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Price: EUR 4

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⁽¹⁾ Text with EEA relevance

EN

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II

(Non-legislative acts)

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) No 1101/2013

of 6 November 2013

concerning the authorisation of a preparation of *Enterococcus faecium* DSM 7134 and *Lactobacillus rhamnosus* DSM 7133 as a feed additive for calves for rearing and amending Regulation (EC) No 1288/2004 (holder of authorisation Lactosan GmbH & CoKG)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 1831/2003 of the European Parliament and of the Council of 22 September 2003 on additives for use in animal nutrition⁽¹⁾, and in particular Article 9(2) thereof,

Whereas:

- (1) Regulation (EC) No 1831/2003 provides for the authorisation of additives for use in animal nutrition and for the grounds and procedures for granting such authorisation. Article 10 of that Regulation provides for the re-evaluation of additives authorised pursuant to Council Directive 70/524/EEC⁽²⁾.
- (2) A preparation of *Enterococcus faecium* DSM 7134 and *Lactobacillus rhamnosus* DSM 7133 was authorised without a time limit in accordance with Directive 70/524/EEC as a feed additive for use on calves by Commission Regulation (EC) No 1288/2004⁽³⁾. That preparation was subsequently entered in the Register of feed additives as an existing product, in accordance with Article 10(1)(b) of Regulation (EC) No 1831/2003.

- (3) In accordance with Article 10(2) of Regulation (EC) No 1831/2003 in conjunction with Article 7 thereof, an application was submitted for the re-evaluation of a preparation of *Enterococcus faecium* DSM 7134 and *Lactobacillus rhamnosus* DSM 7133, as a feed additive for calves for rearing, requesting that additive to be classified in the additive category 'zootechnical additives'. That application was accompanied by the particulars and documents required under Article 7(3) of Regulation (EC) No 1831/2003.
- (4) The European Food Safety Authority ('the Authority') concluded in its opinion of 13 March 2013⁽⁴⁾ that, under the proposed conditions of use in feed, the preparation of *Enterococcus faecium* DSM 7134 and *Lactobacillus rhamnosus* DSM 7133 does not have an adverse effect on animal and consumer health, and for the environment and it has the potential to improve the zootechnical performance in target animals. It also verified the report on the method of analysis of the feed additive in feed submitted by the Reference Laboratory set up by Regulation (EC) No 1831/2003.
- (5) The assessment of the preparation of *Enterococcus faecium* DSM 7134 and *Lactobacillus rhamnosus* DSM 7133 shows that the conditions for authorisation, as provided for in Article 5 of Regulation (EC) No 1831/2003, are satisfied. Accordingly, the use of that preparation should be authorised as specified in the Annex to this Regulation.
- (6) As a consequence of the granting of a new authorisation under Regulation (EC) No 1831/2003, the provisions on *Enterococcus faecium* DSM 7134 and *Lactobacillus rhamnosus* DSM 7133 contained in Regulation (EC) No 1288/2004 should be deleted. Regulation (EC) No 1288/2004 should be therefore amended accordingly.

⁽¹⁾ OJ L 268, 18.10.2003, p. 29.

⁽²⁾ Council Directive 70/524/EEC of 23 November 1970 concerning additives in feeding-stuffs (OJ L 270, 14.12.1970, p. 1).

⁽³⁾ Commission Regulation (EC) No 1288/2004 of 14 July 2004 concerning the permanent authorisation of certain additives and the provisional authorisation of a new use of an additive already authorised in feedingstuffs (OJ L 243, 15.7.2004, p. 10).

⁽⁴⁾ EFSA Journal 2013; 11(4):3175.

- (7) Since safety reasons do not require the immediate application of the modifications to the conditions of authorisation, it is appropriate to allow a transitional period for interested parties to prepare themselves to meet the new requirements resulting from the authorisation.
- (8) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS REGULATION:

Article 1

The preparation specified in the Annex, belonging to the additive category 'zootechnical additives' and to the functional group 'gut flora stabilisers', is authorised as an additive in animal nutrition subject to the conditions laid down in that Annex.

Article 2

In Annex I to Regulation (EC) No 1288/2004 the provisions on E 1706, *Enterococcus faecium* DSM 7134 and *Lactobacillus rhamnosus* DSM 7133 are deleted.

Article 3

The preparation specified in the Annex and feed containing that preparation, which are produced and labelled before 27 May 2014 in accordance with the rules applicable before 27 November 2013 may continue to be placed on the market and used until the existing stocks are exhausted.

Article 4

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

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

Done at Brussels, 6 November 2013.

For the Commission

The President

José Manuel BARROSO

ANNEX

Identification number of the additive	Name of the holder of authorisation	Additive	Composition, chemical formula, description, analytical method	Species or category of animal	Maximum age	Minimum content	Maximum content	Other provisions	End of period of authorisation
						CFU/kg of complete feedingstuff with a moisture content of 12 % or of milk replacer			
Category of zootechnical additives. Functional group: gut flora stabilisers									
4b1706	Lactosan GmbH & Co KG	<i>Enterococcus faecium</i> DSM 7134 <i>Lactobacillus rhamnosus</i> DSM 7133	<i>Additive composition</i> Preparation of: <i>Enterococcus faecium</i> DSM 7134 containing a minimum of 7 × 10 ⁹ CFU/g of additive, and <i>Lactobacillus rhamnosus</i> DSM 7133: 3 × 10 ⁹ CFU/g of additive (ratio 7:3) Solid form <i>Characterisation of the active substance</i> Viable cells of: <i>Enterococcus faecium</i> DSM 7134, and <i>Lactobacillus rhamnosus</i> DSM 7133 <i>Analytical method</i> ⁽¹⁾ Enumeration of: <i>Enterococcus faecium</i> DSM 7134: spread plate method using bile esculin azide agar (EN 15788) <i>Lactobacillus rhamnosus</i> DSM 7133: spread plate method using MRS agar (EN 15787) Identification of <i>Enterococcus faecium</i> DSM 7134, and <i>Lactobacillus rhamnosus</i> DSM 7133: Pulsed Field Gel Electrophoresis (PFGE).	Calves for rearing	4 months	1 × 10 ⁹	—	1. In the directions for use of the additive and premixture, indicate the storage conditions and stability to pelleting. 2. For safety: it is recommended to use breathing protection and gloves during handling.	27 November 2023

⁽¹⁾ Details of the analytical methods are available at the following address of the Reference Laboratory for Feed Additives: http://irmm.jrc.ec.europa.eu/EURLs/EURL_feed_additives/Pages/index.aspx

COMMISSION IMPLEMENTING REGULATION (EU) No 1102/2013

of 6 November 2013

amending Implementing Regulation (EU) No 1044/2012 on a derogation from Regulation (EEC) No 2454/93 as regards the rules of origin used for the purposes of the scheme of generalised tariff preferences to take account of the special situation of Guatemala regarding exports of certain fisheries products to the Union

THE EUROPEAN COMMISSION,

processing industry to comply with the rules for the acquisition of preferential origin of fish.

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

Having regard to Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code ⁽¹⁾, and in particular Article 247 thereof,Having regard to Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code ⁽²⁾, and in particular Article 89(1)(b) thereof,

Whereas:

(1) By Commission Implementing Regulation (EU) No 1044/2012 ⁽³⁾, the Commission granted Guatemala a derogation from the rules of origin laid down in Regulation (EEC) No 2454/93 allowing it to consider certain processed fishery products produced in Guatemala from non-originating fish as originating in Guatemala. This derogation expired on 30 June 2013.

(2) By letter dated 27 May 2013, Guatemala submitted a request for the extension of the derogation. The request is for the extension until 31 December 2013 with respect to 987,5 tonnes of cooked, frozen and vacuum-packed tuna fillets known as 'loins' (hereafter 'tuna loins') of CN code 1604 14 16. By letters dated 17 and 29 July 2013, Guatemala submitted additional information in support of that request.

(3) The request demonstrates that the time covered by the said derogation was insufficient for Guatemala to secure adequate flows of originating tuna to the country.

(4) The extension of the derogation is therefore required in order to give Guatemala sufficient time to prepare its fish

(5) In order to ensure that the temporary derogation is limited to the time needed for Guatemala to achieve compliance with the rules for the acquisition of preferential origin of tuna loins, the derogation should be granted from 1 July 2013 to 31 December 2013.

(6) In order to ensure the continuity of exports of the fish eligible for preferential tariff treatment from Guatemala to the Union, the derogation should be granted with retroactive effect from 1 July 2013.

(7) Implementing Regulation (EU) No 1044/2012 should therefore be amended accordingly.

(8) The measures provided for in this Regulation are in accordance with the opinion of the Customs Code Committee,

HAS ADOPTED THIS REGULATION:

Article 1

Implementing Regulation (EU) No 1044/2012 is amended as follows:

(1) Article 2 is replaced by the following:

'Article 2

The derogation provided for in Article 1 shall apply to tuna loins exported from Guatemala and declared for release for free circulation in the Union during the period from 1 January 2012 to 31 December 2013 or until the date of a provisional application of the Association Agreement between the European Union and Central America by Guatemala if this date is the earlier and up to the quantities set out in the Annex to this Regulation.'

(2) The Annex to Implementing Regulation (EU) No 1044/2012 is replaced by the text set out in the Annex to this Regulation.

⁽¹⁾ OJ L 302, 19.10.1992, p. 1.

⁽²⁾ OJ L 253, 11.10.1993, p. 1.

⁽³⁾ Commission Implementing Regulation (EU) No 1044/2012 of 8 November 2012 on a derogation from Regulation (EEC) No 2454/93 as regards the rules of origin used for the purposes of the scheme of generalised tariff preferences to take account of the special situation of Guatemala regarding exports of certain fisheries products to the Union (OJ L 310, 9.11.2012, p. 28).

Article 2

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

It shall apply from 1 July 2013.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels, 6 November 2013.

For the Commission
The President
José Manuel BARROSO

ANNEX

‘ANNEX

Order No	CN code	Description of goods	Periods	Quantity (in tonnes net weight)
09.1627	ex 1604 14 16	Cooked, frozen and vacuum-packed tuna fillets known as “loins”	1.1.2012 to 31.12.2012	1 975 tonnes
09.1627	ex 1604 14 16	Cooked, frozen and vacuum-packed tuna fillets known as “loins”	1.1.2013 to 30.6.2013	987,5 tonnes
09.1627	ex 1604 14 16	Cooked, frozen and vacuum-packed tuna fillets known as “loins”	1.7.2013 to 31.12.2013	987,5 tonnes’

COMMISSION IMPLEMENTING REGULATION (EU) No 1103/2013
of 6 November 2013
amending Regulation (EU) No 185/2010 as regards recognising the equivalence of security standards
of third countries
(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 300/2008 of the European Parliament and of the Council of 11 March 2008 establishing common rules in the field of civil aviation security and repealing Regulation (EC) No 2320/2002 ⁽¹⁾, and in particular Article 4(3) thereof,

Whereas:

- (1) In accordance with Commission Regulation (EC) No 272/2009 of 2 April 2009 supplementing the common basic standards on civil aviation security laid down in the Annex to Regulation (EC) No 300/2008 of the European Parliament and of the Council ⁽²⁾, the Commission recognises the equivalence of aviation security standards of third countries under the condition that the criteria set out in that Regulation are met.
- (2) The Commission has verified that Vagar airport in Faroe Islands and Kangerlussuaq airport in Greenland fulfil the

criteria set out in Part E of the Annex to Regulation (EC) No 272/2009.

- (3) Commission Regulation (EU) No 185/2010 ⁽³⁾, lists in its Annex the third countries recognised as applying security standards equivalent to the common basic standards that Regulation (EC) No 272/2009 establishes.
- (4) Regulation (EU) No 185/2010 should therefore be amended accordingly.
- (5) The measures provided for in this Regulation are in accordance with the opinion of the Committee on Civil Aviation Security,

HAS ADOPTED THIS REGULATION:

Article 1

The Annex to Regulation (EU) No 185/2010 is amended in accordance with the Annex to this Regulation.

Article 2

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

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

Done at Brussels, 6 November 2013.

For the Commission

The President

José Manuel BARROSO

⁽¹⁾ OJ L 97, 9.4.2008, p. 72.

⁽²⁾ OJ L 91, 3.4.2009, p. 7.

⁽³⁾ Commission Regulation (EU) No 185/2010 of 4 March 2010 laying down detailed measures for the implementation of the common basic standards on aviation security (OJ L 55, 5.3.2010, p. 1).

ANNEX

The Annex to Regulation (EU) No 185/2010 is amended as follows:

(1) in Chapter 3, Attachment 3-B, the following entries are added:

'Vagar airport in Faroe Islands

Kangerlussuaq airport in Greenland'

(2) in Chapter 4, Attachment 4-B, the following entries are added:

'Vagar airport in Faroe Islands

Kangerlussuaq airport in Greenland'

(3) in Chapter 5, Attachment 5-A, the following entries are added:

'Vagar airport in Faroe Islands

Kangerlussuaq airport in Greenland'

COMMISSION IMPLEMENTING REGULATION (EU) No 1104/2013

of 6 November 2013

entering a name in the register of traditional specialities guaranteed ('Basterdsuiker'/'Basterdsuicker'/'Basterdsuijcker'/'Basterdsuijker'/'Basterd'/'Bastardsuiker'/'Bastardsuicker'/'Bastardsuijcker'/'Bastardsuijker'/'Bastard'/'Bastert'/'Bastertsuiker' (TSG))

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 52(2) thereof,

Whereas:

- (1) Regulation (EU) No 1151/2012 entered into force on 3 January 2013. It repealed and replaced Council Regulation (EC) No 509/2006 of 20 March 2006 on agricultural products and foodstuffs as traditional specialities guaranteed ⁽²⁾.
- (2) Pursuant to Article 8(2) of Regulation (EC) No 509/2006, the Netherlands' application to register the name 'Basterdsuiker'/'Basterdsuicker'/'Basterdsuijcker'/'Basterdsuijker'/'Basterd'/'Bastardsuiker'/'Bastardsuicker'/'Bastardsuijcker'/'Bastardsuijker'/'Bastard'/'Bastert'/'Bastertsuiker' (TSG))

'Bastardsuijcker'/'Bastardsuijker'/'Bastard'/'Bastert'/'Bastertsuiker' was published in the *Official Journal of the European Union* ⁽³⁾.

- (3) As no statement of objection under Article 9 of Regulation (EC) No 509/2006 has been received by the Commission, the name 'Basterdsuiker'/'Basterdsuicker'/'Basterdsuijcker'/'Basterdsuijker'/'Basterd'/'Bastardsuiker'/'Bastardsuicker'/'Bastardsuijcker'/'Bastardsuijker'/'Bastard'/'Bastert'/'Bastertsuiker' should therefore be entered in the register,

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

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

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

Done at Brussels, 6 November 2013.

For the Commission

The President

José Manuel BARROSO

⁽¹⁾ OJ L 343, 14.12.2012, p. 1.

⁽²⁾ OJ L 93, 31.3.2006, p. 1.

⁽³⁾ OJ C 363, 23.11.2012, p. 8.

