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I

(Legislative acts)

DECISIONS

DECISION No 1359/2013/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 17 December 2013
amending Directive 2003/87/EC clarifying provisions on the timing of auctions of greenhouse gas allowances
(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1) thereof,

Having regard to the proposal from the European Commission,

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

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

After consulting the Committee of the Regions,

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

Whereas:

- (1) Article 10(4) of Directive 2003/87/EC of the European Parliament and of the Council ⁽³⁾ does not specify how volumes of greenhouse gas emission allowances to be auctioned are to be distributed over the trading period.
- (2) For the purposes of legal certainty and market predictability, it should be clarified that, in order to ensure the orderly functioning of the market, the Commission is able in exceptional circumstances to adapt the auction timetable pursuant to Article 10(4) of Directive 2003/87/EC.

- (3) Directive 2003/87/EC should therefore be amended accordingly,

HAVE ADOPTED THIS DECISION:

Article 1

In the first subparagraph of Article 10(4) of Directive 2003/87/EC the following sentences are added:

‘Where an assessment shows for the individual industrial sectors that no significant impact on sectors or subsectors exposed to a significant risk of carbon leakage is to be expected, the Commission may, in exceptional circumstances, adapt the timetable for the period referred to in Article 13(1) beginning on 1 January 2013 so as to ensure the orderly functioning of the market. The Commission shall make no more than one such adaptation for a maximum number of 900 million allowances.’.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 17 December 2013.

For the European Parliament
The President
M. SCHULZ

For the Council
The President
L. LINKEVIČIUS

⁽¹⁾ OJ C 11, 15.01.2013, p. 87.

⁽²⁾ Position of the European Parliament of 10 December 2013 (not yet published in the Official Journal) and decision of the Council of 16 December 2013.

⁽³⁾ 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).

II

(Non-legislative acts)

REGULATIONS

COUNCIL REGULATION (EU) No 1360/2013

of 2 December 2013

fixing the production levies in the sugar sector for the 2001/2002, 2002/2003, 2003/2004, 2004/2005 and 2005/2006 marketing years, the coefficient required for calculating the additional levy for the 2001/2002 and 2004/2005 marketing years and the amount to be paid by sugar manufacturers to beet sellers in respect of the difference between the maximum levy and the levy to be charged for the 2002/2003, 2003/2004 and 2005/2006 marketing years

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 43(3) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Council Regulation (EC) No 1260/2001⁽¹⁾, and in particular the first indent of Article 15(8), Article 16(5), and Article 18(5), empowered the Commission to adopt detailed rules on the basic production levy and the B levy to be collected from quota holders operating in the framework of the common organisation of markets in the sugar sector, the coefficient for the calculation of an additional levy, and the repayment or recovery of part of the levies from beet sellers.
- (2) The Commission established the production levies for the 2001/2002⁽²⁾, 2002/2003⁽³⁾, 2003/2004⁽⁴⁾, 2004/2005⁽⁵⁾ and 2005/2006⁽⁶⁾ marketing years.

- (3) Article 18(2) of Regulation (EC) No 1260/2001 provided that when a basic production levy was lower than the maximum amount referred to in Article 15(3) or when the B levy referred to in that Article was lower than the maximum amount referred to in Article 15(4) of that Regulation, adjusted, where necessary, in accordance with Article 15(5), sugar manufacturers were to pay back beet sellers 60 % of the difference between the maximum amount of the levy concerned and the levy to be charged.

- (4) In accordance with Article 9(1) of Commission Regulation (EC) No 314/2002⁽⁷⁾, the amount to be paid by sugar manufacturers to beet sellers in respect of the difference between the maximum basic production levy and the B levy and the chargeable levy, were set for the 2002/2003⁽⁸⁾, 2003/2004⁽⁹⁾ and 2005/2006⁽¹⁰⁾ marketing years.

- (5) In the framework of the reform of the common market organisation for the sugar sector, Council Regulation (EC) No 318/2006⁽¹¹⁾ repealed and replaced Regulation (EC) No 1260/2001 as of the 2006/2007 marketing year. Regulation (EC) No 318/2006, which was subsequently repealed and incorporated into Council Regulation (EC) No 1234/2007⁽¹²⁾, replaced the variable sugar production levy system of self-financing the production quota regime by a new production charge aimed at

⁽¹⁾ Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector (OJ L 178, 30.6.2001, p. 1).

