the prices charged for export by a producer located in the USA and not on the basis of its costs. Therefore, any adjustment based on costs does not seem to be appropriate in this case. Because the price of the main raw material decreased significantly it appears even more clearly that prices elements should be used to establish the relevant normal value in this case.
- (63) The adjustment to the normal value was thus established on the basis of the evolution of prices of the product concerned. Given that the US producer stopped its activity and that no information was available from the analogue country, the adjustment was calculated on the basis of the prices reported by Plansee in the original investigation and during the RP. This led to a

downwards adjustment of about 20 % to the normal value established in the original investigation.

- (64) In accordance with Article 2(11) and (12) of the basic Regulation, dumping was calculated by comparing the adjusted weighted average normal value as established in the original investigation and the weighted average export prices of the product under investigation established during this investigation's RP, expressed as a percentage of the net, free-at-Union-frontier price, before customs duty.
- (65) The comparison of the adjusted weighted average normal value and the weighted average export prices showed the existence of dumping.

3. REQUESTS FOR EXEMPTION

- (66) One exporting producer in the PRC requested an exemption from the possible extended measures in accordance with Article 13(4) of the basic Regulation and submitted a questionnaire reply.
- (67) The investigation has however confirmed that this producer circumvented the measures in place. It was therefore concluded to reject the request.

4. MEASURES

- (68) In view of the findings above, it was concluded that the definitive anti-dumping duty imposed on imports of molybdenum wires originating in the PRC was circumvented by imports of certain slightly modified molybdenum wires originating in the PRC.
- (69) In accordance with the first sentence of Article 13(1) of the basic Regulation, the existing anti-dumping measures on imports of the product concerned originating in the PRC should be extended to imports of the product under investigation.
- (70) Pursuant to Articles 13(3) and 14(5) of the basic Regulation, which provide that any extended measures shall be applied against registered imports from the date of registration, the anti-dumping duty should be collected on all imports into the Union of molybdenum wire, containing by weight 97 % or more but less than 99,95 % of molybdenum, of which the maximum cross-sectional dimension exceeds 1,35 mm but does not exceed 4,0 mm and currently falling within CN code ex 8102 96 00 (TARIC code 8102 96 00 30) which entered the Union under registration imposed by the initiating Regulation.

5. DISCLOSURE

- (71) All interested parties were informed of the essential facts and considerations leading to the above conclusions and were invited to comment. The oral and written comments submitted by the parties were considered. None of the arguments presented gave rise to a modification of the findings,

HAS ADOPTED THIS REGULATION:

Article 1

The definitive anti-dumping duty imposed by Implementing Regulation (EU) No 511/2010 on imports of molybdenum wire, containing by weight at least 99,95 % of molybdenum, of which the maximum cross-sectional dimension exceeds 1,35 mm but does not exceed 4,0 mm, originating in the People's Republic of China, is hereby extended to imports into the Union of molybdenum wire, containing by weight at least 97 % of molybdenum, of which the maximum cross-sectional dimension exceeds 1,35 mm but does not exceed 4,0 mm, originating in the People's Republic of China, currently falling within CN code ex 8102 96 00 (TARIC code 8102 96 00 30).

Article 2

The duty shall be collected on imports into the Union of molybdenum wire, registered in accordance with Article 2 of

Implementing Regulation (EU) No 1236/2012 and Articles 13(3) and 14(5) of Regulation (EC) No 1225/2009, containing by weight 97 % or more but less than 99,95 % of molybdenum, of which the maximum cross-sectional dimension exceeds 1,35 mm but does not exceed 4,0 mm and currently falling within CN code ex 8102 96 00 (TARIC code 8102 96 00 30), originating in the People's Republic of China.

Article 3

Customs authorities are hereby directed to discontinue the registration of imports established in accordance with Article 2 of Regulation (EU) No 1236/2012.

Article 4

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

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

Done at Brussels, 2 September 2013.

For the Council

The President

L. LINKEVIČIUS

COMMISSION IMPLEMENTING REGULATION (EU) No 872/2013

of 9 September 2013

approving a minor amendment to the specification for a name entered in the register of protected designations of origin and protected geographical indications [Salame Brianza (PDO)]

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs ⁽¹⁾, and in particular Article 53(2)(2) thereof,

Whereas:

- (1) In accordance with the first subparagraph of Article 53(1) of Regulation (EU) No 1151/2012, the Commission has examined Italy's application for the approval of amendments to the specification for the protected designation of origin 'Salame Brianza' registered under Commission Regulation (EC) No 1107/96 ⁽²⁾,
- (2) The purpose of the application is to amend the specification by specifying the production method, labelling, and adjustments to the rules in force, in particular with regard to monitoring,
- (3) The Commission has examined the amendment in question and decided that it is justified. Since the

amendment is minor within the meaning of the third subparagraph of Article 53(2) of Regulation (EU) No 1151/2012, the Commission may approve it without following the procedure set out in Articles 50 to 52 of the Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The specification for the protected designation of origin 'Salame Brianza' is hereby amended in accordance with Annex I to this Regulation.

Article 2

Annex II to this Regulation contains the consolidated Single Document setting out the main points of the specification.

Article 3

This Regulation shall enter into force on the twentieth 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 Brussels, 9 September 2013.

*For the Commission,
On behalf of the President,
Dacian CIOLOŞ
Member of the Commission*

⁽¹⁾ OJ L 343, 14.12.2012, p. 1.

⁽²⁾ OJ L 148, 21.6.1996, p. 1.

ANNEX I

The specification for the protected designation of origin 'Salame Brianza' is amended as follows:

— **Method of production**

In Article 4 on the 'method of production' for the PDO 'Salame Brianza', the second paragraph on grinding has been amended. The current specification states that salami weighing up to 300g must be ground with a meat grinder fitted with plates with 4-4.5 mm holes (fine mincing), and that salami weighing over 300 g must be ground with a meat grinder fitted with plates with 7-8 mm holes (coarse mincing), thus linking the coarseness of 'Salame Brianza' to its weight.

There is actually no correlation between the weight and coarseness of the salami. This link has therefore been removed from the amended version of the specification, leaving only the criteria for the dimensions of the holes in the meat grinder.

In Article 5 on 'ageing', the table showing the minimum ageing periods for the PDO 'Salame Brianza' has been updated on the basis of the three factors below.