ANNEX

Agricultural products and foodstuffs listed in Annex I, point II, to Regulation (EU) No 1151/2012:

Class 2.3. Confectionery, bread, pastry, cakes, biscuits and other baker's wares

THE NETHERLANDS

Basterdsuiker/Basterdsuicker/Basterdsuijcker/Basterdsuijker/Basterd/Bastardsuiker/Bastardsuicker/Bastardsuijcker/
Bastardsuijker/Bastard/Bastert/Bastertsuiker (TSG)

COMMISSION IMPLEMENTING REGULATION (EU) No 1105/2013**of 6 November 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, 6 November 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	AL	40,5
	MA	42,3
	MK	40,5
	ZZ	41,1
0707 00 05	AL	46,6
	EG	177,3
	MK	69,6
	TR	146,7
	ZZ	110,1
0709 93 10	AL	48,7
	MA	82,6
	TR	151,9
	ZZ	94,4
0805 20 10	AU	136,9
	MA	82,9
	ZA	153,1
	ZZ	124,3
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	PE	123,5
	SZ	55,7
	TR	74,2
	UY	92,8
	ZA	132,7
	ZZ	95,8
0805 50 10	TR	77,6
	ZA	54,2
	ZZ	65,9
0806 10 10	BR	237,2
	PE	270,1
	TR	164,5
	ZZ	223,9
0808 10 80	BA	66,4
	CL	210,3
	NZ	141,4
	US	132,4
	ZA	148,0
0808 30 90	ZZ	139,7
	CN	72,8
	TR	118,4
	ZZ	95,6

⁽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'.

DIRECTIVES

COUNCIL DIRECTIVE 2013/51/EURATOM

of 22 October 2013

laying down requirements for the protection of the health of the general public with regard to radioactive substances in water intended for human consumption

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Articles 31 and 32 thereof,

Having regard to the proposal from the European Commission drawn up after obtaining the opinion of a group of persons appointed by the Scientific and Technical Committee from among scientific experts in the Member States, in accordance with Article 31 of the Treaty establishing the European Atomic Energy Community,

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

After consulting the European Parliament,

Whereas:

(1) The ingestion of water is one of the pathways of incorporation of radioactive substances into the human body. In accordance with Council Directive 96/29/Euratom ⁽²⁾, the contribution to the exposure of the general public as a whole from practices which involve a risk from ionising radiation must be kept as low as reasonably achievable.

(2) In view of the importance for human health of the quality of water intended for human consumption, it is necessary to lay down, at Community level, quality

standards which have an indicator function and to provide for the monitoring of compliance with those standards.

(3) Council Directive 98/83/EC ⁽³⁾ sets out indicator parameters relating to radioactive substances in Annex I, Part C and related monitoring provisions in Annex II thereto. However, those parameters fall within the scope of the basic standards defined in Article 30 of the Euratom Treaty.

(4) The requirements for monitoring levels of radioactive substances in water intended for human consumption should therefore be adopted in specific legislation that ensures the uniformity, coherence and completeness of radiation protection legislation under the Euratom Treaty.

(5) Since the Community is competent to adopt the basic safety standards for the protection of the health of workers and general public against the dangers arising from ionising radiations, the provisions of this Directive supersede those of Directive 98/83/EC as regards the requirements for the protection of the health of the general public with regard to radioactive substances in water intended for human consumption.

(6) As recognised by the Court of Justice in its case-law, the tasks imposed on the Community by Article 2(b) of the Euratom Treaty to establish uniform safety standards to protect the health of workers and of the general public do not preclude, unless explicitly stated in those standards, a Member State from providing for more stringent measures of protection. Since this Directive provides for minimum rules, Member States should be free to adopt or maintain more stringent measures in the field covered by this Directive, without prejudice to the free movement of goods in the internal market as defined by the case-law of the Court of Justice.

⁽¹⁾ OJ C 24, 28.1.2012, p. 122.

⁽²⁾ Council Directive 96/29/Euratom of 13 May 1996 laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionizing radiation (OJ L 159, 29.6.1996, p. 1).

⁽³⁾ Council Directive 98/83/EC of 3 November 1998 on the quality of water intended for human consumption (OJ L 330, 5.12.1998, p. 32).

- (7) Parametric values should not be regarded as limit values. In the event that monitoring of water intended for human consumption indicates non-compliance with a parametric value, the Member State concerned should consider whether that poses a risk to human health which requires action and, where necessary, take remedial action to improve the quality of the water to a level which complies with the requirements for the protection of human health from a radiation protection point of view.
- (8) Monitoring of waters intended for human consumption put into bottles or containers intended for sale, other than natural mineral waters, for the purpose of checking whether the levels of radioactive substances comply with the parametric values laid down pursuant to this Directive, should be carried out in accordance with the principles of hazard analysis and critical control points (HACCP) as required by Regulation (EC) No 852/2004 of the European Parliament and of the Council ⁽¹⁾ and without prejudice to the principles of official controls laid down in Regulation (EC) No 882/2004 of the European Parliament and of the Council ⁽²⁾.
- (9) The general public should be adequately and appropriately informed of the quality of water intended for human consumption.
- (10) It is necessary to exclude from the scope of this Directive natural mineral waters and waters which are medicinal products, since special rules for those types of water have been established in Directive 2009/54/EC of the European Parliament and of the Council ⁽³⁾ and Directive 2001/83/EC of the European Parliament and of the Council ⁽⁴⁾.
- (11) Each Member State should establish monitoring programmes to check that water intended for human consumption meets the requirements of this Directive.
- (12) The methods used to analyse the quality of water intended for human consumption should be such as to ensure that the results obtained are reliable and comparable.
- (13) Taking into consideration the large geographical variability in the natural occurrence of radon, the Commission adopted Recommendation 2001/928/Euratom ⁽⁵⁾, which deals with the quality of water intended for human consumption regarding radon and long-lived radon decay products. It is appropriate to include these radionuclides in the scope of this Directive.
- (14) In order to maintain the high quality of water intended for human consumption in view of its importance for human health, it is necessary for Annexes II and III to be regularly updated in the light of scientific and technical progress.
- (15) While it is for Member States to define the sampling and analysis frequencies for water intended for human consumption put into bottles or containers intended for sale, it is advisable for those Member States required to monitor water intended for human consumption for radon or tritium or to establish the Indicative Dose (ID), to carry out sampling and analysis at least once per year,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Subject matter

This Directive lays down requirements for the protection of the health of the general public with regard to radioactive substances in water intended for human consumption. It lays down parametric values and frequencies and methods for monitoring radioactive substances.

Article 2

Definitions

For the purposes of this Directive the following definitions apply:

(1) 'water intended for human consumption' means:

- (a) all water, either in its original state or after treatment, intended for drinking, cooking, food preparation or other domestic purposes, regardless of its origin and whether it is supplied from a distribution network, a tanker, or in bottles or containers;

⁽¹⁾ Regulation (EC) No 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs (OJ L 139, 30.4.2004, p. 1).

⁽²⁾ Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules, (OJ L 165, 30.4.2004, p. 1).

⁽³⁾ Directive 2009/54/EC of the European Parliament and of the Council of 18 June 2009 on the exploitation and marketing of natural mineral waters (OJ L 164, 26.6.2009, p. 45).

⁽⁴⁾ Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ L 311, 28.11.2001, p. 67).

⁽⁵⁾ Commission Recommendation 2001/928/Euratom of 20 December 2001 on the protection of the public against exposure to radon in drinking water supplies (OJ L 344, 28.12.2001, p. 85).

- (b) all water used in any food-production undertaking for the manufacture, processing, preservation or marketing of products or substances intended for human consumption unless the competent national authorities are satisfied that the quality of the water cannot affect the wholesomeness of the foodstuff in its finished form;
- (2) 'radioactive substance' means any substance that contains one or more radionuclides the activity or concentration of which cannot be disregarded as far as radiation protection is concerned;
- (3) 'indicative dose' or 'ID' means the committed effective dose for one year of ingestion resulting from all the radionuclides whose presence has been detected in a supply of water intended for human consumption, of natural and artificial origin, but excluding tritium, potassium-40, radon and short-lived radon decay products;
- (4) 'parametric value' means the value of radioactive substances in water intended for human consumption above which Member States shall assess whether the presence of radioactive substances in water intended for human consumption poses a risk to human health which requires action and, where necessary, shall take remedial action to improve the quality of water to a level which complies with the requirements for the protection of human health from a radiation protection point of view.
- Article 3*
- Scope and exemptions**
1. This Directive applies to water intended for human consumption.
2. This Directive does not apply to:
- (a) natural mineral waters recognised as such by the competent national authorities, in accordance with Directive 2009/54/EC;
- (b) waters which are medicinal products within the meaning of Directive 2001/83/EC.
3. Member States may exempt from this Directive:
- (a) water intended exclusively for those purposes for which the competent authorities are satisfied that the quality of the water has no influence, either directly or indirectly, on the health of the general public concerned;
- (b) water intended for human consumption from an individual supply providing on average less than 10 m³ a day, or serving fewer than 50 persons, unless the water is supplied as part of a commercial or public activity.
4. Member States that have recourse to the exemptions provided for in paragraph 3(b) shall ensure that:
- (a) the general public concerned is informed thereof and of any action that can be taken to protect human health from the adverse effects resulting from any contamination of water intended for human consumption;
- (b) when a potential danger to human health arising from the quality of such water is apparent, the general public concerned promptly be given appropriate advice.
- Article 4*
- General obligations**
- Without prejudice to the provisions laid down in point a of Article 6(3) of Directive 96/29/Euratom ⁽¹⁾, Member States shall take all measures necessary to establish an appropriate monitoring programme for water intended for human consumption, to ensure that in the event of non-compliance with the parametric values laid down pursuant to this Directive:
- (a) it shall be assessed whether that poses a risk to human health which requires action and,
- (b) remedial action shall be taken, where necessary, to improve the quality of water to a level which complies with requirements for the protection of human health from a radiation protection point of view.
- Article 5*
- Parametric values and points of compliance**
1. Member States shall set parametric values applicable for the monitoring of radioactive substances in water intended for human consumption in accordance with Annex I.
2. Where monitoring of water intended for human consumption is undertaken in accordance with the requirements of Annex II of this Directive the point of compliance shall be:
- (a) in the case of water supplied from a distribution network, the point at which it emerges from the taps where the water is normally taken;
- ⁽¹⁾ Council Directive 96/29/Euratom of 13 May 1996 laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionizing radiation (OJ L 159, 29.6.1996, p. 1).

- (b) in the case of water supplied from a tanker, the point at which it emerges from the tanker;
- (c) in the case of water put into bottles or containers intended for sale, the point at which the water is put into the bottles or containers;
- (d) in the case of water used in a food-production undertaking, the point where the water is used in the undertaking.

3. The definition of points of compliance in paragraph (2)(a) is without prejudice to the choice of a sampling point, which may be any point within the supply zone or at the treatment works provided there is no adverse change in the concentration value between the sampling point and the point of compliance.

Article 6

Monitoring and analysis

1. Member States shall take all measures necessary to ensure that monitoring for radioactive substances in water intended for human consumption is undertaken in accordance with the monitoring strategies and frequencies set out in Annex II, in order to check whether the values of radioactive substances comply with the parametric values laid down pursuant to Article 5(1).

Member States shall ensure that monitoring is undertaken so as to ensure that the measured values obtained are representative of the quality of the water consumed throughout the year. For water intended for human consumption that is put into bottles or containers intended for sale, this shall be without prejudice to the principles of HACCP as required by Regulation (EC) No 852/2004 and to the principles of official controls as laid down in Regulation (EC) No 882/2004.

2. Monitoring for the ID shall be carried out, and analytical performance characteristics shall be in accordance with the requirements set out in Annex III.

3. Member States shall ensure that any laboratory at which samples are analysed has a system of analytical quality control that is subject to checking by an external organisation approved by the competent authority for that purpose.

Article 7

Remedial action and notification of the general public

1. Member States shall ensure that any failure to comply with a parametric value laid down pursuant to Article 5(1) is immediately investigated in order to identify the cause.

2. Where a failure to comply with a parametric value occurs, the Member State shall assess whether the failure poses a risk to human health which requires action.

3. In the event that such a risk referred to under paragraph 2 exists, the Member State shall:

- (a) take remedial action in order to comply with requirements for the protection of human health from a radiation protection point of view; and
- (b) ensure that the general public concerned is:
 - (i) notified of the risk and the remedial action taken; and
 - (ii) advised on any additional precautionary measures that may be needed for the protection of human health in respect of radioactive substances.

Article 8

Transposition into national law

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 28 November 2015 at the latest. They shall forthwith communicate to the Commission the text of those provisions.

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

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

Article 9

Entry into force

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

Article 10

Addressees

This Directive is addressed to the Member States.

Done at Luxembourg, 22 October 2013.

For the Council
The President
L. LINKEVIČIUS

ANNEX I

PARAMETRIC VALUES FOR RADON, TRITIUM AND ID OF WATER INTENDED FOR HUMAN CONSUMPTION

Parameter	Parametric value	Unit	Notes
Radon	100	Bq/l	(Note 1)
Tritium	100	Bq/l	(Note 2)
ID	0,10	mSv	

Note 1:

- (a) Member States may set a level for radon which is judged inappropriate to be exceeded and below which optimisation of protection should be continued, without compromising water supply on a national or regional scale. The level set by a Member State may be higher than 100 Bq/l but lower than 1 000 Bq/l. In order to simplify national legislation, Member States may choose to adjust the parametric value to this level.
- (b) Remedial action is deemed to be justified on radiological protection grounds, without further consideration, where radon concentrations exceed 1 000 Bq/l.

Note 2: Elevated levels of tritium may indicate the presence of other artificial radionuclides. If the tritium concentration exceeds its parametric value, an analysis of the presence of other artificial radionuclides shall be required.

ANNEX II

MONITORING OF RADIOACTIVE SUBSTANCES**1. General principles and monitoring frequencies**

All parameters for which parametric values must be set pursuant with Article 5(1) shall be subject to monitoring. However, no monitoring of a specific parameter shall be required where a competent authority can establish that, for a period of time to be determined by them, that parameter is not likely to be present in a given supply of water intended for human consumption in concentrations which could exceed the corresponding parametric value.

In case of naturally occurring radionuclides, where previous results have shown that the concentration of radionuclides is stable, the frequency, in derogation from the minimum sampling requirements set out in point 6, is to be decided by the Member State, taking into consideration the risk to human health. A Member State is not required to monitor water intended for human consumption for radon or tritium or to establish the ID where it is satisfied on the basis of representative surveys, monitoring data or other reliable information that, for a period of time to be determined by them, the levels of radon, tritium or of the calculated ID will remain below the respective parametric values listed in Annex I. In that case, it shall communicate the grounds for its decision to the Commission and provide the Commission with the necessary documentation supporting that decision, including the findings of any surveys, monitoring or investigations carried out. In this context, the provisions with regard to the minimum sampling and analysis requirements set out in point 6 of this Annex do not apply.

2. Radon

Member States shall ensure that representative surveys are undertaken to determine the scale and nature of likely exposures to radon in water intended for human consumption originating from different types of ground water sources and wells in different geological areas. The surveys shall be designed in such a way that underlying parameters, and especially the geology and hydrology of the area, radioactivity of rock or soil, and well type, can be identified and used to direct further action to areas of likely high exposure. Monitoring of radon concentrations shall be undertaken where there is reason to believe, on the basis of the results of the representative surveys or other reliable information, that the parametric value laid down pursuant to Article 5(1) might be exceeded.

3. Tritium

Member States shall ensure that monitoring of tritium in water intended for human consumption is carried out where an anthropogenic source of tritium or other artificial radionuclides is present within the catchment area and it cannot be shown on the basis of other surveillance programmes or investigations that the level of tritium is below the parametric value listed in Annex I. Where monitoring for tritium is required, it shall be carried out at the frequencies indicated in the table appearing in point 6 of this Annex. If the concentration of tritium exceeds its parametric value, an investigation of the presence of other artificial radionuclides shall be required.

4. Indicative dose

Monitoring of water intended for human consumption for the ID shall be carried out where a source of artificial or elevated natural radioactivity is present and it cannot be shown on the basis of other representative monitoring programmes or other investigations that the level of ID is below the parametric value listed in Annex I. Where monitoring for artificial radionuclide levels is required, it shall be carried out at the frequency indicated in the table appearing in point 6 of this Annex. Where monitoring for natural radionuclide levels is required, each Member State shall define the frequency of the monitoring of either gross alpha activity, gross beta activity or individual natural radionuclides depending on the screening strategy adopted by it (according to Annex III). The monitoring frequency may vary from a single check measurement to the frequencies indicated in the table appearing in point 6 of this Annex. Where only a single check for natural radioactivity is required, a recheck shall be required at least where any change occurs in relation to the supply likely to influence the concentrations of radionuclides in water intended for human consumption.