⁽²⁾ Commission Regulation (EC) No 1837/2002 (OJ L 278, 16.10.2002, p. 13).

⁽³⁾ Commission Regulation (EC) No 1762/2003 (OJ L 254, 8.10.2003, p. 4).

⁽⁴⁾ Commission Regulation (EC) No 1775/2004 (OJ L 316, 15.10.2004, p. 64).

⁽⁵⁾ Commission Regulation (EC) No 1686/2005 (OJ L 271, 15.10.2005, p. 12).

⁽⁶⁾ Commission Regulation (EC) No 164/2007 (OJ L 51, 20.2.2007, p. 17).

⁽⁷⁾ Commission Regulation (EC) No 314/2002 of 20 February 2002 laying down detailed rules for the application of the quota system in the sugar sector (OJ L 50, 21.2.2002, p. 40).

⁽⁸⁾ OJ L 254, 8.10.2003, p. 5.

⁽⁹⁾ OJ L 316, 15.10.2004, p. 65.

⁽¹⁰⁾ OJ L 51, 20.2.2007, p. 16.

⁽¹¹⁾ Council Regulation (EC) No 318/2006 of 20 February 2006 on the common organisation of the markets in the sugar sector (OJ L 58, 28.2.2006, p. 1).

⁽¹²⁾ 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) (OJ L 299, 16.11.2007, p. 1).

contributing to the financing of the expenditure occurring in the sugar sector under the common market organisation for sugar.

- (6) On 8 May 2008, in joined cases C-5/06 and C-23/06 to C-36/06, the Court of Justice declared Commission Regulations (EC) No 1762/2003 ⁽¹⁾ and (EC) No 1775/2004 ⁽²⁾ invalid. In its judgment, the Court held that all quantities of sugar in exported products, regardless of whether or not export refunds were actually paid, were to be taken into account for the purpose of calculating the estimated average loss per tonne of product.
- (7) The Court, in joined cases C-175/07 to C-184/07, and in cases C-466/06 and C-200/06, also declared Commission Regulation (EC) No 1686/2005 ⁽³⁾ invalid.
- (8) In order to comply with the Court's rulings, the Commission adopted Regulation (EC) No 1193/2009 ⁽⁴⁾.
- (9) On 29 September 2011, the General Court delivered its judgment in case T-4/06, in which it stated that there was no proper legal basis for a differentiated coefficient for the additional levy in the sugar sector and annulled Article 2 of Regulation (EC) No 1686/2005, as amended by Article 3 of Regulation (EC) No 1193/2009.
- (10) On 27 September 2012, in joined cases C-113/10, C-147/10 and C-234/10, the Court declared Regulation (EC) No 1193/2009 invalid, stating that, for the purpose of calculating the estimated average loss per tonne of product, Article 15(1)(d) of Regulation (EC) No 1260/2001 was to be interpreted as meaning that the total refund amount includes the total amount of export refunds effectively paid.
- (11) Consequently, levies in the sugar sector should be fixed at the appropriate level. For exports defined in accordance with Article 6(5) of Commission Regulation (EC) No 314/2002, the 'average loss', within the meaning of Article 15(1)(d) of Regulation (EC) No 1260/2001, should be calculated by dividing the refunds effectively paid by the exported quantities, regardless of whether or not a refund has been paid. The 'exportable surplus', within the meaning of Article 15(1)(c) of Regulation (EC) No 1260/2001, should also be calculated by using all exports, regardless of whether or not a refund has been paid.
- (12) Considering that the method used to calculate the levies for the 2001/2002 marketing year was the same as that invalidated by the Court, the production levies and the coefficient for the additional levy for the 2001/2002 marketing year should also be corrected accordingly.
- (13) It follows from the Court's judgement that the corrected levies should apply from the same dates as the levies which were declared invalid.
- (14) As a result of the fixing of the sugar levies in accordance with the method referred to in recital 11, the amount to be paid by sugar manufacturers to beet sellers in respect of the difference between the maximum levy and the levy chargeable for the 2002/2003, 2003/2004 and 2005/2006 marketing years should also be newly set, and should be applicable retroactively.
- (15) For the 2001/2002 marketing year, the uncovered overall loss calculated following the method referred to in recital 11 amounts to EUR 14 123 937. The coefficient referred to in Article 16(2) of Regulation (EC) No 1260/2001 should be set accordingly and should be applicable retroactively for that marketing year.
- (16) For the 2002/2003 marketing year, the application of the method referred to in recital 11 results in 2 % for the basic production levy and 16,371 % for the B levy, which should be applicable retroactively for that marketing year. The recalculated overall loss is covered in its entirety by the receipts from the basic production levy and the B levy. Therefore, there is no need to fix the additional coefficient referred to in Article 16(2) of Regulation (EC) No 1260/2001 for that marketing year.