First, the unit of time for ageing has been changed from weeks in the current specification to days in the new version, giving a clearer and more precise indication of the time required.

Secondly, given the marketing methods set out in Article 8 of the current specification, clearly-defined minimum ageing periods have also been added to the new version for salami that is vacuum-packed, or packaged in a modified atmosphere or in microporous plastic film, as these ageing periods are different from those for unpackaged salami. In the new table, the ageing periods for small salami (in this case, up to 55 mm in diameter) are slightly longer for packaged salami than for salami sold loose, since once the salami is packaged it can no longer dry naturally.

Thirdly, the range of sizes in which 'Salame Brianza' can be marketed has been increased, with the addition of wider diameters not previously available due to the limits imposed by the size of the existing casings on the market. Given that the ageing period for 'Salame Brianza', which also includes drying, varies according to the diameter of the salami, it goes without saying that the increased range of diameters set out in this specification entails more varied and longer ageing periods.

— **Labelling**

The logo for the PDO 'Salame Brianza' has been added to the specification itself in Article 8, whereas it was previously included as an annex and was never described nor used. The current PDO logo has therefore been added to Article 8 along with its colour specifications.

— **Monitoring — Adjustments to the rules**

Article 7 on 'monitoring' has been updated, since it assigned powers to the PDO protection body that were illegal under Articles 10 and 11 of Regulation (EC) No 510/2006 of the Council ⁽¹⁾, which state that monitoring must be the responsibility of an impartial third party.

Finally, the acronym 'DOC', used in Italy before Regulation (EEC) No 2081/92 of the Council ⁽²⁾ was adopted, has been replaced in paragraphs 1 and 3 of Articles 1 and 8 with 'DOP' [PDO] in accordance with Community legislation.

⁽¹⁾ OJ L 93, 31.3.2006, p. 12.

⁽²⁾ OJ L 208, 24.7.1992, p. 1.

ANNEX II

CONSOLIDATED SINGLE DOCUMENT

Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs ⁽¹⁾

'SALAME BRIANZA'

EC No: IT-PDO-0217-0326-21.02.2008

PGI () PDO (X)

1. Name

'Salame Brianza'

2. Member State or Third Country

Italy

3. Description of the agricultural product or foodstuff**3.1. Type of product**

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

3.2. Description of product to which the name in (1) applies

At its release for consumption, the PDO product 'Salame Brianza' has a cylindrical shape and solid consistency, with no springiness.

When cut, it is firm and homogenous, with fat globules free from rancidness; the slices have no visible gristle and are a uniform ruby-red colour. The aroma is subtle and distinctive, and the flavour is very mild and subtle and never sour.

In addition, when it is released for consumption 'Salame Brianza' PDO has the following chemical and physico-chemical characteristics:

- total protein content: min. 23 %
- collagen/protein ratio: max. 0,1
- water/protein ratio: max. 2
- fat/protein ratio: max. 1,5
- pH: at least 5,3.

In microbiological terms, the product has a mesophilic microbe content of $> 1 \times 10^7$ colony-forming units per gram, with lactobacillus and coccus bacteria most prevalent.

3.3. Raw materials (for processed products only)

'Salame Brianza' PDO is made from pork meat: shoulder of pork boned and trimmed using a suitable technique; scrap cuttings; and ground ham, pancetta and/or throats without soft fat, to which salt and crushed and/or ground pepper is added.

The following products may also be used: wine, sugar and/or dextrose and/or fructose and/or lactose, starter cultures, sodium and/or potassium nitrate (maximum quantity: 195 parts per million), sodium and/or potassium nitrite (maximum quantity: 95 parts per million), ascorbic acid and its sodium salt, and a very small amount of garlic.

3.4. Feed (for products of animal origin only)

Detailed rules on the use and composition of the animals' diet must be respected. Pigs are fed in two stages, and their feed mainly consists of cereal products from the macro-area defined in point 4. By-products from cheese-making (whey, curds and buttermilk) are supplied by dairies located within the defined geographical area.

3.5. Specific steps in production that must take place in the defined geographical area

The production of 'Salame Brianza' PDO (cleaning, grinding, mixing of ingredients, filling into casings, drying, ageing) must take place within the traditional production area located in the Brianza region, as defined in point 4.

⁽¹⁾ Replaced by Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs.

3.6. Specific rules concerning slicing, grating, packaging, etc.

'Salame Brianza' PDO must be cut into slices or portions and packaged within the production area defined in point 4, under the supervision of the authorised monitoring body, in order to guarantee the product's quality. 'Salame Brianza' is sensitive to external influences, in particular to light and to oxidation from exposure to the air and to heat. Preparing 'Salame Brianza' for slicing of necessity requires the casing to be removed, and the edible part of the product is therefore directly exposed to the air. Exposing the product to external influences under non-controlled conditions alters the organoleptic characteristics of 'Salame Brianza'. In order to preserve the product's original characteristics, 'Salame Brianza' must therefore be sliced and packaged immediately after the ageing period and on the production site itself.

3.7. Specific rules concerning labelling

'Salame Brianza' may be marketed loose, vacuum-packed or packaged in a modified atmosphere, in whole salami or in portions or slices.

The name of the protected designation of origin 'Salame Brianza' must appear on the label in clear and indelible letters, fully distinguishable from any other wording, and must be followed immediately by the term '*Denominazione di Origine Protetta*' [Protected Designation of Origin].

The above name and term must both be written in Italian.

The acronym 'DOP' [PDO] may also appear elsewhere on the label, in the same visual field. If a product is destined for international markets, the wording 'Protected Designation of Origin' may be given in the language of the destination country.

These details cannot be separated from the PDO logo.



Any other description not expressly allowed is prohibited.

However, the use of names, trade names and private brands is permitted, provided that they have no laudatory purport and are not such as to mislead the consumer; the names of the pig farms from which the product originates may also be used, provided that the raw material comes exclusively from these farms.

If the logo is directly printed on the producers' label, the number of labels, checked by the authorised monitoring body, must match the amount of raw material destined for production of 'Salame Brianza'.

4. Concise definition of the geographical area

Pig farms producing meat for 'Salame Brianza' must be located within the following regions: Lombardy, Emilia-Romagna and Piedmont (the PDO concerned benefits from the derogation granted by Article 2(3) of Regulation (EC) No 510/2006).