5. Water treatment

Where treatment to reduce the level of radionuclides in water intended for human consumption has been taken, monitoring shall be carried out at the frequencies indicated in the table appearing in point 6 to ensure the continued efficacy of that treatment.

6. Minimum sampling and analysis frequencies

The minimum sampling and analysis frequency for the monitoring of water intended for human consumption supplied from a distribution network or from a tanker or used in a food production undertaking shall be as set out in the following table:

Table

Minimum sampling and analysis frequencies for monitoring of water intended for human consumption supplied from a distribution network or from a tanker or used in a food production undertaking

Volume of water distributed or produced each day within a supply zone (Notes 1 and 2) m ³	Number of samples per year (Notes 3 and 4)
volume ≤ 100	(Note 5)
100 < volume ≤ 1 000	1
1 000 < volume ≤ 10 000	1 + 1 for each 3 300 m ³ /d and part thereof of the total volume
10 000 < volume ≤ 100 000	3 + 1 for each 10 000 m ³ /d and part thereof of the total volume
volume > 100 000	10 + 1 for each 25 000 m ³ /d and part thereof of the total volume

Note 1: A supply zone is a geographically defined area within which water intended for human consumption comes from one or more sources and within which water quality may be considered as being approximately uniform.

Note 2: The volumes are calculated as averages taken over a calendar year. A Member State may use the number of inhabitants in a supply zone instead of the volume of water to determine the minimum frequency, assuming a water consumption of 200 l/day/capita.

Note 3: As far as possible, the number of samples should be distributed equally in time and location.

Note 4: In the event of intermittent short-term supply the monitoring frequency of water distributed by tankers is to be decided by the Member State concerned.

Note 5: The frequency is to be decided by the Member State concerned.

Member States shall define sampling frequencies for water intended for human consumption put into bottles or containers intended for sale. In so doing Member States may take into consideration the volume of water produced.

7. Averaging

Where a parametric value is exceeded in a particular sample, Member States shall define the extent of resampling necessary to ensure that the measured values are representative of an average activity concentration for a full year.

ANNEX III

MONITORING FOR INDICATIVE DOSE AND ANALYTICAL PERFORMANCE CHARACTERISTICS**1. Monitoring for compliance with the ID**

Member States may use various reliable screening strategies to indicate the presence of radioactivity in water intended for human consumption. These strategies may include screening for certain radionuclides, or screening for an individual radionuclide, or gross alpha activity or gross beta activity screening.

(a) screening for certain radionuclides, or screening for an individual radionuclide

If one of the activity concentrations exceeds 20 % of the corresponding derived value or the tritium concentration exceeds its parametric value listed in Annex I, an analysis of additional radionuclides shall be required. The radionuclides to be measured shall be defined by Member States taking into account all relevant information about likely sources of radioactivity.

(b) screening strategies for gross alpha activity and gross beta activity

Member States may use screening strategies for gross alpha activity and gross beta activity ⁽¹⁾ to monitor for the parametric indicator value for ID.

For this purpose gross alpha activity or gross beta activity screening levels shall be set. The recommended screening level for gross alpha activity is 0,1 Bq/l. The recommended screening level for gross beta activity is 1,0 Bq/l.

If the gross alpha activity and gross beta activity are less than 0,1 Bq/l and 1,0 Bq/l respectively, the Member State may assume that the ID is less than the parametric value of 0,1 mSv and radiological investigation is not needed unless it is known from other sources of information that specific radionuclides are present in the water that are liable to cause an ID in excess of 0,1 mSv.

If the gross alpha activity exceeds 0,1 Bq/l or the gross beta activity exceeds 1,0 Bq/l, analysis for specific radionuclides shall be required.

Member States may set alternative screening levels for gross alpha activity and gross beta activity where they can demonstrate that the alternative levels are in compliance with an ID of 0,1 mSv.

The radionuclides to be measured shall be defined by Member States taking into account all relevant information about likely sources of radioactivity. Since elevated levels of tritium may indicate the presence of other artificial radionuclides, tritium, gross alpha activity and gross beta activity should be measured in the same sample.

2. Calculation of the ID

The ID shall be calculated from the measured radionuclide concentrations and the dose coefficients laid down in Annex III, Table A of Directive 96/29/Euratom or more recent information recognised by the competent authorities in the Member State, on the basis of the annual intake of water (730 l for adults). Where the following formula is satisfied, Member States may assume that the ID is less than the parametric value of 0,1 mSv and no further investigation shall be required:

$$\sum_{i=1}^n \frac{C_i(ops)}{C_i(der)} \leq 1$$

where

$C_i(ops)$ = observed concentration of radionuclide i

$C_i(der)$ = derived concentration of radionuclide i

n = number of radionuclides detected.

⁽¹⁾ Where appropriate gross beta activity may be replaced by residual beta activity after subtraction of the K-40 activity concentration.

Derived concentrations for radioactivity in water intended for human consumption ⁽¹⁾

Origin	Nuclide	Derived concentration
Natural	U-238 ⁽²⁾	3,0 Bq/l
	U-234 ⁽²⁾	2,8 Bq/l
	Ra-226	0,5 Bq/l
	Ra-228	0,2 Bq/l
	Pb-210	0,2 Bq/l
	Po-210	0,1 Bq/l
Artificial	C-14	240 Bq/l
	Sr-90	4,9 Bq/l
	Pu-239/Pu-240	0,6 Bq/l
	Am-241	0,7 Bq/l
	Co-60	40 Bq/l
	Cs-134	7,2 Bq/l
	Cs-137	11 Bq/l
	I-131	6,2 Bq/l

⁽¹⁾ This table includes values for the most common natural and artificial radionuclides; these are precise values, calculated for a dose of 0,1 mSv, an annual intake of 730 litre and using the dose coefficients laid down in Annex III, Table A of Directive 96/29/Euratom; derived concentrations for other radionuclides can be calculated on the same basis, and values can be updated on the basis of more recent information recognised by the competent authorities in the Member State.

⁽²⁾ This table allows only for the radiological properties of uranium, not for its chemical toxicity.

3. Performance characteristics and methods of analysis

For the following parameters and radionuclides, the method of analysis used must, as a minimum, be capable of measuring activity concentrations with a limit of detection specified below:

Parameters and radionuclides	Limit of detection (Notes 1, 2)	Notes
Tritium	10 Bq/l	Note 3
Radon	10 Bq/l	Note 3
gross alpha activity	0,04 Bq/l	Note 4
gross beta activity	0,4 Bq/l	Note 4
U-238	0,02 Bq/l	
U-234	0,02 Bq/l	

Parameters and radionuclides	Limit of detection (Notes 1, 2)	Notes
Ra-226	0,04 Bq/l	
Ra-228	0,02 Bq/l	Note 5
Pb-210	0,02 Bq/l	
Po-210	0,01 Bq/l	
C-14	20 Bq/l	
Sr-90	0,4 Bq/l	
Pu-239/Pu-240	0,04 Bq/l	
Am-241	0,06 Bq/l	
Co-60	0,5 Bq/l	
Cs-134	0,5 Bq/l	
Cs-137	0,5 Bq/l	
I-131	0,5 Bq/l	

Note 1: The limit of detection shall be calculated according to the ISO standard 11929: Determination of the characteristic limits (decision threshold, detection limit and limits of the confidence interval) for measurements of ionising radiation — Fundamentals and application, with probabilities of errors of 1st and 2nd kind of 0,05 each.

Note 2: Measurement uncertainties shall be calculated and reported as complete standard uncertainties, or as expanded standard uncertainties with an expansion factor of 1,96, according to the ISO Guide for the Expression of Uncertainty in Measurement.

Note 3: The limit of detection for tritium and for radon is 10 % of its parametric value of 100 Bq/l.

Note 4: The limit of detection for gross alpha activity and gross beta activities are 40 % of the screening values of 0,1 and 1,0 Bq/l respectively.

Note 5: This limit of detection applies only to initial screening for ID for a new water source; if initial checking indicates that it is not plausible that Ra-228 exceeds 20 % of the derived concentration, the limit of detection may be increased to 0,08 Bq/l for routine Ra-228 nuclide specific measurements, until a subsequent re-check is required.

DECISIONS

COMMISSION DECISION

of 12 August 2013

on essential requirements relating to marine radio communication equipment which is intended to be used on non-SOLAS vessels and to participate in the Global Maritime Distress and Safety System (GMDSS)

*(notified under document C(2013) 5185)**(2013/638/EU)*

THE EUROPEAN COMMISSION,

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

Having regard to Directive 1999/5/EC of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity ⁽¹⁾, and in particular Article 3(3)(e) thereof,

Whereas:

- (1) A number of Member States have implemented or intend to implement common safety principles and rules for radio equipment on vessels to which the 1974 International Convention for the Safety of Life at Sea (SOLAS) does not apply (hereinafter 'non-SOLAS vessels').
- (2) The harmonisation of radio services should contribute to a safer navigation of non-SOLAS vessels, particularly in case of distress and bad weather conditions.
- (3) Maritime Safety Committee (MSC) Circular 803 on the participation of non-SOLAS ships in the Global Maritime Distress and Safety System (GMDSS) and Resolution MSC.131 (75) of the International Maritime Organisation (IMO) invite States to apply the Guidelines for the participation of non-SOLAS ships in the GMDSS and urges States to require certain features to be implemented in relation to the GMDSS on radio equipment to be used on all vessels.
- (4) The International Telecommunications Union Radio Regulations specify certain frequencies that are designated for use by the GMDSS. All radio equipment operating on those frequencies which is intended for use in times of distress should be compatible with the designated use of

those frequencies and it should provide a reasonable guarantee of assurance that it will function correctly in times of distress.

- (5) It is necessary to clarify that Commission Decision 2004/71/EC of 4 September 2003 on essential requirements relating to marine radio communication equipment which is intended to be used on non-SOLAS vessels and to participate in the Global Maritime Distress and Safety System (GMDSS) ⁽²⁾ applies to GMDSS equipment for use on all non-SOLAS vessels, which is not covered by Council Directive 96/98/EC of 20 December 1996 on marine equipment ⁽³⁾.
- (6) Implementation of requirements to be complied with by GMDSS equipment destined for non-SOLAS vessels should be consistent across all Member States and in line with relevant IMO guidelines.
- (7) Given the number of changes to be made to Decision 2004/71/EC, that Decision should be replaced, in the interest of clarity.
- (8) The measures set out in this Decision are in accordance with the opinion of the Telecommunications Conformity Assessment and Market Surveillance Committee,

HAS ADOPTED THIS DECISION:

Article 1

This Decision shall apply to all radio equipment not within the scope of Directive 96/98/EC and which are intended for use on all vessels to which the 1974 International Convention for the Safety of Life at Sea (SOLAS) does not apply (hereinafter 'non-SOLAS vessels') and which are intended to participate in the Global Maritime Distress and Safety System (GMDSS), as laid down in Chapter IV of the SOLAS convention operating in either of the following services:

⁽¹⁾ OJ L 91, 7.4.1999, p. 10.

⁽²⁾ OJ L 16, 23.1.2004, p. 54.

⁽³⁾ OJ L 46, 17.2.1997, p. 25.

(a) the maritime mobile service as defined in Article 1.28 of the International Telecommunications Union (ITU) Radio Regulations;

(b) the maritime mobile satellite service as defined in Article 1.29 of the ITU Radio Regulations.

Article 2

Without prejudice to Directive 2009/45/EC of the European Parliament and of the Council ⁽¹⁾ radio equipment shall be designed so as to ensure correct functioning under exposure to a marine environment, meet all the operational requirements of the GMDSS applicable to non-SOLAS vessels, in accordance with the relevant provisions of the International Maritime Organisation, and provide clear and robust communications with a high degree of fidelity of the analogue or digital communications link.

Article 3

Decision 2004/71/EC is hereby repealed.

Article 4

This Decision is addressed to the Member States.

Done at Brussels, 12 August 2013.

For the Commission

Antonio TAJANI

Vice-President

⁽¹⁾ OJ L 163, 25.6.2009, p. 1.

COMMISSION DECISION

of 6 November 2013

terminating the anti-dumping proceeding concerning imports of certain seamless pipes and tubes of iron or steel, of an external diameter exceeding 406,4 mm, originating in the People's Republic of China

(2013/639/EU)

THE EUROPEAN COMMISSION,

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⁾, and in particular Article 9 thereof,

Whereas:

A. INITIATION

- (1) On 16 February 2013, the European Commission (the 'Commission') initiated an anti-dumping proceeding with regard to imports into the Union of certain seamless pipes and tubes of iron or steel, of an external diameter exceeding 406,4 mm, originating in the People's Republic of China ('PRC') and published a notice of initiation in the *Official Journal of the European Union* ⁽²⁾.
- (2) The proceeding was initiated following a complaint lodged by the Defence Committee of the seamless pipes and tubes industry of the European Union ('the complainant'), representing more than 25 % of the total Union production of certain seamless pipes and tubes of iron or steel, of an external diameter exceeding 406,4 mm. The complaint contained *prima facie* evidence of dumping of the product and of resulting material injury that was sufficient to justify the initiation.
- (3) The Commission informed the complainant, other known Union producers, the known exporting producers in the PRC, possible analogue country producers, known importers, distributors, and other parties known to be concerned, and representatives of the PRC of the initiation of the proceeding. Interested parties were given an opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.
- (4) The complainant, other Union producers, the exporting producers in the PRC, importers and distributors made their views known. All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

B. WITHDRAWAL OF THE COMPLAINT AND
TERMINATION OF THE PROCEEDING

- (5) By a letter of 9 September 2013 to the Commission, the complainant withdrew its complaint.
- (6) In accordance with Article 9(1) of the basic Regulation, a proceeding may be terminated where the complaint is withdrawn, unless such termination would not be in the Union interest.
- (7) The investigation has not brought to light any considerations showing that such termination would be against the Union interest. Therefore, the Commission considered that the present proceeding should be terminated. Interested parties were informed accordingly and were given an opportunity to comment. No comments were received.
- (8) The Commission therefore concludes that the anti-dumping proceeding concerning imports into the Union of certain seamless pipes and tubes of iron or steel, of an external diameter exceeding 406,4 mm, originating in the PRC, should be terminated,

HAS ADOPTED THIS DECISION:

Article 1

The anti-dumping proceeding concerning imports of seamless pipes and tubes of iron or steel, other than of stainless steel, of circular cross-section, of an external diameter exceeding 406,4 mm, originating in the People's Republic of China, currently falling within CN codes 7304 19 90, 7304 29 90, 7304 39 98 and 7304 59 99, is terminated.

Article 2

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

Done at Brussels, 6 November 2013.

For the Commission
The President

José Manuel BARROSO

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

⁽²⁾ OJ C 45, 16.2.2013, p. 3.

III

(Other acts)

EUROPEAN ECONOMIC AREA

EFTA SURVEILLANCE AUTHORITY DECISION

No 522/12/COL

of 19 December 2012

amending for the eighty-seventh time the procedural and substantive rules in the field of state aid by introducing a new chapter on state aid measures in the context of the greenhouse gas emission allowance trading scheme post-2012

THE EFTA SURVEILLANCE AUTHORITY,

HAVING regard to the Agreement on the European Economic Area ⁽¹⁾, in particular to Articles 61 to 63 and Protocol 26 thereof,

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

RECALLING the Procedural and Substantive Rules in the Field of State Aid adopted on 19 January 1994 by the Authority ⁽³⁾,

whereas:

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

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

On 22 May 2012, the European Commission adopted a Communication on *Guidelines on certain State aid measures in the context of the greenhouse gas emission allowance trading scheme post-2012* ⁽⁴⁾.