⁽¹⁾ Commission Regulation (EC) No 1762/2003 of 7 October 2003 fixing the production levies in the sugar sector for the 2002/03 marketing year (OJ L 254, 8.10.2003, p. 4).

⁽²⁾ Commission Regulation (EC) No 1775/2004 of 14 October 2004 setting the production levies in the sugar sector for the 2003/04 marketing year (OJ L 316, 15.10.2004, p. 64).

⁽³⁾ Commission Regulation (EC) No 1686/2005 of 14 October 2005 setting the production levies and the coefficient for the additional levy in the sugar sector for the 2004/05 marketing year (OJ L 271, 15.10.2005, p. 12).

⁽⁴⁾ Commission Regulation (EC) No 1193/2009 of 3 November 2009 correcting Regulations (EC) No 1762/2003, (EC) No 1775/2004, (EC) No 1686/2005, (EC) No 164/2007 and fixing the production levies in the sugar sector for the marketing years 2002/2003, 2003/2004, 2004/2005, 2005/2006 (OJ L 321, 8.12.2009, p. 1).

- (17) For the 2002/2003 marketing year, Commission Regulation (EC) No 1440/2002 ⁽¹⁾ set the maximum amount of the B levy at 37,5 % of the intervention price for white sugar. However, the B levy applicable for that marketing year, revised according to the method referred to in recital 11 is 16,371 % of the intervention price for white sugar. This difference requires that the amount payable by sugar manufacturers to beet sellers be fixed per tonne of beet of standard quality for that marketing year, in accordance with Article 18(2) of Regulation (EC) No 1260/2001.
- (18) For the 2003/2004 marketing year, the application of the method referred to in recital 11 results in 2 % for the basic production levy and 17,259 % for the B levy. The recalculated overall loss is covered in its entirety by the receipts from the basic production levy and the B levy. Therefore, there is no need to fix the additional coefficient referred to in Article 16(2) of Regulation (EC) No 1260/2001 for that marketing year.
- (19) For the 2003/2004 marketing year, Regulation (EC) No 1440/2002 set the maximum amount of the B levy at 37,5 % of the intervention price for white sugar. However, the B levy applicable for that marketing year, revised according to the method referred to in recital 11, is 17,259 % of the intervention price for white sugar. This difference requires that the amount payable by sugar manufacturers to beet sellers be fixed per tonne of beet of standard quality for that marketing year, in accordance with Article 18(2) of Regulation (EC) No 1260/2001.
- (20) For the 2004/2005 marketing year, the application of the method referred to in recital 11 does not change the basic production levy and the B levy. For that marketing year, the uncovered overall loss calculated following the method referred to in recital 11 amounts to EUR 57 648 788. The coefficient referred to in Article 16(2) of Regulation (EC) No 1260/2001 should therefore be set. It follows from the Court's judgement referred to in recital 9 that the coefficient should be uniform for the Member States of the Union as constituted on 30 April 2004 and the Member States of the Union as constituted on 1 May 2004.
- (21) For the 2005/2006 marketing year, the application of the method referred to in recital 11 results in an amount of 1,2335 % for the basic production levy without the need for a B levy. The recalculated overall loss is covered in its entirety by the receipts from the basic production levy and there is no need to fix the additional coefficient referred to in Article 16(2) of Regulation (EC) No 1260/2001 for that marketing year.
- (22) For the 2005/2006 marketing year, Commission Regulation (EC) No 1296/2005 ⁽²⁾ set the maximum amount of the B levy at 37,5 % of the intervention price for white sugar. While the basic production levy applicable for that marketing year, revised in accordance with the method referred to in recital 11, is 1,2335 % of the intervention price for white sugar, there is no need for any B levy to be fixed. Due to these differences, it is necessary to fix the amounts per tonne of beet of standard quality payable by sugar manufacturers to beet sellers for that marketing year, in accordance with Article 18(2) of Regulation (EC) No 1260/2001.
- (23) For reasons of legal certainty and to ensure uniform treatment of the operators concerned in different Member States, it is necessary to set a common date upon which the levies fixed by this Regulation should be established, within the meaning of the second subparagraph of Article 2(2) of Council Regulation (EC, Euratom) No 1150/2000 ⁽³⁾. However, this deadline should not apply where Member States are required, under national law, to reimburse the operators concerned after that date,