The production area for 'Salame Brianza' PDO is located in the Brianza region, bordered to the north by the Ghisallo foothills, to the south by the Villoresi canal, to the east by the deep course of the Adda river, and to the west by the Comasina trunk road (including a 2km outer ring).

5. Link with the geographical area

5.1. Specificity of the geographical area

The geographical macro-zone in which pig farms providing meat for 'Salame Brianza' are located has a highly uniform landscape, especially in the wholly flat area of the Po Valley, which is criss-crossed by rivers and canals and is rich in plant life, with meadows and maize in particular. The climate is characterised by fairly harsh autumns and winters that are very damp and foggy, with mild and rainy springs, and fairly hot summers where short rain showers are quite common and often come in intense bursts.

Within this macro-zone, the production micro-zone for 'Salame Brianza' PDO is in the Brianza region itself, and offers fertile plains alternating with sun-bathed hills, sheltered by a vast mountain range to the north, which filters the air currents and weather systems, creating various atmospheric phenomena such as air-filtering, warm down-slope winds, cold winds (when the currents blow from the north instead of from the west), and fog.

5.2. Specificity of the product

'Salame Brianza' has unmistakable characteristics. When cut, the slice is homogenous, ruby-red in colour, and has a firm and compact texture. Its aroma is subtle and distinctive, and the flavour is mild and never sour.

5.3. Causal link between the geographical area and the quality or characteristics of the product (for PDO) or a specific quality, the reputation or other characteristic of the product (for PGI)

The requisite features of 'Salame Brianza' PDO depend on environmental conditions and on natural and human factors.

In particular, the properties of the raw material are peculiar to the geographical macro-zone identified in point 4, while the production of 'Salame Brianza' is founded on the conditions of the micro-zone described in the same point.

The characteristics and natural resources of the macro-zone have in fact enabled the considerable expansion of agriculture and livestock farming, shaping the economic activities in the area today, with a major maize-growing industry and numerous feed manufacturers transforming cereal crops into feed for the huge number of pig and cattle farms in the zone.

Although the macro-zone has always been an ideal source for the raw materials needed for pig-rearing (maize and whey), it is equally true that the geography and morphology of the Brianza region have been key factors in enabling the development of typical products such as 'Salame Brianza'.

The alpine range that forms the north-west border of the Brianza area actually brings special climatic conditions to the whole Piedmont region: air currents and weather systems are filtered by the vast mountain ranges, creating various atmospheric phenomena such as air-filtering, warm down-slope winds, cold winds (when the currents blow from the north instead of from the west), and fog. All this naturally produces the ideal conditions for ageing 'Salame Brianza', as the fermentation that begins during ageing is due to the array of microbial flora found in the places used for processing and ageing the product, and the microbial flora is itself determined by the environmental characteristics of the zone (temperature, humidity, etc.).

Reference to publication of the specification

[Article 5(7) of Regulation (EC) No 510/2006]

The Ministry launched the national objection procedure with the publication of the proposal for amending the 'Salame Brianza' protected designation of origin in Official Gazette of the Italian Republic No 8 of 10 January 2008.

The full text of the product specification for 'Salame Brianza' PDO can be found:

— on the following website:

<http://www.politicheagricole.it/flex/cm/pages/ServeBLOB.php/L/IT/IDPagina/3335>

or

— by going directly to the home page of the Ministry of Agricultural, Food and Forestry Policy (www.politicheagricole.it) and clicking on 'Qualità e sicurezza' (at the top right of the screen), and then on 'Disciplinari di Produzione all'esame dell'UE'.

COMMISSION REGULATION (EU) No 873/2013**of 11 September 2013****establishing a prohibition of fishing for saithe in areas IIIa and IV; EU waters of IIa, IIb, IIc and Subdivisions 22-32 by vessels flying the flag of the Netherlands**

THE EUROPEAN COMMISSION,

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

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

Whereas:

- (1) Council Regulation (EU) No 40/2013 of 21 January 2013 fixing for 2013 the fishing opportunities available in EU waters and, to EU vessels, in certain non-EU waters for certain fish stocks and groups of fish stocks which are subject to international negotiations or agreements ⁽²⁾, lays down quotas for 2013.
- (2) According to the information received by the Commission, catches of the stock referred to in the Annex to this Regulation by vessels flying the flag of or registered in the Member State referred to therein have exhausted the quota allocated for 2013.
- (3) It is therefore necessary to prohibit fishing activities for that stock,

HAS ADOPTED THIS REGULATION:

*Article 1***Quota exhaustion**

The fishing quota allocated to the Member State referred to in the Annex to this Regulation for the stock referred to therein for 2013 shall be deemed to be exhausted from the date set out in that Annex.

*Article 2***Prohibitions**

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

*Article 3***Entry into force**

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

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

Done at Brussels, 11 September 2013.

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

Lowri EVANS

Director-General for Maritime Affairs and Fisheries

⁽¹⁾ OJ L 343, 22.12.2009, p. 1.

⁽²⁾ OJ L 23, 25.1.2013, p. 54.

ANNEX

No	36/TQ40
Member State	The Netherlands
Stock	POK/2A34.
Species	Saithe (<i>Pollachius virens</i>)
Zone	IIIa and IV; EU waters of IIa, IIIb, IIIc and Subdivisions 22-32
Date	12.8.2013

COMMISSION IMPLEMENTING REGULATION (EU) No 874/2013**of 11 September 2013****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:

- (1) Implementing Regulation (EU) No 543/2011 lays down, pursuant to the outcome of the Uruguay Round multi-lateral 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.

- (2) The standard import value is calculated each working day, in accordance with Article 136(1) of Implementing Regulation (EU) No 543/2011, taking into account variable daily data. Therefore 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 standard import values referred to in Article 136 of Implementing Regulation (EU) No 543/2011 are fixed in the Annex to this Regulation.

Article 2

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

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

Done at Brussels, 11 September 2013.