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

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

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

The European Commission and the EFTA States have been consulted,

HAS ADOPTED THIS DECISION:

Article 1

The State Aid Guidelines shall be amended by introducing a new chapter on state aid measures in the context of the greenhouse gas emission allowance trading scheme post 2012. The new chapter is contained in the Annex to this Decision.

⁽¹⁾ The 'EEA Agreement'.

⁽²⁾ The 'Surveillance and Court Agreement'.

⁽³⁾ Guidelines on the application and interpretation of Articles 61 and 62 of the EEA Agreement and Article 1 of Protocol 3 to the Surveillance and Court Agreement, adopted and issued by the Authority on 19 January 1994, published in the *Official Journal of the European Union* (hereinafter referred to as OJ) L 231, 3.9.1994 p. 1 and EEA Supplement No 32, 3.9.1994 p. 1. Hereinafter referred to as the State Aid Guidelines. The updated version of the State Aid Guidelines is published on the Authority's website: <http://www.eftasurv.int/state-aid/legal-framework/state-aid-guidelines/>

⁽⁴⁾ Communication from the Commission – Guidelines on certain State aid measures in the context of the greenhouse gas emission allowance trading scheme post-2012 (OJ C 158, 5.6.2012, p. 4).

Article 2

Only the English version is authentic.

Done at Brussels, 19 December 2012.

For the EFTA Surveillance Authority

Oda Helen SLETNES
President

Sverrir Haukur GUNNLAUGSSON
College Member

ANNEX

AID IN THE CONTEXT OF THE GREENHOUSE GAS EMISSION ALLOWANCE TRADING SCHEME POST 2012 ⁽¹⁾**STATE AID POLICY AND THE ETS DIRECTIVE**

1. Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 ⁽²⁾ established a scheme for greenhouse gas emission allowance trading within the Union (the EU ETS), while Directive 2009/29/EC ⁽³⁾ improved and extended the EU ETS with effect from 1 January 2013. Directive 2003/87/EC as amended ⁽⁴⁾ is hereinafter referred to as 'the ETS Directive'. Directive 2009/29/EC is part of a legislative package containing measures to fight climate change and promote renewable and low-carbon energy. That package was mainly designed to achieve the Union's overall environmental target of a 20 % reduction in greenhouse gas emissions compared to 1990 and a 20 % share of renewable energy in the Union's total energy consumption by 2020.

2. The ETS Directive provides for the following special and temporary measures for certain undertakings: aid to compensate for increases in electricity prices resulting from the inclusion of the costs of greenhouse gas emissions due to the EU ETS (commonly referred to as 'indirect emission costs'), investment aid to highly efficient power plants, including new power plants that are ready for the environmentally safe capture and geological storage of CO₂ (CCS-ready), optional transitional free allowances in the electricity sector in some EFTA States ⁽⁵⁾ and the exclusion of certain small installations from the EU ETS if the greenhouse gas emission reductions can be achieved outside the framework of the EU ETS at lower administrative cost.

3. The special and temporary measures provided for in the context of implementation of the ETS Directive involve State aid within the meaning of Article 61(1) of the EEA Agreement. In accordance with Section II of Part 2 of Protocol 3 to the Surveillance and Court Agreement, State aid must be notified by EFTA States to the EFTA Surveillance Authority and may not be put into effect until it is approved by the EFTA Surveillance Authority.

4. In order to ensure transparency and legal certainty, these Guidelines explain the compatibility criteria that will be applied to these State aid measures in the context of the greenhouse gas emission allowance trading scheme, as improved and extended by Directive 2009/29/EC.

5. In line with the balancing test formulated in the 2005 State Aid Action Plan ⁽⁶⁾, the primary objective of State aid control in the context of implementation of the EU ETS is to ensure that State aid measures will result in a higher reduction of greenhouse gas emissions than would occur without the aid and to ensure that the positive effects of the aid outweigh its negative effects in terms of distortions of competition in the internal market. State aid must be necessary to achieve the environmental objective of the EU ETS (necessity of the aid) and must be limited to the minimum needed to achieve the environmental protection sought (proportionality of the aid) without creating undue distortions of competition and trade in the internal market.

⁽¹⁾ These guidelines correspond to the European Commission guidelines on certain State aid measures in the context of the greenhouse gas emission allowance trading scheme post 2012 which were adopted on 22.5.2012 (OJ C 158, 5.6.2012, p. 4). The Authority's State Aid Guidelines are published on the Authority's website (www.eftasurv.int/state-aid/legal-framework/state-aid-guidelines/).

⁽²⁾ Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC, OJ L 275, 25.10.2003, p. 32. The Directive has been incorporated into the EEA Agreement in point 21(a)(i) of Annex XX.

⁽³⁾ Directive 2009/29/EC of the European Parliament and of the Council of 23 April 2009 amending Directive 2003/87/EC so as to improve and extend the greenhouse gas emission allowance trading scheme of the Community, OJ L 140, 5.6.2009, p. 63. This Directive has been incorporated into the EEA Agreement in point 21(a)(i) of Annex XX.

⁽⁴⁾ Directive 2004/101/EC of the European Parliament and of the Council of 27 October 2004, OJ L 338, 13.11.2004, p.18; Directive 2008/101/EC of the European Parliament and of the Council of 19 November 2008, OJ L 8, 13.1.2009, p. 3; Regulation (EC) No 219/2009 of the European Parliament and of the Council of 11 March 2009, OJ L 87, 31.3.2009, p. 109.

⁽⁵⁾ For the purpose of these guidelines, the term 'EFTA States' refers to Iceland, Liechtenstein and Norway, but not to Switzerland which - albeit an EFTA State - did not join the EEA.

⁽⁶⁾ State Aid Action Plan – Less and better targeted State aid: a roadmap for State aid reform 2005 to 2009, COM(2005) 107 final, 7.6.2005.

6. Since the provisions introduced by Directive 2009/29/EC will apply as from 1 January 2013, State aid cannot be deemed necessary to lessen any burden resulting from this Directive before that date. Consequently, the measures covered by these Guidelines may only be authorised for costs incurred on or after 1 January 2013, except for the aid involved in optional transitional free allocation for the modernisation of electricity generation (in some EFTA States), which may comprise, under certain conditions, investments undertaken as from 25 June 2009 included in the National Plan.

1. SPECIFIC MEASURES COVERED BY THESE GUIDELINES

1.1. Aid to undertakings in sectors and subsectors deemed to be exposed to a significant risk of carbon leakage due to EU ETS allowance costs passed on in electricity prices (aid for indirect emission costs)

7. Under Article 10a(6) of the ETS Directive, EEA States may grant State aid in favour of sectors or subsectors deemed to be exposed to a significant risk of carbon leakage due to costs relating to greenhouse gas emissions passed on in electricity prices (hereinafter referred to as indirect emission costs), in order to compensate for those costs in accordance with State aid rules. For the purposes of these Guidelines, 'carbon leakage' describes the prospect of an increase in global greenhouse gas emissions when companies shift production outside the EEA because they cannot pass on the cost increases induced by the EU ETS to their customers without significant loss of market share.
8. Addressing the risk of carbon leakage serves an environmental objective, since the aid aims to avoid an increase in global greenhouse gas emissions due to shifts of production outside the EEA, in the absence of a binding international agreement on reduction of greenhouse gas emissions. At the same time, aid for indirect emission costs may have a negative impact on the efficiency of the EU ETS. If poorly targeted, the aid would relieve the beneficiaries of the cost of their indirect emissions, thereby limiting incentives for emission reductions and innovation in the sector. As a result, the costs of reducing emissions would have to be borne mainly by other sectors of the economy. Furthermore, such State aid may result in significant distortions of competition in the internal market, in particular whenever undertakings in the same sector are treated differently in different EEA States due to different budgetary constraints. Therefore, these Guidelines need to address three specific objectives: minimising the risk of carbon leakage, preserving the EU ETS objective to achieve cost-efficient decarbonisation and minimising competition distortions in the internal market.
9. During the process of adopting Directive 2009/29/EC, the Commission issued a statement ⁽⁷⁾ setting out the main principles it intended to apply in respect of State aid for indirect emission costs in order to avoid undue distortions of competition.
10. The Commission assessed, at Union level, the extent to which it is possible for a sector or subsector to pass on indirect emission costs into product prices without significant loss of market share to less carbon-efficient installations outside the Union.
11. The maximum aid amount that EEA States can grant must be calculated according to a formula that takes into account the installation's baseline production levels or the installation's baseline electricity consumption levels as defined in these Guidelines, as well as the CO₂ emission factor for electricity supplied by combustion plants in different geographic areas. In case of electricity supply contracts that do not include any CO₂ costs, no state aid will be granted. The formula ensures that the aid is proportionate and that it maintains the incentives for electricity efficiency and the transition from 'grey' to 'green' electricity, in accordance with the recital 27 of Directive 2009/29/EC.
12. Furthermore, in order to minimise competition distortions in the internal market and preserve the objective of the EU ETS to achieve a cost-effective decarbonisation, the aid must not fully compensate for the costs of EUAs in electricity prices and must be reduced over time. Degressive aid intensities are fundamental in operating state aid to avoid aid dependency. Moreover, they will maintain both the long-term incentives for full internalisation of the environmental externality and the short-term incentives to switch to less CO₂-emitting generation technologies, while underlining the temporary nature of the aid and contributing to the transition towards a low-carbon economy.

⁽⁷⁾ Annex II to Annex 15713/1/08REV1 18 November 2008 (25.11) <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P6-TA-2008-0610&format=XML&language=EN>

1.2. Investment aid to highly efficient power plants, including new power plants that are carbon capture and storage (CCS)-ready

13. In accordance with the Commission statement to the European Council⁽⁸⁾ regarding Article 10(3) of the ETS Directive on the use of revenues generated from the auctioning of allowances, EEA States may use those revenues, between 2013 and 2016, to support the construction of highly efficient power plants, including new power plants that are carbon capture and storage (CCS)-ready. As a *minus* to this definition, under Article 33 of Council Directive 2009/31/EC of 23 April 2009 on the geological storage of carbon dioxide⁽⁹⁾, EEA States must ensure that operators of combustion plants with a rated electrical output exceeding 300 MW have assessed certain conditions, namely, whether suitable storage sites are available, whether transport facilities are technically and economically feasible, and whether it is technically and economically feasible to retrofit for CO₂ capture. Where the assessment is positive, suitable space on the installation site for the equipment necessary to capture and compress CO₂ has to be set aside⁽¹⁰⁾.
14. That aid must seek to increase the protection of the environment resulting in lower CO₂ emissions compared to the state-of-the-art technology and target a market failure by having a substantial impact on environmental protection. The aid must be necessary, have an incentive effect and be proportional. Aid for CCS implementation carbon capture and storage does not fall within the scope of these Guidelines and is already assessed under other existing State aid rules, in particular, the Chapter of the State aid guidelines on State aid for environmental protection⁽¹¹⁾.
15. In order to ensure proportionality of the aid, the maximum aid intensities must vary depending on the contribution to the increase of environmental protection and reduction of CO₂ emissions (objective of the ETS Directive) of the new power plant. Therefore, start of implementation of the full CCS chain (i.e. construction and effective start of capture, transport and storage of CO₂) by new power plants before 2020 must be rewarded as compared to new power plants with CCS-readiness, but without start of CCS implementation before 2020. In addition, when considering two similar projects for new CCS-ready power plants, the permissible maximum aid intensities shall be higher for projects chosen in a genuinely competitive bidding process based on clear, transparent and non-discriminatory criteria, which will effectively ensure that the aid is limited to the minimum necessary and promotes competition in the electricity generation market. Under such circumstances, it can be assumed that the respective bids reflect all possible benefits that might flow from the additional investment.

1.3. Aid involved in optional transitional free allowances for the modernisation of electricity generation

16. Under Article 10c of the ETS Directive, EEA States fulfilling certain conditions, relating to the interconnectivity of their national electricity network or their share of fossil fuels in electricity production and the level of GDP per capita in comparison to the Union's average, have the option to temporarily deviate from the principle of full auctioning and grant free allowances to electricity generators in operation by 31 December 2008 or to electricity generators for which the modernisation investment process was physically initiated by 31 December 2008. In exchange for granting free allowances to power generators, eligible EEA States have to present a national investment plan ('National Plan') setting out the investments undertaken by the recipients of the free allowances or by other operators in retrofitting and upgrading the infrastructure, in clean technologies and in diversifying their energy mix and sources of supply.
17. That derogation from the principle of full auctioning through the provision of transitional free allowances involves State aid within the meaning of Article 61(1) of the EEA Agreement, because EEA States forego revenues by granting free allowances and give a selective advantage to power generators. Power generators may compete with power generators in other EEA States, which may, as a result, distort or threaten to distort competition and affect trade in the internal market. State aid is also involved at the level of investments that recipients of free allowances will undertake at a reduced cost.

1.4. Aid involved in the exclusion of small installations and hospitals from the EU ETS

18. Under Article 27 of the ETS Directive, EEA States may exclude small installations and hospitals from the EU ETS, as long as they are subject to measures that achieve equivalent reduction of greenhouse gas emissions. EEA States may propose measures applying to small installations and hospitals that will achieve a contribution to emission reductions equivalent to those achieved by the EU ETS. That possibility of excluding them from the EU ETS is intended to offer the maximum gain, in terms of reducing administrative costs for each tonne of CO₂ equivalent excluded from the ETS.

⁽⁸⁾ Addendum to 'I/A' Note from General Secretariat of the Council to COREPER/COUNCIL 8033/09 ADD 1 REV 1 of 31 March 2009.

⁽⁹⁾ Directive 2009/31/EC of 23 April 2009 on the geological storage of carbon dioxide and amending Council Directive 85/337/EEC, European Parliament and Council Directives 2000/60/EC, 2001/80/EC, 2004/35/EC, 2006/12/EC, 2008/1/EC and Regulation (EC) No 1013/2006, OJ L 140 5.6.2009, p. 114. This Directive has been incorporated into the EEA Agreement in points 1a, 1f, 1i, 13ca, 19a, 21at and 32c of Annex XX.

⁽¹⁰⁾ See footnote 9.

⁽¹¹⁾ OJ L 144, 10.6.2010, p. 1, EEA Supplement No 29, 10.6.2010, p. 1. This Chapter corresponds to the European Commission Community Guidelines on State Aid for Environmental Protection (OJ C 82, 1.4.2008, p. 1).

19. The exclusion of small installations and hospitals from the EU ETS may involve State aid. EEA States have a wide margin of discretion in deciding whether to exclude small installations from the EU ETS and, if so, which type of installation to exclude and which type of measures to require. Therefore, it cannot be excluded that the measures imposed by EEA States may amount to an economic advantage in the favour of small installations or hospitals excluded from the EU ETS that is likely to distort or threaten to distort competition and affect trade in the internal market.

2. SCOPE OF APPLICATION AND DEFINITIONS

2.1. Scope of application of these Guidelines

20. These Guidelines apply only to the specific aid measures provided for in the context of implementation of the ETS Directive. The Chapter of the State aid guidelines on State aid for environmental protection⁽¹²⁾ does not apply to these measures.

2.2. Definitions

21. For the purposes of these Guidelines the definitions laid down in Appendix I will apply.

3. COMPATIBLE AID MEASURES UNDER ARTICLE 61(3) OF THE EEA AGREEMENT

22. State aid may be declared compatible with the internal market within the meaning of Article 61(3)(c) of the EEA Agreement if it leads to increased environmental protection (reduction of greenhouse gas emissions) without adversely affecting trading conditions to an extent contrary to the common interest. In assessing the compatibility of an aid measure, the EFTA Surveillance Authority balances the positive impact of the aid measure in reaching an objective in the common interest against its potentially negative side effects, such as distortion of trade and competition. For that reason, the duration of aid schemes must not be longer than the duration of these Guidelines. This is without prejudice to the possibility for an EFTA State to re-notify a measure extending beyond the time limit set by the EFTA Surveillance Authority decision authorising the aid scheme.