HAS ADOPTED THIS REGULATION:

Article 1

1. The production levies in the sugar sector for the 2001/2002, 2002/2003, 2003/2004, 2004/2005 and 2005/2006 marketing years shall be those set out in point 1 of the Annex.
2. The coefficients required for calculating the additional levy for the 2001/2002 and 2004/2005 marketing years shall be those set out in point 2 of the Annex.
3. The amounts payable by sugar manufacturers to beet sellers in respect of the A or B levies for the 2002/2003, 2003/2004 and 2005/2006 marketing years shall be those set out in point 3 of the Annex.

⁽¹⁾ Commission Regulation (EC) No 1440/2002 of 7 August 2002 revising the maximum amount for the B production levy and amending the minimum price for B beet in the sugar sector for the 2002/03 marketing year (OJ L 212, 8.8.2002, p. 3).

⁽²⁾ Commission Regulation (EC) No 1296/2005 of 5 August 2005 revising the maximum amount for the B production levy and amending the minimum price for B beet in the sugar sector for the 2005/06 marketing year (OJ L 205, 6.8.2005, p. 20).

⁽³⁾ Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000 implementing Decision 2007/436/EC, Euratom on the system of the Communities own resources (OJ L 130, 31.5.2000, p. 1).

Article 2

The date of establishment, as referred to in the second subparagraph of Article 2(2) of Regulation (EC, Euratom) No 1150/2000, of the levies fixed by this Regulation shall be no later than 30 September 2014, except where Member States are prevented from respecting that deadline due to the application of national law on the recovery by economic operators of sums paid but not due.

Article 3

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

Article 1(1) shall apply from:

- 16 October 2002 for the 2001/2002 marketing year,
- 8 October 2003 for the 2002/2003 marketing year,
- 15 October 2004 for the 2003/2004 marketing year,

— 18 October 2005 for the 2004/2005 marketing year, and

— 23 February 2007 for the 2005/2006 marketing year.

Article 1(2) shall apply from:

— 16 October 2002 for the 2001/2002 marketing year, and

— 18 October 2005 for the 2004/2005 marketing year.

Article 1(3) shall apply from:

— 8 October 2003 for the 2002/2003 marketing year,

— 15 October 2004 for the 2003/2004 marketing year, and

— 23 February 2007 for the 2005/2006 marketing year.

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

Done at Brussels, 2 December 2013.

For the Council

The President

E. GUSTAS

ANNEX

(1) Production levies in the sugar sector referred to in Article 1(1)

	2001/2002	2002/2003	2003/2004	2004/2005	2005/2006
(a) EUR per tonne of white sugar as the basic production levy on A sugar and B sugar	12,638	12,638	12,638	12,638	7,794
(b) EUR per tonne of white sugar as the B levy on B sugar	236,963	103,447	109,061	236,963	—
(c) EUR per tonne of dry matter as the basic production levy on A isoglucose and B isoglucose	5,330	5,330	5,330	5,330	3,394
(d) EUR per tonne of dry matter as the B levy on B isoglucose	99,424	46,017	48,261	99,424	—
(e) EUR per tonne of dry matter equivalent sugar/isoglucose as the basic production levy on A inulin syrup and B inulin syrup	12,638	12,638	12,638	12,638	7,794
(f) EUR per tonne of dry matter equivalent sugar/isoglucose as the B levy on B inulin syrup.	236,963	103,447	109,061	236,963	—

(2) Coefficients required for calculating the additional levy referred to in Article 1(2)

2001/2002 marketing year: 0,01839

2004/2005 marketing year: 0,07294

(3) Amounts to be paid by sugar manufacturers to beet sellers in respect of the A or B levies referred to in Article 1(3)

	2002/2003	2003/2004	2005/2006
Complement price for A beet (*)			0,378
Complement price for B beet (*)	10,414	9,976	18,258

(*) Complement price in respect of A or B levy per tonne of beet of the standard quality (EUR).