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

Jerzy PLEWA
*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	MK	34,4
	XS	27,7
	ZZ	31,1
0707 00 05	TR	95,4
	ZZ	95,4
0709 93 10	TR	133,1
	ZZ	133,1
0805 50 10	AR	102,6
	CL	142,3
	IL	142,1
	TR	73,0
	UY	99,5
	ZA	121,6
	ZZ	113,5
0806 10 10	BR	183,4
	EG	184,6
	IL	162,2
	TR	144,9
	ZZ	168,8
0808 10 80	AR	163,2
	BR	54,6
	CL	130,8
	NZ	144,8
	US	145,5
	ZA	120,7
	ZZ	126,6
0808 30 90	AR	202,6
	CN	82,3
	TR	132,0
	ZA	206,6
	ZZ	155,9
0809 30	TR	130,8
	ZZ	130,8
0809 40 05	BA	45,1
	MK	54,9
	XS	53,5
	ZZ	51,2

⁽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'.

DECISIONS

COMMISSION DECISION

of 2 May 2013

on State aid SA.33618 (12/C) which Sweden is planning to implement for Uppsala arena

(notified under document C(2013) 2362)

(Only the English text is authentic)

(Text with EEA relevance)

(2013/452/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 108(2) thereof,

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

Having called on interested parties to submit their comments pursuant to the provision(s) cited above ⁽¹⁾ and having regard to their comments,

Whereas:

1. PROCEDURE

- (1) On 7 December 2011, Sweden notified the Commission a measure for a new arena in Uppsala following a pre-notification phase. On 17 January 2012, the Commission sent a request for information. Sweden submitted its reply on 16 February 2012.
- (2) By letter dated 22 March 2012, the Commission informed Sweden that it had decided to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union in respect of the aid.
- (3) The Commission decision to initiate the procedure was published in the *Official Journal of the European Union* ⁽²⁾. The Commission called on interested parties to submit their comments.
- (4) The Commission received comments from one interested party. It forwarded them to Sweden, which was given the opportunity to react; its comments were received by letter dated 3 August 2012.
- (5) Sweden also submitted additional clarifications in October and November 2012.

- (6) Sweden has provided a language waiver and agrees that the decision will be adopted in English as the authentic language.

2. DESCRIPTION OF THE MEASURE

- (7) The parties involved in the Uppsala arena project are the municipality of Uppsala ⁽³⁾ (hereafter the "municipality"), and three firms which have, or will have upon being set up, private ownership, namely, the Arena Company, the Property Company and the Events Company.
- (8) The Arena Company will manage and coordinate the arena project until the Property Company and Events Company have been formed. The Arena Company is the only company which currently exists. It is owned by the private companies SH Bygg (45 %), Aros Holding (45 %) and the sports club Almtuna IS (10 %).
- (9) The Property Company will build and own the arena. The shareholders of the Property Company will exclusively be private investors. The municipality will set out requirements in order to ensure that the selection of the Property Company is managed objectively and as openly and transparently as possible. The Arena Company will make suggestions to the municipality of possible and eligible investors, and the municipality will be in charge of approving and deciding which investors are selected to form the Property Company in accordance with the listed selection criteria ⁽⁴⁾. The arena project will have a portal website as a means of providing information and communicating with interested parties. Through this portal, interested parties

⁽³⁾ Uppsala is the fourth largest city in Sweden (located approx. 70 km north of Stockholm).

⁽⁴⁾ The selection criteria for the Property Company is listed in the Supplement to Letter of Intent, submitted by Sweden on 29 June 2012; a.o. the candidate should have: experience and knowledge of construction and operating a larger facility for commercial purposes; a high level of professional competence; financial stability and strength; commitment to promote the arena's openness to the public and work actively against discrimination.

⁽¹⁾ OJ C 152, 30.5.2012, p. 18.

⁽²⁾ Cf. footnote 1.

will have the opportunity to express an interest to invest in the Property Company ⁽⁵⁾. However, the municipality will not own any part of the arena nor have any influence over the activities of the Property Company as such, but will, in return for its grant, receive an option to purchase the Property Company.

- (10) The Events Company will be a private undertaking in charge of the operation of the arena. The owner(s) may not be the same as those of the Property Company. The Events Company will be selected by the Property Company in compliance with the requirements set out by the municipality to ensure that the selection of the Events Company is open, transparent and objective and in accordance with the listed selection criteria ⁽⁶⁾.

- (11) In order to meet the current and future need for facilities for sporting and cultural events, the municipality claims, based on the result of studies made ⁽⁷⁾, that a multifunctional facility the size of the arena must be constructed.

- (12) The arena will be designed to cater for several types of sport for example ice hockey, basketball, floor ball, handball and equestrian sports, several types of cultural and entertainment events for example concerts, family shows, TV productions and gala events and various types of meetings for example conferences, company meetings, trade fairs, corporate events. The largest arena room will have capacity to accommodate 8 500 visitors at sport events and 10 000 at other events ⁽⁸⁾. The arena will also house a gym and restaurants.

- (13) Currently there are six arenas and concert halls in Uppsala, four of which are owned by the municipality

⁽⁵⁾ In analogy with the Commission Interpretative Communication on the Community law applicable to contract awards which are not subject or not fully subject to the provisions of the Public Procurement Directives, (OJ C 179, 1.8.2006, p. 2).

⁽⁶⁾ The selection criteria for the Events Company is listed in the Supplement to Letter of Intent, submitted by Sweden on 29 June 2012; a.o. the candidate should have: experience and knowledge of the relevant markets, high level of professional competence and to the events, sports and cultural scene in Uppsala, credible business plan for the operation of the arena including openness to the public and work against discrimination, financial stability and strength and agree to a fair and commercial mix of fixed and result-oriented level of compensation.

⁽⁷⁾ Several surveys have been submitted for example a survey on the needs for facilities for organised sports associations in Uppsala, the result thereof showed that currently only around 70 % of the need for facilities for major sports in Uppsala is met and thus the lack of capacity would correspond to approximately 30 %. Another questionnaire amongst the residents of Uppsala revealed that 37 % of the residents believe that the municipality should invest in sports halls, arenas and stadiums, the second most required investment after bike and walking paths, and that investments in sport events are preferred by 16 %.

⁽⁸⁾ The larger of the two wings of the arena will have capacity to take 2 000 visitors at sports and 3 500 visitors at congresses and concerts. The smaller of the two wings of the arena will have capacity to take around 1 000 visitors at any event and the "conference room" of the arena has room for 10 to 400 visitors.

and two of which are privately owned. In addition, there are other large arenas within 1 to 2 hours distance road from Uppsala, *inter alia* in Stockholm. However, Sweden claims that the present capacity is insufficient to meet the needs for arena space and does not allow the hosting of larger sporting and cultural events and that an alternative means of expansion would be more expensive for the municipality ⁽⁹⁾.