3.1. Aid to undertakings in sectors and subsectors deemed to be exposed to a significant risk of carbon leakage due to EU ETS allowance costs passed on in electricity prices (aid for indirect emission costs)

23. For sectors and subsectors listed in Appendix II, aid to compensate for EU ETS allowance costs passed on in electricity prices as a result of implementation of the ETS Directive incurred as of 1 January 2013 will be considered compatible with the internal market within the meaning of Article 61(3)(c) of the EEA Agreement provided that the conditions set out in this Section are met.

Objective and necessity of aid

24. For the purposes of these Guidelines, the objective of this aid is to prevent a significant risk of carbon leakage due to EUA costs passed on in electricity prices supported by the beneficiary, if its competitors from third countries do not face similar CO₂ costs in their electricity prices and the beneficiary is unable to pass on those costs to product prices without losing significant market share.
25. For the purposes of these Guidelines, a significant risk of carbon leakage is considered to exist only if the beneficiary is active in a sector or subsector listed in Appendix II.

Maximum aid intensity

26. The aid intensity must not exceed 85 % of the eligible costs incurred in 2013, 2014 and 2015, 80 % of the eligible costs incurred in 2016, 2017 and 2018 and 75 % of the eligible costs incurred in 2019 and 2020.

Maximum aid amount calculation

27. The maximum aid payable per installation for the manufacture of products within the sectors and subsectors listed in Appendix II must be calculated according to the following formula:

⁽¹²⁾ OJ L 144, 10.6.2010, p. 1, EEA Supplement No 29, 10.6.2010, p. 1. This Chapter corresponds to the European Commission Community Guidelines on State Aid for Environmental Protection (OJ C 82, 1.4.2008, p. 1).

- (a) Where electricity consumption efficiency benchmarks listed in appendix III are applicable to the products manufactured by the beneficiary, the maximum aid payable per installation for costs incurred in year t equals:

$$A_{\max_t} = A_i \cdot C_t \cdot P_{t-1} \cdot E \cdot BO$$

In this formula, A_i is the aid intensity at year t , expressed as a fraction (e.g. 0,8); C_t is the applicable CO₂ emission factor (tCO₂/MWh) (at year t); P_{t-1} is the EUA forward price at year $t-1$ (EUR/tCO₂); E is the applicable Product-specific electricity consumption efficiency benchmark defined in appendix III; and BO is the Baseline output. These concepts are defined in Appendix I.

- (b) Where electricity consumption efficiency benchmarks listed in appendix III are not applicable to the products manufactured by the beneficiary, the maximum aid payable per installation for costs incurred in year t equals:

$$A_{\max_t} = A_i \cdot C_t \cdot P_{t-1} \cdot EF \cdot BEC$$

In this formula, A_i is the aid intensity at year t , expressed as a fraction (e.g. 0,8); C_t is the applicable CO₂ emission factor (tCO₂/MWh) (at year t); P_{t-1} is the EUA forward price at year $t-1$ (EUR/tCO₂); EF is the fall-back electricity consumption efficiency benchmark; and BEC is the baseline electricity consumption (MWh). These concepts are defined in Appendix I.

28. If an installation manufactures products for which an electricity consumption efficiency benchmark listed in Appendix III is applicable and products for which the fall back electricity consumption efficiency benchmark is applicable, the electricity consumption for each product must be apportioned according to the respective tonnage of production of each product.
29. If an installation manufactures products that are eligible for aid (i.e. they fall within the eligible sectors or subsectors listed in Appendix II) and products that are not eligible for aid, the maximum aid payable shall be calculated only for the products that are eligible for aid.
30. Aid may be paid to the beneficiary in the year in which the costs are incurred or in the following year. If aid is paid in the year in which the costs are incurred, an ex-post payment adjustment mechanism must be in place to ensure that any over-payment of aid will be repaid before 1 July in the following year

Incentive effect

31. The incentive effect requirement is presumed to be met if all the conditions in Section 3.1 are fulfilled.

3.2. Investment aid to new highly efficient power plants, including new power plants which are CCS-ready

32. Investment aid granted between 1 January 2013 and 31 December 2016 for new highly efficient power plants will be considered compatible with the internal market within the meaning of Article 61(3)(c) of the EEA Agreement provided the conditions set out in this Section are met.
33. Investment aid to new highly efficient power plants may be granted only if each of the following conditions is met:
 - (a) the new highly efficient power plant exceeds the harmonised efficiency reference value of the power plants set out in Annex I to Commission Implementing Decision 2011/877/EU of 19 December 2011 establishing harmonised efficiency reference values for separate production of electricity and heat in application of Directive 2004/8/EC of the European Parliament and of the Council⁽¹³⁾ or the relevant efficiency reference value in force when the aid is granted. New highly efficient power plants which merely comply with those efficiency reference values shall not be eligible for aid; and
 - (b) the aid granting authority's approval decision is taken between 1 January 2013 and 31 December 2016.

⁽¹³⁾ OJ L 343, 23.12.2011, p. 91. This Directive has been incorporated into the EEA Agreement in point 24 of Annex IV.

Objective and necessity of the aid

34. EFTA States must demonstrate that the aid targets a market failure by having a substantial impact on the environmental protection. Aid must have an incentive effect in that it results in a change in the behaviour of the aid beneficiary; that incentive effect shall be demonstrated through a counterfactual scenario providing evidence that without the aid the beneficiary would not have undertaken the investment. In addition, the aided project must not start before the submission of the aid application. Finally, EFTA States must demonstrate that the aid does not adversely affect trading conditions to an extent contrary to the common interest, in particular where aid is concentrated on a limited number of beneficiaries or where the aid is likely to reinforce the beneficiaries' market position (at the level of company group).

Eligible costs

35. The eligible costs will be limited to the total costs of investment in the new installation (tangible and intangible assets) which are strictly necessary for the construction of the new power plant. In addition, in the case of construction of a CCS-ready power plant, the costs of demonstrating the overall economic and technical feasibility of implementing a full CCS chain will be eligible. The costs of installing capture, transport and storage equipment will not be eligible costs under these Guidelines, since aid for CCS implementation is already assessed under the Chapter of the State aid guidelines on State aid for environmental protection.

Maximum aid intensities

36. For new highly efficient power plants that are CCS-ready and start implementation of the full CCS chain before 2020, the aid must not exceed 15 % of the eligible costs.
37. For new highly efficient power plants which are CCS-ready but do not start implementing the full CCS chain before 2020 and for which aid is granted after a genuinely competitive bidding process that promotes (i) the most environmentally-friendly power generation technologies in the new plant resulting in lower CO₂ emissions compared to the state-of-the-art technology and (ii) competition on the electricity generation market, the aid must not exceed 10 % of the eligible costs. Such a bidding process must be based on clear, transparent and non-discriminatory criteria and provide for the participation of a sufficient number of undertakings. In addition, the budget related to the bidding process must be a binding constraint, in the sense that not all participants can receive aid.
38. For new highly efficient power plants that do not meet the conditions of points 36 and 37 above, the aid must not exceed 5 % of the eligible costs.
39. In case of non-start of implementation of the full CCS chain before 2020, the aid shall be reduced to 5% of the eligible costs of the investment, or to 10% if the conditions set in Section 3.2, paragraph 37 above are met. In case of upfront payment of the aid, EFTA States shall claw-back the exceeding aid amount.

3.3. Aid involved in optional transitional free allowances for the modernisation of electricity generation

40. From 1 January 2013 to 31 December 2019, State aid involved in transitional and optional free allowances for the modernisation of electricity generation and the investments included in the National Plans, in accordance with Article 10c of the ETS Directive, will be considered compatible with the internal market within the meaning of Article 61(3)(c) of the EEA Agreement provided all the following conditions are met:
- (a) the transitional free allowance is granted pursuant to Article 10c of the ETS Directive and in accordance with the Commission Decision on guidance on the methodology to transitionally allocate free allowances to installations for electricity production pursuant to Article 10c(3) of the ETS Directive⁽¹⁴⁾ and the Commission Communication on the optional application of Article 10c of the ETS Directive⁽¹⁵⁾;
- (b) the National Plan pursues an objective in the common interest, such as increased environmental protection, in the light of the overall objectives of the ETS Directive;

⁽¹⁴⁾ Commission Communication of 29 March 2011 on guidance on the methodology to transitionally allocate free allowances to installations in respect of electricity production pursuant to Article 10c(3) of Directive 2003/87/EC, C(2011) 1983 final, 29.3.2011.

⁽¹⁵⁾ Communication from the Commission, Guidance document on the optional application of Article 10c of Directive 2003/87/EC, OJ C 99, 31.3.2011, p. 9.

- (c) the National Plan includes investments in retrofitting and upgrading of the infrastructure, in clean technologies and in diversification of their energy mix and sources of supply in accordance with the ETS Directive undertaken after 25 June 2009;
- (d) the market value (at the level of company groups) of free allowances during the whole allocation period (calculated in accordance with the Commission Communication of 29 March 2011⁽¹⁶⁾ or the relevant guidance document applicable when the aid is granted) does not exceed the total costs for investments undertaken by the recipient of free allowances (at the level of company groups). If the total investment costs are lower than the market value of the allowances or the recipient of the free allowances does not undertake any investment eligible under the National Plan, the recipients of free allowances must transfer the difference to a mechanism that will finance other investments eligible under the National Plan, and
- (e) the aid does not adversely affect trading conditions to an extent contrary to the common interest, in particular where aid is concentrated on a limited number of beneficiaries or where the aid is likely to reinforce the beneficiaries' market position (at the level of company group).

Incentive effect

The incentive effect is deemed fulfilled for investments undertaken as from 25 June 2009.

Eligible costs

- 41. Eligible costs must be limited to the total investment costs (tangible and intangible assets) as listed in the National Plan corresponding to the market value of free allowances (calculated in accordance with the Commission Communication of 29 March 2011⁽¹⁷⁾ or the relevant guidance document applicable when the aid is granted) granted per beneficiary, irrespective of operating costs and benefits of the corresponding installation.

Maximum aid intensity

- 42. Aid must not exceed 100 % of the eligible costs.

3.4. Aid involved in the exclusion of small installations and hospitals from the EU ETS

- 43. Aid involved in the exclusion of small installations or hospitals exempted from the EU ETS as from 1 January 2013 will be considered compatible with the internal market within the meaning of Article 61(3)(c) of the EEA Agreement provided the small installations or hospitals are subject to measures that achieve equivalent greenhouse gas emissions reduction within the meaning of Article 27 of the ETS Directive and provided that the EFTA State complies with the conditions laid down in Article 27 of the ETS Directive.

Incentive effect

- 44. The incentive effect requirement is presumed to be met if all the conditions in Section 3.4 are fulfilled.

3.5. Proportionality

- 45. EFTA State must demonstrate that the aid amount to the beneficiary is limited to the minimum necessary. In particular, EFTA States may grant aid with lower aid intensities than those mentioned in these Guidelines.

4. CUMULATION

- 46. The aid ceilings set out in these Guidelines must not be exceeded regardless of whether the support is financed entirely from State resources or is partly financed by the Union.
- 47. Aid deemed to be compatible under these Guidelines may not be combined with other State aid within the meaning of Article 61(1) of the EEA Agreement or with other forms of financing from the Union if such overlapping results in aid intensity higher than that laid down in these Guidelines. However, where the expenditure eligible for aid for measures covered by these Guidelines is eligible in whole or in part for aid for other purposes, the common portion will be subject to the most favourable aid ceiling under the applicable rules.

⁽¹⁶⁾ See footnote 15.

⁽¹⁷⁾ See footnote 15.

5. FINAL PROVISIONS

5.1. Annual reporting

48. In accordance with Part II of Protocol 3 to the Surveillance and Court Agreement ⁽¹⁸⁾ and Decision No 195/04/COL of 14 July 2004 ⁽¹⁹⁾, EFTA States must submit annual reports to the EFTA Surveillance Authority.
49. Beyond the requirements laid down in Part II of Protocol 3 to the Surveillance and Court Agreement and Decision No 195/04/COL, annual reports for environmental aid measures must contain additional information on the respective approved schemes. In particular, EFTA States must include in their annual reports the following information:
- the names of the beneficiary and the aided installations under its ownership,
 - the sector(s) or subsector(s) in which the beneficiary is active,
 - the year for which the aid is being paid and the year in which it is being paid,
 - the *baseline output* for each aided installation in the pertinent (sub)sector,
 - the *significant capacity extensions* or reductions, where relevant,
 - yearly production for each aided installation in the pertinent (sub)sectors for each of the years used to determine the *baseline output*,
 - yearly production for each aided installation in the pertinent (sub)sector for the year for which aid is being paid,
 - yearly production of other products manufactured by each aided installation not covered by *electricity consumption efficiency benchmarks* for each of the years used to determine the *baseline output* (if any aid is given using a *fall back electricity consumption efficiency benchmark*),
 - the *baseline electricity consumption* for each aided installation (if any aid is given using a *fall back electricity consumption efficiency benchmark*),
 - yearly electricity consumption for each of the years used to determine the *baseline electricity consumption* (if any aid is given using a *fall back electricity consumption efficiency benchmark*),
 - yearly electricity consumption of the installation for the year for which aid is being paid (if any aid is given using a *fall back electricity consumption efficiency benchmark*),
 - the *EUA forward price* used to compute the aid amount per beneficiary,
 - the *aid intensity*,
 - the national *CO₂ emission factor*.
50. The EFTA Surveillance Authority will regularly monitor aid granted to undertakings in sectors and subsectors deemed to be exposed to a significant risk of carbon leakage due to EU ETS allowance costs passed on in electricity prices described in Section 3.1. In doing so, it will update its information on the size of the indirect cost pass through and the possible consequences for carbon leakage.
51. With respect to aid granted for new highly efficient power plants, including those that are CCS-ready, EFTA States must include in their annual reports the following information:
- the names of the beneficiaries,
 - the aid amount per beneficiary,
 - the aid intensity,
 - the verification of compliance with the conditions in Section 3.2, paragraph 32 as regards the timing of granting of the aid,
 - the verification of compliance with the conditions in section 3.2, paragraph 36 as regards the start of implementation of the full CCS chain before 2020.

⁽¹⁸⁾ Part II of Protocol 3 to the Surveillance and Court Agreement mirrors Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 83, 27.3.1999, p. 1). Regulation (EC) No 659/1999 was further incorporated into Protocol 26 to the EEA Agreement.

⁽¹⁹⁾ Decision No 195/04/COL (OJ L 139, 25.5.2006, p. 37, EEA Supplement No. 26, 25.5.2006, p. 1.) corresponds to Commission Regulation (EC) No 794/2004 of 21 April 2004 (OJ L 140, 30.4.2004, p. 1), which implements Regulation (EC) No 659/1999.

5.2. Transparency

52. The EFTA Surveillance Authority considers that further measures are necessary to improve the transparency of State aid in the EFTA States. In particular, it must be ensured that the EFTA States, economic operators, interested parties and the EFTA Surveillance Authority have easy access to the full text of all applicable environmental aid schemes.
53. That goal can be achieved through the establishment of internet sites. For that reason, when assessing aid schemes, the EFTA Surveillance Authority will systematically require the EFTA State concerned to publish the full text of all final aid schemes on the internet and to communicate the internet address of the publication to the EFTA Surveillance Authority.

5.3. Monitoring

54. EFTA States must ensure that detailed records regarding the granting of aid for all measures are maintained. Such records, which must contain all information necessary to establish that the conditions regarding eligible costs and maximum allowable aid intensity have been observed, must be maintained for 10 years from the date on which the aid was granted and be provided to the EFTA Surveillance Authority upon request.