COUNCIL IMPLEMENTING REGULATION (EU) No 1361/2013**of 17 December 2013****implementing Regulation (EU) No 267/2012 concerning restrictive measures against Iran**

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran ⁽¹⁾, and in particular Article 46(2) thereof,

Whereas:

- (1) On 23 March 2012, the Council adopted Regulation (EU) No 267/2012.
- (2) Following the judgment of 28 November 2013 of the Court of Justice of the European Union in Case C-280/12 P, Fereydoun MAHMOUDIAN and Fulmen are not

included on the list of persons and entities subject to restrictive measures in Annex II to Council Decision 2010/413/CFSP ⁽²⁾.

- (3) Fereydoun MAHMOUDIAN and Fulmen should be removed from the list of persons and entities subject to restrictive measures in Annex IX to Regulation (EU) No 267/2012,

HAS ADOPTED THIS REGULATION:

Article 1

Annex IX to Regulation (EU) No 267/2012 is amended as set out in the Annex to this Regulation.

Article 2

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

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

Done at Brussels, 17 December 2013.

For the Council

The President

R. ŠADŽIUS

⁽¹⁾ OJ L 88, 24.3.2012, p. 1.

⁽²⁾ Council Decision 2010/413/CFSP of 26 July 2010 concerning restrictive measures against Iran (OJ L 195, 27.7.2010, p. 39).

ANNEX

Annex IX to Regulation (EU) No 267/2012 is amended as follows:

- (1) in Part I(A), entry no 9 concerning 'Fereydoun MAHMOUDIAN' is deleted;
 - (2) in Part I(B), entry no 13 concerning 'Fulmen' is deleted.
-

COMMISSION IMPLEMENTING REGULATION (EU) No 1362/2013**of 11 December 2013****laying down the methods for the sensory testing of uncooked seasoned poultry meat for the purposes of its classification in the Combined Nomenclature**

THE EUROPEAN COMMISSION,

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

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

HAS ADOPTED THIS REGULATION:

Having regard to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff⁽¹⁾, and in particular Article 9(1)(a) thereof,

Article 1

The methods used to determine whether or not uncooked poultry meat is seasoned for the purposes of classification in the Combined Nomenclature shall be laid down in the Annex.

Whereas:

Article 2

- (1) Additional Note 6(a) to Chapter 2 of the Combined Nomenclature annexed to Regulation (EEC) No 2658/87 defines 'uncooked seasoned meat' as 'uncooked meat that has been seasoned either in depth or over the whole surface of the product with seasoning either visible to the naked eye or clearly distinguishable by taste'.

1. The visual examination of poultry meat shall be carried out by means of the method and under the conditions set out in Part I of the Annex.

The aim of the visual examination is to establish whether or not the poultry meat has been seasoned over the whole surface and whether the seasoning is visible to the naked eye.

- (2) In order to ensure that customs authorities apply a uniform approach for the purposes of customs classification, it is necessary to lay down methods for determining whether or not uncooked poultry meat is seasoned within the meaning of Additional Note 6(a) to Chapter 2 of the Combined Nomenclature.

2. The tasting of poultry meat shall be carried out by means of the method and under the conditions set out in Part II of the Annex.

The tasting shall only be undertaken in cases where, based on the results of the visual examination, it is not established that the sample has been seasoned over the whole surface and that the seasoning is visible to the naked eye.

- (3) In the light of studies carried out by the Group of European Customs Laboratories, the methods to verify whether uncooked poultry meat is seasoned or not should consist of, firstly, a visual examination and, secondly, the tasting of a sample.

The aim of the tasting is to establish whether the poultry meat has been seasoned in depth or over the whole surface and whether the seasoning is clearly distinguishable by taste.

- (4) The method consisting in the tasting of a sample should be applied only where the visual examination method does not lead to conclusive results.

The preparations of the tasting shall be carried out only on the premises fulfilling the minimum equipment requirements set out in point (2) of Part II of the Annex.

⁽¹⁾ OJ L 256, 7.9.1987, p. 1.