- (14) The municipality's preference would be for the new capacity to be provided by private projects, without public intervention, but this is not feasible.

2.1. Funding of the construction of the arena

- (15) The municipality will be financially involved in two ways first by a direct grant to the building of the arena and second by leasing the land on which it will be built to the Property Company.

- (16) Regarding the grant, the cost of the arena project is estimated at SEK 650 million (or EUR 72 million). The municipality would contribute with a grant of SEK 150 million (or EUR 16,5 million), the rest would be financed mainly by a mix of private capital and loans as follows: the private owners of the Property Company will contribute SEK 75 to 100 million (or EUR 8 to 11 million) and the Property Company will take up loans of between SEK 400 to 425 million (or EUR 44 to 47 million) for which the municipality will not provide any guarantees.

- (17) In return for its funding, the municipality will receive an option ("the option") to buy the arena. The option, which is transferable, may be exercised from year 6 until year 25 from the date it comes into force. In order to exercise this option, the option holder will pay a fee in accordance with the criteria set out in the option agreement. A possible scenario in year 10 has been provided indicating such fee to be SEK 47,3 million (or EUR 5 million). According to Sweden, the net present value of the option is SEK 128 million (or EUR 15 million) in a *pessimistic* case scenario (which would mean that the net value of the municipal grant is SEK 22 million (or EUR 2,6 million)) ⁽¹⁰⁾. According to Sweden, the municipality has no interest in becoming an owner of the arena and the value of the option for the municipality resides in the possibility of selling it on in the future to recoup the funding of the arena.

⁽⁹⁾ For example only maintaining the existing Gränby Ice Rink without any expansion would not be a realistic alternative, because it would not solve the need for new capacity and expanding of Gränby Ice Rink would involve higher costs for the municipality.

⁽¹⁰⁾ The option is drafted in consultation with the financial adviser Copenhagen Economics. In a base scenario the option is valued at SEK 174 million (or EUR 19,6 million), that is to say SEK 24 million more than the grant.

- (18) Regarding the land lease, the arena will be built on public land, which the municipality will lease to the Property Company for a minimum term of 50 years ⁽¹¹⁾. The lease will be SEK 50 000 per year (or EUR 5 500). The rent is claimed to be on market terms.

2.2. Operation and Use of the arena

- (19) Upon completion of the construction, the arena will be operated by the Events Company, which will lease the arena from the Property Company and then let it to users.
- (20) One of the conditions for contributing to the funding of the arena is that the municipality has set out requirements for the selection of the Events Company. According to the leasing agreement between the Property Company and the Events Company, the latter will also ensure that the arena is made available to the general public on market terms and under non-discriminatory conditions.
- (21) As clarified by Sweden during the procedure, there will be three main categories of events in the arena: commercial events, sponsored events and events organised by the municipality or others during the time the arena is rented by the municipality. Approximately 90 % of those events will be open to the public, although at varying fee levels, and no less than 95 % of the municipality's rented time will be used for school and student sports, non-profit associations and leisure sport for the general public that is to say around 60 hours per week. The arena is claimed to be multifunctional and open to all with no captive user given predominant use ⁽¹²⁾.
- (22) In order to ensure arena time for schools, sports clubs and the general public, as well as for the municipality's own events, the municipality will enter into a lease agreement with the Events Company ⁽¹³⁾. The municipality will lease 20 % of the total capacity of the arena.

⁽¹¹⁾ The municipality may not terminate the site leasehold prior to the expiry of 50 years from the date of the lease and thereafter upon the expiry of consecutive 20 year periods.

⁽¹²⁾ Although the arena will become the home arena for local ice hockey and basketball teams, it has been explained that those associations will not govern the use of the arena.

⁽¹³⁾ In addition to the leasing agreement between the Events Company and the municipality, the latter will also enter into an agreement with the Property Company in order to, a.o. secure municipal and public access to the arena in case the Events Company was to become insolvent or lose its lease agreement with the Property Company. The lease the Property Company will in such cases continue under the same conditions.

The lease will be for 25 years with a rent of SEK 15 million (or EUR 1,7 million) per year ⁽¹⁴⁾. Besides the rent paid by the municipality, the arena is estimated to have other rental revenues of SEK [...] ^(*).

2.3. Grounds for initiating the procedure

- (23) In the decision to open formal investigation, the Commission found that a selective economic advantage could not be excluded at any level for example construction, operation and use and consequently the project would involve state aid. In addition, the public co-financing of the arena, would most likely distort, or at least, threaten to distort competition and have an effect on competition and trade between Member States could not be excluded. The Commission also had doubts whether the proposed project could be deemed compatible under Article 107(3)(c) of the Treaty, at that stage at all three levels of possible aid (construction, operation and use) in accordance with the above.

3. COMMENTS FROM INTERESTED PARTIES

- (24) Following the opening of the formal investigation procedure, comments were only submitted by the Green party, an opposition party in the Uppsala Municipal Council which, in general terms, expressed its disapproval of the project which it considered to be primarily to the benefit of private undertakings.

4. COMMENTS FROM SWEDEN

- (25) Sweden has, for the purpose of the notification, assumed the presence of state aid as they acknowledge that the additional arena capacity will not be provided by market forces but argue that it should be considered compatible under article 107(3)(c) of the Treaty. They argue that in particular the following should be taken into consideration.
- (26) The arena satisfies a well-defined objective of common interest in light of its multifunctional character and present lack of adequate and up-to-date facilities for sports and cultural events in Uppsala. The municipality will be fulfilling its responsibility to the general public by making the arena project possible ⁽¹⁵⁾. Available alternatives, investments into the existing infrastructure Gränby Ice Rink would cost more and would still not cover the full capacity shortfall.
- (27) There is a market failure as the required new arena capacity would not be provided without the aid. The

⁽¹⁴⁾ The rent will be reviewed yearly, on the basis of the consumer price index. The municipality will also make a separate agreement with the Property Company to ensure that it will keep access to the arena on the same terms should the Events Company go out of business.

^(*) [...]: the information in brackets is covered by the obligation of professional secrecy

⁽¹⁵⁾ According to surveys there is at present a 30 % shortage in the capacity for the type of sports and cultural events that the arena would accommodate.