5.4. Period of application and revision

55. The EFTA Surveillance Authority will apply these Guidelines from the day following that of their publication in the *Official Journal of the European Union* and the *EEA Supplement*.
56. The Guidelines will be applicable until 31 December 2020. After consulting the EFTA States, the EFTA Surveillance Authority may amend them before that date on the basis of important competition policy or environmental policy considerations or in order to take account of other EEA policies or international commitments. Such amendments might in particular be necessary in the light of future international agreements in the area of climate change and future climate change legislation in the EEA. The EFTA Surveillance Authority may carry out a review of these Guidelines every two years after their adoption.
57. The EFTA Surveillance Authority will apply these Guidelines to all notified aid measures in respect of which it is called upon to take a decision after the Guidelines are published in the *Official Journal and the EEA Supplement*, even where the projects were notified prior to their publication. The EFTA Surveillance Authority will apply the rules set out in the Chapter of the State Aid Guidelines on Applicable Rules For The Assessment Of Unlawful State Aid ⁽²⁰⁾ to all unlawful aid.

⁽²⁰⁾ OJ L 73, 19.3.2009, p. 23, EEA Supplement No 15, 19.3.2009, p. 6. This Chapter corresponds to the Commission Notice on the determination of the applicable rules for the assessment of unlawful State aid (OJ C 119, 22.5.2002, p. 22).

*Appendix I***Definitions**

For the purposes of these Guidelines the following definitions will apply:

- ‘aid’ means any measure fulfilling all the criteria laid down in Article 61(1) of the EEA Agreement;
- ‘aid granting period’ means one or more years within the period 2013-2020. If an EFTA State wishes to grant aid corresponding to a shorter period, it should take as a reference a business year of the beneficiaries and grant aid on a yearly basis;
- ‘maximum aid intensity’ means the total aid amount expressed as a percentage of the eligible costs. All figures used must be taken before any deduction of tax or other charges. Where aid is awarded in a form other than a grant, the aid amount must be the equivalent of the grant in terms of value. Aid payable in several instalments must be calculated at its total net present value at the moment of granting the first instalment, using the relevant reference rate of the Authority for discounting the value over time. The aid intensity is calculated per beneficiary;
- ‘auto generation’ means generation of electricity by an installation that does not qualify as an ‘electricity generator’ within the meaning of Article 3(u) of Directive 2003/87/EC;
- ‘beneficiary’ means an undertaking receiving aid;
- ‘CCS-ready’ means that an installation has demonstrated that suitable storage sites are available, that transport facilities are technically and economically feasible and that it is technically and economically feasible to retrofit for CO₂ capture, as soon as sufficient market incentives in the form of a CO₂ price threshold are reached. In particular, CCS-ready requires:
 - Demonstration of the technical feasibility of retrofitting for CO₂ capture. A site-specific technical study should be produced showing in sufficient engineering detail that the facility is technically capable of being fully retrofitted for CO₂ capture at a capture rate or 85 % or higher, using one or more types of technology which are proven at pre-commercial scale or whose performance can be reliably estimated as being suitable;
 - Control of sufficient additional space on the site on which capture equipment is to be installed;
 - Identification of one or more technically and economically feasible pipeline or other transport route(s) to the safe geological storage of CO₂;
 - Identification of one or more potential storage sites which have been assessed as suitable for the safe geological storage of projected full lifetime volumes and rates of captured CO₂;
 - Demonstration of the economic feasibility of retrofitting an integrated CCS system to the full/partial capacity of the facility, based on an economic assessment. The assessment should provide evidence of reasonable scenarios, taking into account CO₂ prices forecasts, the costs of the technologies and storage options identified in the technical studies, their margins of error and the projected operating revenues. The assessment will indicate the circumstances under which CCS would be economically feasible during the lifetime of the proposed installation. It should also include a potential CCS implementation plan, including a potential timetable to entry into operation;
 - Demonstration that all relevant permits to implement CCS can be obtained and identification of procedures and timelines for this process;
- ‘environmental protection’ means any action designed to remedy or prevent damage to physical surroundings or natural resources by a beneficiary’s own activities, to reduce the risk of such damage or to lead to more efficient use of natural resources, including energy-saving measures and the use of renewable sources of energy;

- ‘*European Union Allowance (EUA)*’ means a transferable allowance to emit one tonne of CO₂ equivalent during a specified period;

- ‘*gross value added (GVA)*’ means gross value added at factor costs, which is the value of output less the value of intermediate consumption. It is a measure of the contribution to GDP made by an individual producer, industry or sector. GVA at factor cost is GVA at market prices less any indirect taxes plus any subsidies. Value added at factor cost can be calculated from turnover, plus capitalised production, plus other operating income, plus or minus changes in stocks, minus purchases of goods and services, minus other taxes on products that are linked to turnover but not deductible, minus duties and taxes linked to production. Alternatively, it can be calculated from gross operating surplus by adding personnel costs. Income and expenditure classified as financial or extraordinary in company accounts is excluded from value added. Value added at factor costs is calculated at gross level, as value adjustments (such as depreciation) are not subtracted ⁽¹⁾;

- ‘*implementation of the full CCS chain*’ means construction and effective start of capture, transport and storage of CO₂;

- ‘*small installations*’ means installations which have reported to the competent authority annual emissions of less than 25 000 tonnes of CO₂ equivalent and, where they carry out combustion activities, have a rated thermal input below 35 MW, excluding emissions from biomass, in each of the three years preceding the notification of equivalent measures in accordance with Article 27(1)(a) of the ETS Directive;

- ‘*Start of work*’ means either the start of construction work or the first firm commitment to order equipment, excluding preliminary feasibility studies.

- ‘*tangible assets*’ means, for the purposes of calculating eligible costs, investments in land, buildings, plant and equipment;

- ‘*intangible assets*’ means, for the purposes of calculating eligible costs, spending on technology transfer through the acquisition of operating licences or of patented and non-patented know-how, provided the following conditions are complied with:
 - the intangible asset concerned is a depreciable asset,

 - it is purchased on market terms, from an undertaking in which the acquirer has no power of direct or indirect control,

 - it is included in the assets of the undertaking, and remain in the establishment of the recipient of the aid and is used there for at least five years. This condition does not apply if the intangible asset is technically out of date. If the intangible asset is sold during those five years, the yield from the sale must be deducted from the eligible costs and all or part of the amount of aid must, where appropriate, be reimbursed;

- ‘*trade intensity*’ means the ratio between the total value of exports to third countries plus the value of imports from third countries and the total market size for the EEA (annual domestic turnover of EEA companies plus total imports from third countries) as per Eurostat statistics;

- ‘*EUA forward price*’, in EUR, means the simple average of the daily one-year forward EUA prices (closing offer prices) for delivery in December of the year for which the aid is granted, as observed in a given EU carbon exchange from 1 January to 31 December of the year preceding the year for which the aid is granted. For example, for aid granted for 2016, it is the simple average of the December 2016 EUA closing offer prices observed from 1 January 2015 to 31 December 2015 in a given EU carbon exchange;

⁽¹⁾ Code 12 15 0 within the legal framework established by Council Regulation No 58/97 of 20 December 1996 concerning structural business statistics. Regulation No 58/97, which had been incorporated into the EEA Agreement, was repealed by Regulation (EC) No 295/2008 of the European Parliament and of the Council of 11 March 2008 concerning structural business statistics (recast), which was incorporated into the EEA Agreement in point 1 of Annex XXI (although the provisions of Regulation No 58/97 continue to apply as regards the collection, compilation and transmission of data for reference years up to and including 2007).

- ‘CO₂ emission factor’, in tCO₂/MWh, means the weighted average of the CO₂ intensity of electricity produced from fossil fuels in different geographic areas. The weight shall reflect the production mix of the fossil fuels in the given geographic area. The CO₂ factor is the result of the division of the CO₂ equivalent emission data of the energy industry divided by the Gross electricity generation based on fossil fuels in TWh. For the purposes of these Guidelines, the areas are defined as geographic zones (a) which consist of submarkets coupled through power exchanges, or (b) within which no declared congestion exists and, in both cases, hourly day-ahead power exchange prices within the zones showing price divergence in Euro (using daily ECB exchange rates) of maximum 1 % in significant number of all hours in a year. Such regional differentiation reflects the significance of fossil fuel plants for the final price set on the wholesale market and their role as marginal plants in the merit order. The mere fact that electricity is traded between two EEA States does not automatically mean that they constitute a supranational region. Given the lack of relevant data at sub-national level, the geographic areas comprise the entire territory of one or more EEA States. On this basis, the following geographic areas can be identified: Nordic (Denmark, Sweden, Finland and Norway), Central-West Europe (Austria, Belgium, Luxembourg, France, Germany, Liechtenstein and Netherlands), Iberia (Portugal, Spain), Czech and Slovakia (Czech Republic and Slovakia) and all other EEA States separately. The corresponding maximum regional CO₂ factors are listed in Annex appendix IV;
- ‘baseline output’, in tonnes per year, means the average production at the installation over the reference period 2005-2011 (*baseline output*) for installations operating every year from 2005 to 2011. A given calendar year (e.g. 2009) may be excluded from that 7-year reference period. If the installation did not operate for at least one year from 2005 to 2011, then the baseline output will be defined as yearly production until there are four years of operation on record, and afterwards it will be the average of the preceding three years of that period. If, over the aid granting period, production capacity at an installation is significantly extended within the meaning of these Guidelines, the baseline output can be increased in proportion to that capacity extension. If an installation reduces its production level in a given calendar year by 50 % to 75 % compared to the baseline output, the installation will only receive half of the aid amount corresponding to the baseline output. If an installation reduces its production level in a given calendar year by 75 % to 90 % compared to the baseline output, the installation will only receive 25 % of the aid amount corresponding to the baseline output. If an installation reduces its production level in a given calendar year by 90 % or more compared to the baseline output, the installation will receive no aid.
- ‘baseline electricity consumption’, in MWh, means the average electricity consumption at the installation (including electricity consumption for the production of out-sourced products eligible for aid) over the reference period 2005-2011 (*baseline electricity consumption*) for installations operating every year from 2005 to 2011. A given calendar year (e.g. 2009) may be excluded from that 7-year reference period. If the installation did not operate for at least one year from 2005 to 2011, the baseline electricity consumption will be defined as yearly electricity consumption until there are four years of operation on record, and afterwards it will be defined as the average of the preceding three years for which operation has been recorded. If, over the aid granting period, an installation significantly extends its production capacity, the baseline electricity consumption can be increased in proportion to this capacity extension. If an installation reduces its production level in a given calendar year by 50 % to 75 % compared to the baseline output, the installation will only receive half of the aid amount corresponding to the baseline electricity consumption. If an installation reduces its production level in a given calendar year by 75 % to 90 % compared to the baseline output, the installation will only receive 25 % of the aid amount corresponding to the baseline electricity consumption. If an installation reduces its production level in a given calendar year by 90 % or more compared to the baseline output, the installation will receive no aid;
- ‘significant capacity extension’ means a significant increase in an installation’s initial installed capacity whereby all following occur:
- one or more identifiable physical changes relating to its technical configuration and functioning take place other than the mere replacement of an existing production line, and
 - the installation can be operated at a capacity that is at least 10 % higher compared to the installation’s initial installed capacity before the change and it results from a physical capital investment (or a series of incremental physical capital investments).

The installation must submit to the national aid granting authority evidence demonstrating that the criteria for a significant capacity extension have been met and that the significant capacity extension has been verified as satisfactory by an independent verifier. The verification should address the reliability, credibility and accuracy of the data provided by the installation and should deliver a verification opinion that states with reasonable assurance that the data submitted are free from material misstatements.

- '*electricity consumption efficiency benchmark*', in MWh/tonne of output and defined at Prodcum 8 level, means the product-specific electricity consumption per tonne of output achieved by the most electricity-efficient methods of production for the product considered. For products within the eligible sectors for which fuel and electricity exchangeability has been established in the Commission Decision 2011/278/EU ⁽¹⁾, the definition of electricity consumption efficiency benchmarks is made within the same system boundaries, taking into account only the share of electricity. The corresponding electricity consumption benchmarks for products covered by eligible sectors and subsectors are listed in Appendix III.
 - '*fall back electricity consumption efficiency benchmark*', 80 % of baseline electricity consumption. It corresponds to the average reduction effort imposed by the application of the electricity consumption efficiency benchmarks (benchmark electricity consumption/ex-ante electricity consumption). It is applied for all products and processes which fall within eligible sectors or subsectors, but which are not covered by the electricity consumption efficiency benchmarks set in Appendix III.
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⁽¹⁾ Commission Decision 2011/278/EU of 27 April 2011 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC of the European Parliament and of the Council, OJ L 130, 17.5.2011, p. 1. Annex I.2 to this Decision lists a number of products where such fuel substitutability has been deemed to exist, at least to a certain extent. The Decision has been incorporated into the EEA Agreement in point 21(a)(l)(c) of Annex XX.

Appendix II

Sectors and subsectors deemed ex-ante to be exposed to a significant risk of carbon leakage due to indirect emission costs

For the purposes of these Guidelines, an aid beneficiary's installation may receive State aid for indirect emission costs under Section 3.3 of these Guidelines, only if it is active in one of the following sectors and subsectors. No other sectors and subsectors will be considered eligible for such aid.

	NACE code ⁽¹⁾	Description
1.	2742	Aluminium production
2.	1430	Mining of chemical and fertiliser minerals
3.	2413	Manufacture of other inorganic chemicals
4.	2743	Lead, zinc and tin production
5.	1810	Manufacture of leather cloths
6.	2710 272210	Manufacture of basic iron and steel and of ferro-alloys, Seamless steel pipes
7.	2112	Manufacture of paper and paperboard
8.	2415	Manufacture of fertilisers and nitrogen compounds
9.	2744	Copper production
10.	2414	Manufacture of other organic basic chemicals
11.	1711	Spinning of cotton-type fibres
12.	2470	Manufacture of man-made fibres
13.	1310	Mining of iron ores
14.	24161039 24161035 24161050 24165130 24163010 24164040	The following sub-sectors within the Manufacture of plastics in primary forms sector (2416): Low Density Polyethylene (LDPE) Linear Low Density Polyethylene (LLDPE) High Density Polyethylene (HDPE) Polypropylene (PP) Polyvinyl Chloride (PVC) Polycarbonate (PC)
15.	21111400	The following sub-sector within the Manufacture of pulp sector (2111): Mechanical pulp

⁽¹⁾ According to NACE rev.1.1: http://ec.europa.eu/eurostat/ramon/nomenclatures/index.cfm?TargetUrl=-LST_CLS_DLD&StrNom=NACE_1_1&StrLanguageCode=EN&StrLayoutCode=HIERARCHIC

Explanatory note regarding the methodology for defining the sectors and subsectors eligible for aid

1. In line with Article 10a(15) of the ETS Directive, sectors or subsectors listed in the table above have been deemed to be exposed to a significant risk of carbon leakage for the purposes of these Guidelines on a quantitative basis if the intensity of trade with third countries is above 10 % and the sum of indirect additional costs induced by the implementation of the ETS Directive would lead to a substantial increase in production costs, calculated as a proportion of the gross value added, amounting to at least 5 %.