Article 3

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, 11 December 2013.

*For the Commission,
On behalf of the President,
Algirdas ŠEMETA
Member of the Commission*

ANNEX

PART I: VISUAL EXAMINATION OF SEASONED POULTRY MEAT

1. Objective and definition

The objective of this method is to determine whether uncooked seasoned poultry meat has to be classified in Chapter 2 or in Chapter 16 of the Combined Nomenclature because it can be established that:

- (1) the seasoning covers the whole surface of the sample and
- (2) the seasoning is visible to the naked eye.

The method consists of a visual examination of one or more samples of uncooked poultry meat.

2. Preparation of samples

Any sample is to be taken from a declared lot. Only an unopened original package is to be sampled. The sample may be packaged in a box or vacuum-packaged in plastic.

In the case of frozen uncooked meat the sample is to be thawed (for example in a refrigerator at a low temperature of 4 °C). The discharge of fluid is to be limited to a minimum.

Relevant information about the packaging and/or about the samples is to be registered or photographed and included in the test report referred to in point 4.

3. Carrying out of the visual examination

The sample is to be visually examined after removal of the packaging.

The sample is to be examined by at least two assessors.

When carrying out the visual examination, the assessors must take account of the following factors:

- (a) not each part of the surface of the sample needs to be seasoned up to the same degree;
- (b) absence of seasoning on creases or folds of the loosened inner fillet is unimportant for determining whether or not the seasoning has been applied over the whole surface;
- (c) observation of white pepper is more difficult than that of black pepper;
- (d) observation of pepper on a surface of lightly coloured meat (for example, breast meat) is easier than the observation of pepper on a surface of dark coloured meat (for example, thigh bone meat).

4. Evaluation of results

All the assessors must come to the same conclusion on whether or not the sample has been seasoned over the whole surface and whether or not the seasoning is visible to the naked eye.

They must fill in the test report on the visual examination of uncooked seasoned poultry meat. The specimen of the test report form is set out in Appendix 1.

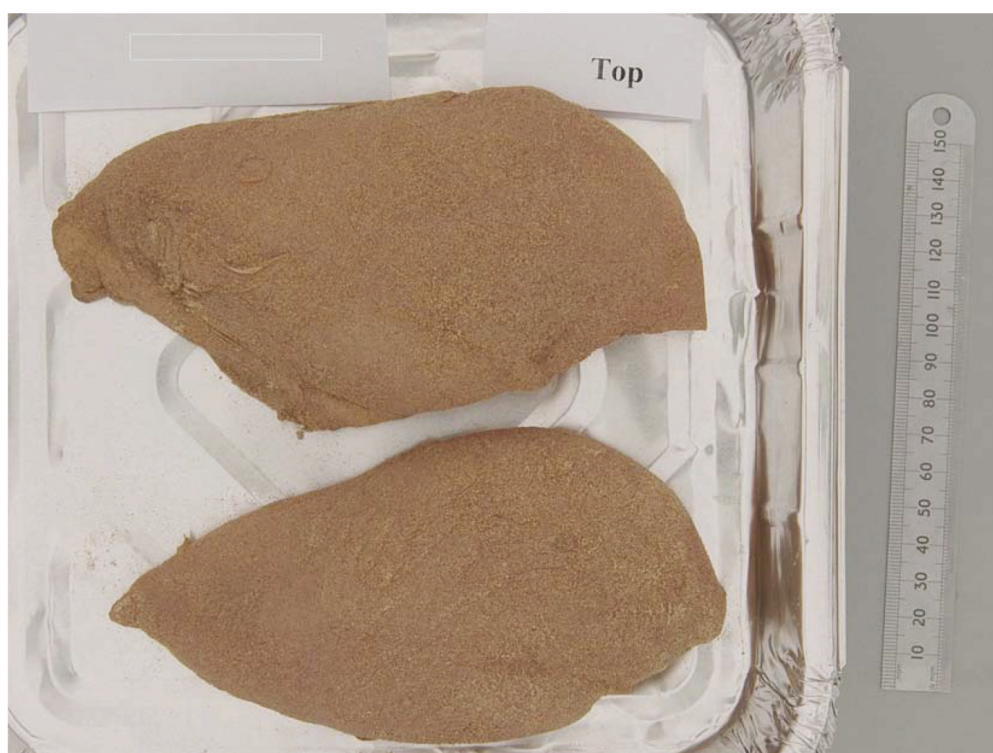
Where all the assessors do not arrive at the same conclusion with regard to a certain sample, or where they all arrive at the conclusion that the sample has not been seasoned over the whole surface or that the seasoning is not visible to the naked eye, the sample must be tested in accordance with Part II.