Swedish sport sector is, unlike the situation in some other Member States, largely non-profit and reliant upon public financial support.

the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market".

- (28) The public co-funding at 23 % of the total project budget is limited to what is strictly necessary and proportionate in order to realise the project by being limited to the funding gap that is to say the funding that cannot be found on the market. Thus, by investing the "missing" funds the municipality makes the arena project possible since no other market actor is willing to contribute the SEK 150 million (or EUR 16,5 million). The lease that the municipality will pay for 20 % of the arena's capacity will not provide an advantage to the operator compared to market terms, and the site will be leased to the Property Company on terms comparable to those of other undertakings leasing land from the municipality that is dedicated for sports facilities. Sweden has further explained the need of the arena, that is to say the necessary additional capacity cannot be met by private actors or by use of the existing arenas in Uppsala and/or expansion thereof.
- (29) To further ensure that the aid is proportionate, the municipality will receive the option, valued at a base scenario at SEK 174 million (or EUR 19,6 million) ⁽¹⁶⁾. The option precludes any over-compensation since the municipality gets the option in return for its contribution which is worth more than the contribution made.
- (30) Sweden has also further clarified the use of the arena and its openness to the public, that is to say, open to the general public for approximately 90 % of the available time and the use of the arena will be ensured on a non-discriminatory basis without favouring any specific undertaking(s) and on market terms.
- (31) The effect on competition and trade between Member States, if any, is limited since the economic activities are mostly local. In addition, the private facilities in the municipality have different profiles and cannot be considered to compete for the same audiences as the arena.

5. ASSESSMENT OF THE AID

5.1. Existence of aid within the meaning of Article 107(1) of the Treaty

- (32) According to Article 107(1) of the Treaty, "any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or

- (33) In order to be classified as state aid, the notified project must fulfill the following cumulative conditions: first, the measure must be granted through State resources; second, it has to confer an economic advantage to undertakings; third, this advantage must be selective and distort or threaten to distort competition and fourth, the measure must affect intra-Community trade.
- (34) With regard to the requirement that the measure must be granted through State resources and must be attributable to the State, this criterion is clearly fulfilled in this case as the municipality of Uppsala itself will contribute with a direct grant, pay rent for use of the arena and provide the land where the arena is to be built. Municipalities, like Uppsala, are public authorities and part of the State and their resources are thereby deemed attributable to the State.
- (35) The municipality funding of the construction of the arena may constitute aid if it leads to a selective advantage for specific economic activities. In this context, the funding of the construction of an infrastructure for commercial activities constitutes State aid, according to the Leipzig/Halle airport judgment of the Court of Justice ⁽¹⁷⁾, if all the requirements of Article 107 (1) of the Treaty are fulfilled. Following the Court's assessment, the economic character of the later use of the infrastructure would determine the nature of the construction. In this case, the arena will be used to provide services on a market, hence for an economic activity. Consequently, it needs to be assessed whether there is State aid to the different actors involved in the project.

Construction of the arena

- (36) Sweden has acknowledged that the municipality had initially hoped that private investors would finance the realisation of the arena, but it is not feasible to carry out the project without public funding. Consequently, the SEK 150 million grant for the construction of the arena gives an economic advantage to its owner, the Property Company, as it is necessary for the construction of the arena that would not have been built on market terms. As the funds involved are obviously state resources and the decision to make the grant is imputable to the municipality, all other criteria of State aid are met see hereafter the examination of distortion of competition and effect on trade between Member States and the grant thus constitutes state aid to the Property Company.

⁽¹⁶⁾ In a negative scenario the option is valued at SEK 128 million (or EUR 15 million) which would mean that the net present value of the municipal grant is SEK 22 million (or EUR 2,6 million).

⁽¹⁷⁾ Judgment of 19 December 2012 in Case C-288/11, *Mitteldeutsche Flughafen AG and Flughafen Leipzig-Halle GmbH v Commission*.

- (37) Concerning the site leasehold, Sweden has provided evidence of comparable rent levels for other sports facilities in Uppsala⁽¹⁸⁾. Therefore it cannot be demonstrated that the terms of the lease would contain additional aid to the Property Company.

Operation of the arena

- (38) The arena will be operated by the Events Company, which will lease the arena from the Property Company. Both the Property Company and the Events Company will be private companies. During the procedure, Sweden has further clarified the terms and conditions for the selection of the Property Company and the Events Company, as well as the primary terms and conditions of the lease agreement between the Property Company and the Events Company⁽¹⁹⁾. Regarding the selection of the Property Company, the municipality will be in charge of approving and deciding which candidates are selected to form the Property Company, however, the municipality will not be involved in the commercial operations of the Property Company. The Property Company will select the Events Company, which will be a private undertaking not linked to the Property Company.

- (39) As regards the lease fee that the Events Company will pay to the Property Company, Sweden has explained that it will consist of the following elements: (i) a fixed rent that corresponds to the rent paid by the municipality to the Events Company for its lease of 20 % of the arena's capacity; (ii), a fixed fee that corresponds to the payment from a name sponsor; (iii) a fixed rent, based upon actual cost that covers operating expenses and depreciation of equipment; and (iv) a variable rent that is calculated as a percentage of the net turnover of the Events Company, with a minimum level to be agreed between the parties. In other words, the lease will – above a certain minimum that follows from the above – be set freely between the two private undertakings. Sweden has also clarified that the municipality will not have a right to be directly involved in the negotiations between the Property Company and the Events Company as regards the lease agreement and will not in any way influence the commercial terms and conditions agreed upon by those two independent, private, undertakings.

- (40) With regards to the lease agreement between the municipality and the Events Company for the use of 20 % of the total arena capacity, it shall be for 25 years with a rent of SEK 15 million per year (or EUR 1.7 million). Sweden has declared that: (i) the municipality will pay an hourly rent that is 40 to 50 % lower than the rent that the Events Company will pay the Property Company for their use of the arena (ii) the difference between the

rent that the municipality and the Events Company pays will increase over time; and (iii) the Events Company will charge market rents to other users.

- (41) While these arrangements minimise the advantage to the Events Company to the minimum necessary to ensure operation of the infrastructure, an advantage to the operator of this new arena within the market for operating such facilities cannot be excluded. However, given that such aid would be compatible with the internal market, as demonstrated below, it is not necessary to make a definitive finding about the existence of aid.