2. In calculating the indirect costs for the purposes of eligibility under these Guidelines, the same CO₂ price assumption and the same average EU emission factor for electricity is applied as in Commission Decision 2010/2/EU ⁽¹⁾. The same data on trade, production and value added for each sector or subsector are used as in Commission Decision 2010/2/EU. The computation of the trade intensities relies on exports and imports to all countries outside the EU, regardless of whether those non-EU countries impose any CO₂ pricing (through carbon taxes, or cap-and-trade systems similar to the ETS). It is also assumed that 100 % of the CO₂ cost will be passed on in electricity prices.
3. Similar with the provisions in Article 10a(17) of the ETS Directive, in determining the eligible sectors and subsectors listed in the table above, the assessment of sectors on the basis of quantitative criteria set out in paragraph 1 above has been supplemented with a qualitative assessment, where relevant data are available and industry representatives or EEA States have made sufficiently plausible and substantiated claims in favour of eligibility. The qualitative assessment was applied, firstly, to borderline sectors, i.e. NACE-4 sectors which face increased indirect emission costs in the range of 3-5 % and a trade intensity of at least 10 %; secondly, to sectors and subsectors (including at Prodcom level ⁽²⁾) for which official data are missing or are of poor quality; and, thirdly, to sectors and subsectors (including at Prodcom level) that can be considered to have been insufficiently represented by the quantitative assessment. Sectors or subsectors with less than 1 % indirect CO₂ costs have not been considered.
4. The qualitative eligibility assessment focused, firstly, on the size of the asymmetric indirect CO₂ cost impact as a share of the sector's gross value added. The asymmetric cost impact must be sufficiently large to entail a significant risk of carbon leakage due to indirect CO₂ costs. Indirect CO₂ costs of more than 2,5 % were considered to fulfil this criterion. Secondly, in addition, account was taken of available market related evidence indicating that the (sub)sector cannot pass on the increased indirect emission costs to its clients without losing significant market share in favour of its third country competitors. As an objective proxy to that end, a sufficiently high trade intensity of at least 25 % was deemed necessary for that second criterion to be fulfilled. In addition, the second criterion required substantiated information indicating that the EU sector concerned is on the whole likely to be price-taker (e.g. prices set at commodity exchanges or evidence of price correlations across macro-regions); such evidence was supported by further information where available, on the international demand and supply situation, transport costs, profit margins and CO₂ abatement potential. Thirdly, fuel and electricity exchangeability for products in the sector, as established by the Commission Decision 2011/278/EU ⁽³⁾ was also taken into account.
5. The results of both qualitative and quantitative assessments are reflected in the list of eligible sectors and subsectors set in this Annex, which is closed and may only be reviewed during the mid-term review of these Guidelines.

⁽¹⁾ Commission Decision of 24 December 2009 determining, pursuant to Directive 2003/87/EC of the European Parliament and of the Council, a list of sectors and subsectors which are deemed to be exposed to a significant risk of carbon leakage, OJ L 1, 5.1.2010, p. 10. The Decision has been incorporated into the EEA Agreement in point 21(a)(l)(b) of Annex XX.

⁽²⁾ Production Communautaire list, available at http://ec.europa.eu/eurostat/ramon/nomenclatures/-index.cfm?TargetUrl=LST_NOM_DTL&StrNom=PRD_2010&StrLanguageCode=EN&IntPckKey=&StrLayoutCode=HIERARCHIC

⁽³⁾ Commission Decision 2011/278/EU of 27 April 2011 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC of the European Parliament and of the Council, OJ L 130, 17.5.2011, p. 1. Annex I.2 to this Decision lists a number of products where such fuel substitutability has been deemed to exist, at least to a certain extent. The Decision has been incorporated into the EEA Agreement in point 21(a)(l)(c) of Annex XX.

Electricity consumption efficiency benchmarks for products covered by the NACE codes in Appendix II

NACE4	Product benchmark ⁽¹⁾	Bench- mark value	Benchmark unit	Unit of production ⁽²⁾	Product definition ⁽²⁾	Processes covered by product BM ⁽²⁾	Relevant prodcom-code (rev 1.1)	Description
2742	Primary aluminium	14,256	MWh/t product (AC consumption)	Tonne of unwrought non-alloy liquid aluminium	Unwrought non-alloy liquid aluminium from electrolysis	Unwrought non-alloy liquid aluminium from electrolysis, including pollution control units, auxiliary processes and the cast house. In addition to the definitions of the product in 2011/278/EU the anode plant (pre-bake anodes) is included. In case anodes are provided from a stand-alone plant in Europe, this plant should not be compensated as already comprised in the BM. In case anodes are produced outside Europe a correction may be applied.	27421130	Unwrought non-alloy aluminium (excluding powders and flakes)
							27421153	Unwrought aluminium alloys in primary form (excluding aluminium powders and flakes)
2742	Alumina (refining)	0,225	MWh/t product	Tonne of alumina		All processes directly or indirectly linked to the production of alumina	27421200	Aluminium oxide (excluding artificial corundum)
2710	Basic Oxygen steel	0,036	MWh/t product	Tonne of crude (cast) steel		Secondary metallurgy, refractories preheating, auxiliaries (in particular dedusting) and casting installations up to cut-off of crude steel products	2710T122	non-alloy steel produced by other processes than in electric furnaces
							2710T132	alloy steel other than stainless steel produced by other processes than in electric furnaces
							2710T142	stainless and heat resisting steel produced by other processes than in electric furnaces

NACE4	Product benchmark ⁽¹⁾	Bench- mark value	Benchmark unit	Unit of production ⁽²⁾	Product definition ⁽²⁾	Processes covered by product BM ⁽²⁾	Relevant prodcom-code (rev 1.1)	Description
2710	EAF carbon steel	0,283	tCO ₂ /t product	Tonne of crude secondary steel ex-caster.	Steel containing less than 8 % metallic alloying elements and tramp elements to such levels limiting the use to those applications where no high surface quality and processability is required.	All processes directly or indirectly linked to the process units electric arc furnace — secondary metallurgy — casting and cutting — post-combustion unit — dedusting unit — vessels heating stands — casting ingots preheating stands — scrap drying and — scrap preheating — are included.	2710T121	Crude steel: non-alloy steel produced in electric furnaces
		(based on 10 % best average)					2710T131	Crude steel: alloy steel other than stainless steel produced in electric furnaces
							2710T141	Crude steel: stainless and heat resisting steel produced in electric furnaces
2710	EAF high alloy steel	0,352	tCO ₂ /t product	Tonne of high alloy crude steel	Steel containing 8 % or more metallic alloying elements or where high surface quality and processability is required	All processes directly or indirectly linked to the process units — electric arc furnace — secondary metallurgy — casting and cutting — post-combustion unit — dedusting unit — vessels heating stands — casting ingots preheating stands	2710T121	Crude steel: non-alloy steel produced in electric furnaces

NACE4	Product benchmark ⁽¹⁾	Bench- mark value	Benchmark unit	Unit of production ⁽²⁾	Product definition ⁽²⁾	Processes covered by product BM ⁽²⁾	Relevant prodcom-code (rev 1.1)	Description
						— slow cooling pit — scrap drying and — scrap preheating are included. The process units FeCr converter and cryogenic storage of industrial gases are not included.		
		(based on 10 % best average)					2710T142	stainless and heat resisting steel produced by other processes than in electric furnaces
2710	FeSi	8,540	MWh/t product	Tonne of final FeSi-75	FeSi-75	All processes directly linked to operation of the furnaces. Auxiliaries are not included	27102020/ 24101230	Ferro-silicon-75 % Si content
2710	FeMn HC	2,760	MWh/t product	Tonne of final High Carbon FeMn	High Carbon FeMn	All processes directly linked to the furnaces. Auxiliary processes are not included	27102010	Ferro-manganese (in accordance with BREF)
2710	SiMn	3,850	MWh/t product	Tonne of final SiMn	Silico-manganese of different carbon content, including SiMn, Low Carbon SiMn, Very Low Carbon SiMn	All processes directly linked to the operation of the furnaces. Auxiliary processes are not included	27102030	Silico-manganese excluding FeSiMn
2413	Cl2	2,461	MWh/t product	Tonne of chlorine	Chlorine	All processes directly or indirectly linked to the electrolysis unit, including auxiliaries like motors	24131111	Chlorine

NACE4	Product benchmark ⁽¹⁾	Bench- mark value	Benchmark unit	Unit of production ⁽²⁾	Product definition ⁽²⁾	Processes covered by product BM ⁽²⁾	Relevant prodcom-code (rev 1.1)	Description
2413	Si metal	11,870	MWh/t product	Tonne of Si metal	Silicon with a grade 90-99,99 %	All processes directly linked to the furnaces. Auxiliary processes are not included	24131155	Silicon containing by weight < 99,99 % of silicon
2413	Hyperpure polysilicon	60,000	MWh/t product	Tonne of hyperpure Si metal	Silicon with a grade > 99,99 %	All processes directly or indirectly linked to the furnace, including auxiliaries	24131153	Silicon containing by weight >= 99,99 % of silicon
2413	SiC	6,200	MWh/t product	Tonne of 100 % SiC	Silicon carbide with 100 % purity	All processes directly or indirectly linked to the furnace, including auxiliaries	24135450	Carbides whether or not chemically defined
2414	High Value Chemicals	0,702	tCO ₂ /t product	Tonne of high value chemical (HVC) (Tonne of acetylene, ethylene, propylene, butadiene, benzene and hydrogen)	Mix of high value chemicals (HVC) expressed as total mass of acetylene, ethylene, propylene, butadiene, benzene and hydrogen excluding HVC from supplemental feed (hydrogen, ethylene, other HVC) with an ethylene content in the total product mix of at least 30 mass-percent and a content of HVC, fuel gas, butenes and liquid hydrocarbons of together at least 50 mass-percent of the total product mix.	All processes directly or indirectly linked to the production of high value chemicals as purified product or intermediate product with concentrated content of the respective HVC in the lowest tradable form (raw C4, unhydrogenated pygas) are included except C4 extraction (butadiene plant), C4-hydrogenation, hydrotreating of pyrolysis gasoline and aromatics extraction and logistics/storage for daily operation.	Several prodcom-codes under NACE 2414	

NACE4	Product benchmark ⁽¹⁾	Bench- mark value	Benchmark unit	Unit of production ⁽²⁾	Product definition ⁽²⁾	Processes covered by product BM ⁽²⁾	Relevant prodcom-code (rev 1.1)	Description
							24141120	Saturated acyclic hydrocarbons
							24141130	Unsaturated acyclic hydrocarbons; ethylene
							24141140	Unsaturated acyclic hydrocarbons; propene (propylene)
							24141150	Unsaturated acyclic hydrocarbons; butene (butylene) and isomers thereof
							24141160	Unsaturated acyclic hydrocarbons; buta-1.3-diene and isoprene
							24141190	Unsaturated acyclic hydrocarbons (excluding ethylene, propene-butene, buta-1.3-diene and isoprene)
							24/20141223	Benzene
2414	Aromatics	0,030	tCO ₂ /t product	CO ₂ weighted tonne	Mix of aromatics expressed as CO ₂ weighted tonne (CWT)	All processes directly or indirectly linked to aromatics sub-units — pygas hydrotreater — benzene/toluene/xylene (BTX) extraction — TDP — HAD — xylene isomerisation — p-xylene units — cumene production and — cyclo-hexane production are included.	Several prodcom-codes under NACE 2414. See guidance document 9 for the direct emissions for the full list.	

NACE4	Product benchmark ⁽¹⁾	Bench- mark value	Benchmark unit	Unit of production ⁽²⁾	Product definition ⁽²⁾	Processes covered by product BM ⁽²⁾	Relevant prodcom-code (rev 1.1)	Description
2414	Black carbon	1,954	tCO ₂ /t product	Tonne of furnace carbon black (saleable unit, > 96 %)	Furnace carbon black. Gas- and lamp black products are not covered by this benchmark	All processes directly or indirectly linked to the production of furnace carbon black as well as finishing, packaging and flaring are included.	24131130	Carbon (carbon blacks and other forms of carbon, n.e.c.)
2414	Styrene	0,527	tCO ₂ /t product	Tonne of styrene (saleable product)	Styrene monomer (vinyl benzene, CAS number: 100-42-5)	All processes directly or indirectly linked to the production of — styrene as well as — the intermediate product ethylbenzene (with the amount used as feed for the styrene production) are included.	24141250	Styrene
2414	Ethylene oxide/ ethylene glycols EO/EG	0,512	tCO ₂ /t product	Tonne of EO-equivalents (EOE), defined as the amount of EO (in mass) that is embedded in one mass unit of any of the specific glycols.	The ethylene oxide/ ethylene glycol benchmark covers the products — Ethylene oxide (EO, high purity) — Monoethylene glycol (MEG, standard grade + fiber grade (high purity)) — Diethylene glycol (DEG) — Triethylene glycol (TEG) The total amount of products is expressed in terms of EO-equivalents (EOE), which are defined as the amount of EO (in mass) that is embedded in one mass unit of the specific glycol	All processes directly or indirectly linked to the process units EO production, EO purification and glycol section are included.	24146373	Oxirane (ethylene oxide)

NACE4	Product benchmark ⁽¹⁾	Bench- mark value	Benchmark unit	Unit of production ⁽²⁾	Product definition ⁽²⁾	Processes covered by product BM ⁽²⁾	Relevant prodcom-code (rev 1.1)	Description
							24142310	Ethylene glycol (ethanediol)
							24146333	2,2-Oxydiethanol (diethylene glycol; digol)
2743	Zinc electrolysis	4,000	MWh/t product	Tonne of zinc	Primary zinc	All processed directly or indirectly linked to the zinc electrolysis unit including auxiliaries	27431230	Unwrought non-alloy zinc (excluding zinc dust, powders and flakes)
							2743125	Unwrought zinc alloys (excluding zinc dust, powders and flakes)
2415	Ammonia	1,619	tCO ₂ /t product	Tonne of ammonia produced as saleable (net) production and 100 % purity.	Ammonia (NH ₃), to be recorded in tons produced	All processes directly or indirectly linked to the production of the ammonia and the intermediate product hydrogen are included	24151075	Anhydrous ammonia

⁽¹⁾ For products shaded in light grey interchangeability between electricity and fuels was established and the benchmark is provided in terms of tCO₂

⁽²⁾ Production units, definitions and processes covered, which are shaded in dark grey are based on Commission Decision 2011/278/EU of 27 April 2011 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC

Products for which inter-exchangeability of electricity and fuels was established in Annex 1(2) of Decision 2011/278/EU ⁽¹⁾

Decision 2011/278/EU in Annex 1 established that in respect of some production processes there is substitutability between fuel and electricity. For those products it is not appropriate to set a benchmark on the basis of MWh/t of product. Instead, starting point are the specific greenhouse gases emission curves derived for the direct emissions. For those processes, the product benchmarks were determined on the basis of the sum of direct emissions (from energy and process emissions), as well as indirect emissions arising from the use of the inter-exchangeable part of the electricity.

In these cases, the factor 'E' in the formula for the calculation of the maximum aid amount as referred to in paragraph 27 (a) of the Guidelines is to be replaced by the following term that converts a product benchmark as per Decision 2011/278/EU into an electricity consumption efficiency benchmark on the basis of an average European emission intensity factor of 0.465 t CO₂/MWh:

Existing product BM from Annex 1 from Decision 2011/278/EU (in t CO₂/t) × share of relevant indirect emissions (*) over the baseline period (%) / 0.465 (t CO₂/MWh).

(*) 'Share of relevant indirect emissions over the baseline period' means the quotient of

- the relevant indirect emissions and
- the sum of total direct emissions and relevant indirect emissions as per Art 14 of the 2011/278/EU decision.

⁽¹⁾ Commission Decision on determining transitional Union-wide rules for harmonised free allocation pursuant to Article 10a of Directive 2003/87/EC. 27.4.2011, C(2011) 2772 final, OJ 17.5.2011, L 130/1. The decision has been incorporated into the EEA Agreement in point 21(a)(l)(c) of Annex XX.