Use of the arena

- (42) As mentioned above, the Events Company is a private undertaking. Regarding the use of the arena, the Events Company has to ensure that the arena is made available to the general public on market terms and under non-discriminatory conditions. Approximately 90 % of all events will be open to the public, although at varying fee levels, and no less than 95 % of the municipality's rented time will be used for school and student sports, non-profit associations and leisure sport for the general public that is to say around 60 hours per week). Thus, the arena is multifunctional and open to all with no captive professional user.
- (43) In this case, the municipality will be an essential customer and the arena will to a large extent be used by the local ice-hockey and basketball teams, which will have the arena as their home arena. The ice-hockey team's activities, as well as the basketball teams', are predominantly at the amateur level, and the best team of the ice-hockey association plays in the second highest ice-hockey division.

- (44) The renting of the arena may constitute aid for the users, if the users can be considered undertakings within the meaning of Article 107 of the Treaty and if the rent they pay is below the rent for the use of comparable infrastructure under normal market conditions. Non-professional users do not qualify as undertakings within the meaning of Article 107 of the Treaty. Sweden committed furthermore to apply a market oriented fee. However, in the absence of any clarification on how that fee will be calculated, an advantage cannot be entirely excluded.

Effect on competition and trade between Member States

- (45) Even if most of the activities which are to be carried out in the arena are of local character, the arena will have the capacity to host large or mid-size international events as well, and thus an effect on competition and trade between Member States cannot be excluded. Although, according to the municipality, it is highly unlikely that more than a few, if any, of the events that will take place

⁽¹⁸⁾ An example of a comparable site leasehold interest agreement regarding a tennis facility in Gränby has been provided, for which the rent is SEK 52 000 per year.

⁽¹⁹⁾ See Supplement to Letter of Intent dated 29 June 2012.

in the arena will be of such an interest to persons living in neighbouring countries that they would be willing to travel hundreds of kilometers to Uppsala in order to attend the events and thus it would be unlikely that events taking place in the arena would compete with arenas in nearby countries.

- (46) However, the General Court has held, in its Order concerning the Ahoy complex in the Netherlands, that there was no reason to limit the market for use of this type of facilities to the territory of that Member State⁽²⁰⁾. As in the opening decision, the Commission therefore considers that aid to the arena has the potential to affect competition and trade between Member States.

5.2. Compatibility

- (47) Sweden argued that if the measure was found to constitute state aid, this should be declared compatible under article 107(3)(c) of the Treaty. In order for a proposed measure to be found compatible with the internal market under this derogation, the Commission examines whether it pursues a policy objective of common interest, as well as whether it is necessary and proportional and does not cause undue distortion of competition.
- (48) With regard to the achievement of a policy objective of common interest, it is noted that the construction of venues for sport and other public events and supporting different types of activities which benefit the general public can be considered as a State responsibility, particularly in light of the Amsterdam Declaration on Sport and article 165 of the Treaty, "The Union shall contribute to the promotion of European sporting issues, while taking account of its specific nature, its structures based on voluntary activity and its social and educational function".
- (49) As the arena will ensure the general public's access and practice of sport and culture, particularly considering the arena's multifunctional character and lack of capacity and/or adequate and up-to-date facilities for sports and cultural events in Uppsala, the municipality will be fulfilling its responsibility to the general public by making the arena project possible. The realisation of the arena must therefore be regarded as satisfying policy objectives of common interest.
- (50) Concerning the necessity and proportionality of the proposed measure, Sweden has demonstrated the need

of additional arena capacity. With only 70 % of the need for facilities for major sports in Uppsala being satisfied⁽²¹⁾ and with Uppsala's population growing at a relatively high rate, there is an urgent and pressing need for additional arena capacity in Uppsala. Sweden has further explained that the need of the arena cannot be met fully by private actors alone. One reason is the characteristic of the Swedish sports movement, amongst others not-for-profit and based on voluntary leadership and work, and dependent on public financial support. Sweden has further explained that the existing arenas are also inappropriate for certain types of events etc for example larger sports and cultural events and that the privately owned facilities typically arrange only smaller types of events. The existing facilities have become outdated and do not meet the modern requirements of the public anymore. The Gränby Ice Rink was built in 1974, and in order to improve it to modern standards, it would, according to Sweden, require such a big change that in practice it would amount to building a whole new arena and the site where it is located is too small to make that possible. E.g. the adjacent bandy facility would be affected and another problem with the site is that it is not able cope with transportation, evacuation and safety of visitors and players, while other activities are going on in other facilities nearby.

- (51) In addition, with the new arena constructed, the existing arenas including Gränby Ice Rink will still be used. The new arena with its multiarena character will be used both for large sports and cultural events which currently cannot take place in Uppsala, as a complement to the existing arenas, while the existing arenas will continue functioning mainly in the same way as they currently do. With the new arena, larger sports events that currently take place at Gränby Ice Rink for example ice-hockey games in the second highest division can be moved to more suitable facilities in the new arena with higher capacity. It is expected that around 60 % of the ice-hockey will gradually be moved from Gränby Ice Rink to the new arena, which will free around 3 045 hours per year at Gränby Ice Rink for school and student sports and leisure sports for the general public.
- (52) There are also no practicable alternatives to the construction of the new arena. Maintaining the existing arena of Gränby Ice Rink without any expansion of capacity, would not be a realistic alternative to the arena because it would not solve the need for new capacity, and expanding the capacity of Gränby Ice Rink, would not satisfy the need for facilities to host larger events. With the new arena constructed, the existing arenas including Gränby Ice Rink will still require repairs and need to be re-equipped.

⁽²⁰⁾ Case T-90/09 *Mojo Concerts BV and Amsterdam Music Dome Exploitatie BV v. the European Commission*, Order of the General Court of 26/01/2012, paragraph 45.

⁽²¹⁾ Based on surveys carried out, see also footnote 7.