Appendix IV

Maximum regional CO₂ emission factors in different geographic areas (tCO₂/MWh)

		Electricity
Central-West Europe	Austria, Belgium, France, Germany, Netherlands, Luxembourg, Liechtenstein	0,76
Czech and Slovakia	Czech Republic, Slovakia	1,06
Iberia	Portugal, Spain	0,57
Nordic	Denmark, Sweden, Finland, Norway	0,67
Bulgaria		1,12
Cyprus		0,75
Estonia		1,12
Greece		0,82
Hungary		0,84
Ireland		0,56
Italy		0,60
Latvia		0,60
Lithuania		0,60
Malta		0,86
Poland		0,88
Romania		1,10
Slovenia		0,97
United Kingdom		0,58
Iceland		0,00

Explanatory note regarding maximum regional CO₂ emission factors

In order to ensure equal treatment of sources of electricity and avoid possible abuses, the same CO₂ emission factor applies to all sources of electricity supply (auto generation, electricity supply contracts or grid supply) and to all aid beneficiaries in the EEA State concerned.

The method for establishing the maximum aid amount takes into account the CO₂ emission factor for electricity supplied by combustion plants in different geographic areas. Such regional differentiation reflects the significance of fossil fuel plants for the final price set on the wholesale market and their role as marginal plants in the merit order.

The Commission determined ex-ante the above mentioned regional value(s) of the CO₂ emission factors, which constitute maximum values for the calculation of the aid amount. However, EEA States may apply a lower CO₂ emission factor for all beneficiaries in their territory.

EFTA SURVEILLANCE AUTHORITY DECISION

No 309/13/COL

of 16 July 2013

on the compatibility with EEA law of measures to be taken by Norway pursuant to Article 14 of Directive 2010/13/EU of the European Parliament and of the Council on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive)

THE EFTA SURVEILLANCE AUTHORITY,

Having regard to the Act referred to at point 5p of Annex XI to the EEA Agreement, Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services⁽¹⁾ (the “Act”), and in particular Article 14(2) thereof,

Whereas:

- (1) By letter dated 22 April 2013, received by the EFTA Surveillance Authority (“the Authority”) on 23 April 2013, Norway notified the Authority of measures to be taken pursuant to Article 14(1) of Directive 2010/13/EU.
- (2) The EFTA Surveillance Authority verified, within a period of three months from this notification, that such measures are compatible with EEA law, in particular with regard to the proportionality of the measures and the transparency of the national consultation procedure.
- (3) In its verification, the Authority considered the available data on the Norwegian media market.
- (4) The list of events of major importance for society included in the Norwegian measures was drawn up in a clear and transparent manner. Furthermore, a far-reaching consultation had been launched in Norway in this regard.
- (5) The Authority was satisfied that the events listed in the Norwegian measures met at least two of the following criteria considered to be reliable indicators of the importance of events for society: (i) a special general resonance within the EEA EFTA State, and not simply a significance to those who ordinarily follow the sport or activity concerned; (ii) a generally recognised and distinct cultural importance for the population in the EEA EFTA State, in particular as a catalyst of cultural identity; (iii) involvement of the national team in the event concerned in the context of a competition or tournament of inter-

national importance; and (iv) the fact that the event has traditionally been broadcast on free-to-air television and has commanded a large television audience.

- (6) A number of events listed in the Norwegian measures, such as the Olympic Games as well as the Men’s World Cup and the Men’s European Football Championship, both including qualifying games with Norwegian participation, fall within the category of events considered of major importance for society, as referred to explicitly in recital 49 of Directive 2010/13/EU.
- (7) The summer Olympic Games is an event that attracts enormous interest in Norway as Norwegian athletes have always participated in a wide range of individual and group disciplines. The event has a special resonance among the general public in Norway, as it interests audiences who would not normally follow it. The summer Olympic Games were traditionally broadcast on free-to-air television and commanded high viewing figures in Norway.
- (8) The winter Olympic Games is an event even more popular and enjoys very high viewing figures. A large number of Norwegian athletes participate in the winter Olympic Games in both individual and group disciplines. The event has traditionally been broadcast on free-to-air television and commanded high viewing figures in Norway. The event is watched not only by viewers that ordinarily follow the sports concerned.
- (9) The Men’s World Cup and the Men’s European Football Championship, both in their entirety and including qualifying games with Norwegian participation, are among the most popular sports events in Norway. The Norwegian public and media take great interest in the Norwegian team’s qualifying matches as well as the matches in the final round, especially the final matches. The events have traditionally been broadcast on free-to-air television and have commanded a large television audience. As the matches between other countries in the final round may affect the matches that Norway may play as well as the overall result, they also enjoy a special resonance in Norway.
- (10) In Norway, there is a strong interest in local football clubs. The Men’s Norwegian Football Cup Final has traditionally been broadcast on free-to-air television. The high viewing figures that the event has enjoyed so far

⁽¹⁾ OJ L 95, 15.4.2010, p. 1.

indicate a significant public interest in this event, also outside of the audience that usually follows the matches of the local football clubs.

and wide interest in the population, also for those who do not normally follow the disciplines, as a part of the Norwegian's cultural identity and ski heritage. The event has traditionally been broadcast on free-to-air television and has commanded a large television audience.

- (11) The Women's World and European Handball Championships (the final round tournaments) are events traditionally broadcast on free-to-air television with significant viewing figures. The Norwegian women's national handball team has enjoyed great success over a long period which led to general resonance in Norway, also among audiences that would not normally follow this sport. The matches between other countries in the final rounds of both events affect the matches that the Norwegian national team may play as well as the overall result.
- (12) The FIS Nordic World Ski Championships is a popular event in Norway. Cross-country skiing is deeply rooted in the Norwegian culture and constitutes an important element of the Norwegian cultural heritage. The event has a generally recognised, distinct cultural importance for the Norwegian population and it has traditionally been broadcast on free-to-air television with large audience figures. The large viewing audience attracted by this event shows that the event and its outcome have a special general resonance in Norway and are not simply of significance to those who ordinarily follow the sport.
- (13) The FIS Alpine World Ski Championships is a popular event in Norway. Alpine skiing is deeply rooted in Norwegian culture and constitutes an important element of the Norwegian cultural heritage. The FIS Alpine Ski Championships can therefore be regarded as having a generally recognised, distinct cultural importance for the Norwegian population. Norway has had a number of winning alpine skiers which greatly impacted the interest for the discipline in Norway. The event and its outcome have therefore a special general resonance in Norway and not simply to those who ordinarily follow the sport.
- (14) The Holmenkollen FIS World Cup Nordic is an annual event in Holmenkollen, Oslo and forms part of the FIS World Cup Nordic. The event is one of the most important annual sports events in Norway, has a long tradition and it can be regarded as having a generally recognised, distinct cultural importance for the Norwegian population. The event has also traditionally been broadcast on free-to-air television and has commanded a large viewing audience. Because of the cultural significance of the event, the outcome of the event has a special general resonance in Norway, even for audiences that do not usually follow this discipline.
- (15) The Biathlon World Championships is an important winter event in Norway and has a special resonance
- (16) The Norwegian measures appear proportionate to justify, by the overriding reason of public interest in ensuring wide public access to broadcasts of events of major importance for society, the derogation from the fundamental freedom to provide services laid down in Article 36 of the Agreement on the European Economic Area.
- (17) The Norwegian measures are also compatible with EEA competition rules in so far as the definition of the qualifying broadcasters for the broadcasting of listed events relies on objective criteria (required coverage), which allow potential competition for the acquisition of the rights to broadcast these events. In addition, the number of listed events is not so disproportionate as to distort competition on the downstream free television and pay television markets.
- (18) The general proportionality of the Norwegian measures is supported by several factors. Firstly, the introduction of the 90 % threshold of the required potential coverage of the population for qualifying broadcasters increases the proportionality of the measures, in so far as it increases the number of broadcasters who potentially qualify. Secondly, the number of events included in the list is proportionate. Thirdly, a mechanism has been introduced for the resolution of disputes between broadcasters as regards the payment of fair compensation for broadcasting rights. Furthermore, the Norwegian measures provide for appropriate arrangements in situations where the events listed are purchased by non-qualifying broadcasters, in order to ensure a system for relicensing of exclusive rights to qualifying broadcasters. Furthermore, the Norwegian measures anticipate situations in which the rights to the events listed are purchased by a non-qualifying broadcaster, and no request has been received from a qualified buyer, in order to ensure that the non-qualifying broadcaster is able to exercise its rights. Finally, the entry into force of the final Norwegian is postponed to 1 July 2014 in order to ensure that any contract negotiations made before that date are not adversely effected.
- (19) The Authority communicated the measures notified by Norway to the other EEA EFTA States and sought the opinion of the EFTA Contact Committee established pursuant to Article 29 of Directive 2010/13/EU. The Committee adopted a favourable opinion.

HAS DECIDED AS FOLLOWS:

Article 1

The measures to be adopted by Norway pursuant to the Act referred to at point 5p of Annex XI to the EEA Agreement, Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (the “Act”), and in particular Article 14(1) thereof, notified to the Authority pursuant to Article 14(2) of the Act on 22 April 2013 and received by the Authority on 23 April 2013, are compatible with EEA law.

Article 2

Norway shall communicate to the Authority the measures as finally adopted. The Authority shall publish these measures in

the EEA Supplement to the *Official Journal of the European Union* in accordance with Article 14(2) of Directive 2010/13/EU.

Article 3

This Decision is addressed to Norway.

Done at Brussels, 16 July 2013.

For the EFTA Surveillance Authority

Sabine MONAUNI-TÖMÖRDY
College Member

Xavier LEWIS
Director

ANNEX

Regulation on amendments to Regulation no 153 of 28 February 1997 relating to broadcasting and audiovisual media services

Adopted by Royal Decree of 9 August 2013 pursuant to Section 2-8 of Act no 127 of 4 December 1992 relating to broadcasting and audiovisual media services. Submitted by the Ministry of Culture.

I

Regulation no 153 of 28 February 1997 relating to broadcasting and audiovisual media services is amended as follows:

The current provisions in Sections 5-1 and 5-2 are hereby revoked.

New Section 5-1 shall read:

Section 5-1 Events of major importance to society

The following events are to be regarded as events of major importance to society:

- a) The Summer and Winter Olympic Games in full, organised by the International Olympic Committee (IOC)
- b) The Men's World Football Championships in full, including qualifying games with Norwegian participation, organised by the Fédération Internationale de Football Association (FIFA)
- c) The Men's European Football Championships in full, including qualifying games with Norwegian participation, organised by the Union of European Football Associations (UEFA)
- d) The Women's World Handball Championships in full, organised by the International Handball Federation (IHF)
- e) The Women's European Handball Championships in full, organised by the European Handball Federation (EHF)
- f) The Men's Football Cup Final, organised by the Norwegian Football Federation (NFF)
- g) The Nordic World Ski Championships in full, organised by the International Ski Federation (FIS)
- h) The Alpine World Ski Championships in full, organised by the International Ski Federation (FIS)
- i) The Holmenkollen FIS World Cup Nordic
- j) The Biathlon World Championships in full, organised by the International Biathlon Union (IBU)

New Section 5-2 shall read:

Section 5-2 Television channels that are received by a substantial portion of the viewers on free television

A television channel is received by a substantial portion of the viewers on free television if the channel may be received by at least 90% of viewers with no additional costs apart from the licence fee and/or basic package fee.

New Section 5-3 shall read:

Section 5-3 Procedural provisions and setting of market price

- a) A television channel that does not meet the conditions in Section 5-2, and that has acquired an exclusive right to broadcast an event listed in Section 5-1, is obliged to provide a written offer for resale of the right to any television channel that meets the requirements in Section 5-2 and that requests the right to broadcast the event.
- b) An offer pursuant to letter a must be given no later than one month after receipt of a request from a television channel that meets the conditions in Section 5-2.
- c) A television channel that meets the conditions in Section 5-2, and that has received an offer pursuant to letter a must within one month after receipt of the offer respond whether the offer is accepted or not.
- d) If the parties cannot reach agreement on remuneration for the broadcasting rights to an event listed in Section 5-1, any of the parties may no later than six months before the event takes place request that the Media Authority set the remuneration for the rights to the event. The remuneration for the broadcasting rights shall be set in accordance with market principles. The Media Authority shall issue guidelines on the stipulation of remuneration for the resale of rights to events listed in Section 5-1 according to market principles.

- e) A television channel that does not meet the conditions in Section 5-2 may only exercise its exclusive right to an event listed in Section 5-1 if no requests pursuant to letter a) have been received at least ten months before the event taking place, or no television channels that meet the conditions in Section 5-2 wish to acquire the broadcasting rights at market price.
- f) The time limits in this provision shall not apply if an exclusive right to a television broadcast of an event listed in Section 5-1 is sold by a rights-holder to a television channel less than ten months in advance of the event listed in Section 5-1.

New Section 5-4 shall read:

Section 5-4 Conditions for the deferred or partial broadcasting of the event

A television channel that has acquired an event of major importance for society in accordance with Section 5-3, shall broadcast the entire event live.

The television channel may nevertheless broadcast parts of the event live, or wholly or partially deferred if:

- a) the event takes place at night between 00:00 and 06:00 GMT +1,
- b) the event consists of several parallel events, or
- c) other factors indicate that it would be in the interests of the public that the event is broadcast partly live, or wholly or partially deferred.

The current provision in Section 5-3 becomes the new Section 5-5, and shall read:

Section 5-5 Reporting of acquisitions

A television channel that acquires exclusive rights to all or parts of events that are listed in Section 5-1 or the lists of events of major importance to society in other EEA countries that have been approved by the European Commission or the EFTA Surveillance Authority and published in the Official Journal and the EEA Supplement to the Official Journal, shall immediately report such acquisitions to the Norwegian Media Authority.

The current provision in Section 5-4 becomes the new Section 5-6.

Section 10-2 first paragraph shall read:

For violations of provisions in Chapter 3 of the Act or rules pursuant to Chapter 3, other than those mentioned in Section 10-1 of this Regulation, violation of Section 6-4 of the Act, or Sections 1-4, 2-5, 2-6, 5-3, 5-4, 5-5 and 7-6 No 1 of this Regulation, the Norwegian Media Authority may impose a financial penalty based on a discretionary assessment. The same applies to a violation of licence conditions that include clearly defined obligations stipulated pursuant to Section 2-1, second paragraph of the Act.

Section 10-3 first paragraph shall read:

For violations of provisions in Section 2-1 first and third paragraph, Section 2-2 first paragraph and conditions adopted pursuant to Section 2-2 second paragraph of the Act, the Act Sections 2-4, 2-5 or Sections 1-3, 1-7, 2-1, 2-2, 2-4, 7-1 second paragraph, 7-6 nos. 2 and 4, 7-7, 7-8, 7-9 second and third paragraph, 7-10 and 7-11 of this Regulation, the Norwegian Media Authority may impose a financial penalty according to the following rules:

II

Entry into force

The amendments shall enter into force on 1 July 2014.

CORRIGENDA**Corrigendum to Council Implementing Regulation (EU) No 543/2012 of 25 June 2012 implementing Article 11(1) of Regulation (EU) No 753/2011 concerning restrictive measures directed against certain individuals, groups, undertakings and entities in view of the situation in Afghanistan**

(Official Journal of the European Union L 165 of 26 June 2012)

On page 15, recital 2:

for: '(2) On 18 May 2012, the Committee established pursuant to paragraph 30 of United Nations Security Council Resolution 1988 (2011) ...',

read: '(2) On 18 May and 1 June 2012, the Committee established pursuant to paragraph 30 of United Nations Security Council Resolution 1988 (2011) ...'.

Corrigendum to Council Implementing Decision 2012/334/CFSP of 25 June 2012 implementing Decision 2011/486/CFSP concerning restrictive measures directed against certain individuals, groups, undertakings and entities in view of the situation in Afghanistan

(Official Journal of the European Union L 165 of 26 June 2012)

On page 75, recital 2:

for: '(2) On 18 March 2012, the Committee established pursuant to paragraph 30 of United Nations Security Council Resolution 1988 (2011) ...',

read: '(2) On 18 May and 1 June 2012, the Committee established pursuant to paragraph 30 of United Nations Security Council Resolution 1988 (2011) ...'.

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