- (53) Consequently, even if other arenas exist both directly in the areas and in nearby cities/countries, the Commission considers that Sweden has shown that the need of additional capacity in Uppsala cannot be met only by the use or expansion of the existing arenas in Uppsala. The new arena will become a complement, ensuring an effective use of the arena capacity in Uppsala, rather than a substitute for the existing arenas, in particular Gränby Ice Rink, as well as a host for larger sports and cultural events for which there are currently no appropriate venues in Uppsala.
- (54) Sweden has also explained that if the municipality had not taken an interest in this project the private parties would have settled for a different arena with more focus on commercial activities to the detriment of sporting activities and in general the general public. According to Sweden, discussions with banks and private investors have revealed that they are not willing to cover the entire financial risk that the project involves. The total investment cost of SEK 650 million (or EUR 72 million) is financed by three parts: loans, direct private investments and municipal investment. In order to ensure enough solidity in the company, the part financed by loans cannot be too large and the rest must be financed directly by investors. Due to the structure and risk/return of the project, the private investors are only willing to invest around SEK 75 to 100 million (or EUR 8 to 11 million), leaving SEK 150 million (or EUR 16,5 million) to be financed by the municipality. With such an investment by the municipality, the initial solidity will be above 35 % and will also remain above 30 % for the project⁽²²⁾. The amount of SEK 150 million (or EUR 16,5 million) also corresponds to around 23 % of the nominal total investment. All private letters of intent from banks and private investors are contingent on the municipality investing SEK 150 million (or EUR 16,5 million). An investment of such an amount from the municipality is thus necessary to realise the project and to achieve the public benefits thereof. It has thus been demonstrated, that the municipality's commitment to the project is essential. The public co-financing of the arena is also necessary, as without the municipality's contribution there will not be enough funds to finance the arena project. Based on the above, the municipal contribution has also been ensured to be limited to the strictly necessary.
- (55) In return for its contribution, the municipality's option to buy the arena is valued in a pessimistic scenario to SEK 128 million (or EUR 15 million), which means that the net value of the municipal capital contribution is at most SEK 22 million (or EUR 2,6 million) in a negative scenario. However, the municipality estimates that the value of the option almost certainly exceeds the investment cost.
- (56) In any case, both the selection procedure of the operator and its agreement with the Property Company, together with the other above reasons, ensure that the necessity and proportionality requirements would be fulfilled.
- (57) Regarding the municipality's use of the arena, 20 % of the total possible use of the arena amounting to 3 285 hours per year, Sweden has committed that no less than 95 % of the Municipality's rented time will be used for school and student sports, non-profit associations and leisure sport for the general public around 3 121 hours per year, approximately 60 hours per week. Consequently, in terms of openness to the general public, the new arena will not only add 3 285 hours of capacity due to the municipality's rent agreement for the new arena, but also add available time of 3 045 hour per year at Gränby ice rink (see recital 51).
- (58) Hence, the new arena will both complement existing arenas with additional capacity and increase the types of events, both sports and cultural, which can take place in Uppsala, and considerably benefit amateur sports and the general public in Uppsala. Thus, the aid must thus be considered well-targeted and the public co-financing thereof justified
- (59) In addition, considering the location of the arena and that most of the activities which are to be carried out in the arena are of local character, the effect on competition and trade between Member States is limited, although, as described above, cannot be completely excluded.
- (60) From the above reasons, it has been demonstrated that the municipality's involvement in the arena project is both necessary, proportionate and does not cause undue distortion of competition, and that possible aid to the Events Company and users would also be compatible with the internal market.
- (61) As the project is still in phase 1 pending the Commission's approval, it is only following such an approval that the project will evolve and the Property Company and the Events Company will be formed. Thus, Sweden has committed that:
- ⁽²²⁾ Calculations on solidity in the Property Company dependent on the initial investment from the municipality by Copenhagen Economics. Sweden has also explained that banks are generally hesitant to loan funds to projects with solidity lower than 30 %.

- (i) the Letter of Intent and supplement to Letter of Intent between the municipality and the Arena Company shall be implemented ⁽²³⁾;
- (ii) no less than 95 % of the municipality's rented time in the arena shall be used for school and student sports, non-profit associations, and leisure sport for the general public;
- (iii) Sweden shall submit the relevant agreements that are entered into as a result of the Letter of Intent to the Commission (the agreement between the municipality and the Property Company, the agreement between the Property Company and the Events Company and the lease agreement between the municipality and the Events Company); and
- (iv) Sweden shall submit annual reports on the implementation of the aid measure, in particular with regards to point 2 above, for the period up to the end of year 2020 to the Commission.

6. CONCLUSION

- (62) The municipality's grant for the construction of the arena constitutes state aid to the Property Company, and possibly to the Events Company and the users of the arena. The public co-financing of the Uppsala arena has been demonstrated to be both necessary and proportionate to realise the project, as well as sufficiently open to all on non-discriminatory terms without favouring any specific undertaking(s). The outcome of the balancing test is positive.

(63) The Commission therefore finds that the Uppsala arena project is compatible with the internal market in accordance with Article 107(3)(c) of the Treaty.

(64) The Commission notes that Sweden has agreed that the decision shall be adopted in English as the authentic language.

HAS ADOPTED THIS DECISION:

Article 1

The measure which Sweden is planning to implement for the Uppsala arena, amounting to SEK 150 million is compatible with the internal market pursuant to Article 107(3)(c) of the Treaty on the Functioning of the European Union. Implementation of the measure amounting to SEK 150 million is accordingly authorised.

Article 2

This Decision is addressed to the Kingdom of Sweden.

Done at Brussels, 2 May 2013.

For the Commission
Joaquín ALMUNIA
Vice-President

⁽²³⁾ As submitted to the Commission by Sweden as Appendix 6 to the Notification and as supplemented by Appendix 1 to the submission of 29 June 2012.

NOTICE TO READERS

Council Regulation (EU) No 216/2013 of 7 March 2013 on the electronic publication of the *Official Journal of the European Union*

In accordance with Council Regulation (EU) No 216/2013 of 7 March 2013 on the electronic publication of the *Official Journal of the European Union* (OJ L 69, 13.3.2013, p. 1), as of 1 July 2013, only the electronic edition of the Official Journal shall be considered authentic and shall have legal effect.

Where it is not possible to publish the electronic edition of the Official Journal due to unforeseen and exceptional circumstances, the printed edition shall be authentic and shall have legal effect in accordance with the terms and conditions set out in Article 3 of Regulation (EU) No 216/2013.

NOTE TO READERS — WAY OF REFERRING TO ACTS

As of 1 July 2013 the way of referring to acts has changed.

During a transitional period this new practice will coexist with the previous one.

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