5. Explanatory pictures

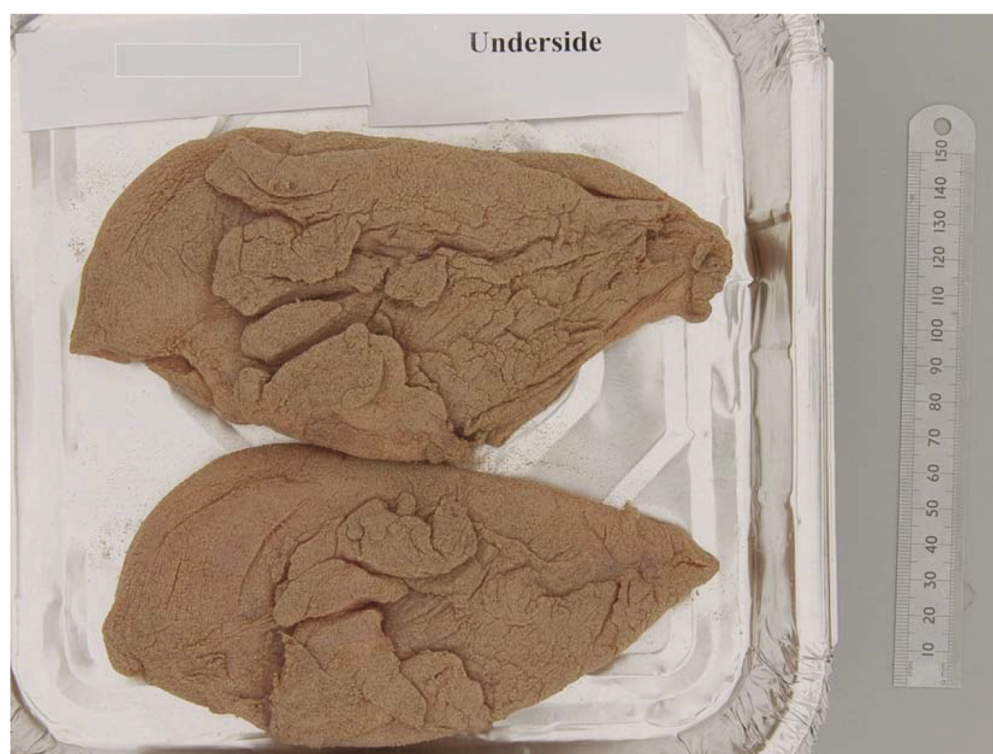
The enclosed pictures show how samples are to be assessed during the visual examination.

The pictures are of peppered poultry meat but the explanations given below each picture may also apply to other spices.

In the pictures 'TOP' refers to the outer surface of the poultry breast and 'UNDERSIDE' refers to the surface of the poultry breast exposed when cut from the bone.

Picture 1A

Result of the visual examination: the sample is seasoned over the whole surface and the seasoning is visible to the naked eye.

Picture 1B

Result of the visual examination: the sample is seasoned over the whole surface and the seasoning is visible to the naked eye.

Picture 2A

Result of the visual examination: the sample is seasoned over the whole surface and the seasoning is visible to the naked eye.

Picture 2B

Result of the visual examination: the sample is seasoned over the whole surface and the seasoning is visible to the naked eye.

Picture 3A

Result of the visual examination: the sample is seasoned over the whole surface and the seasoning is visible to the naked eye.

Picture 3B

Result of the visual examination: the sample is seasoned over the whole surface and the seasoning is visible to the naked eye.

Picture 4A

Result of the visual examination: the sample is seasoned over the whole surface and the seasoning is visible to the naked eye.

Picture 4B

Result of the visual examination: the sample is seasoned over the whole surface and the seasoning is visible to the naked eye.

Picture 5A



Result of the visual examination: the seasoning is visible to the naked eye but does **NOT** cover the whole surface of the sample.

Picture 5B



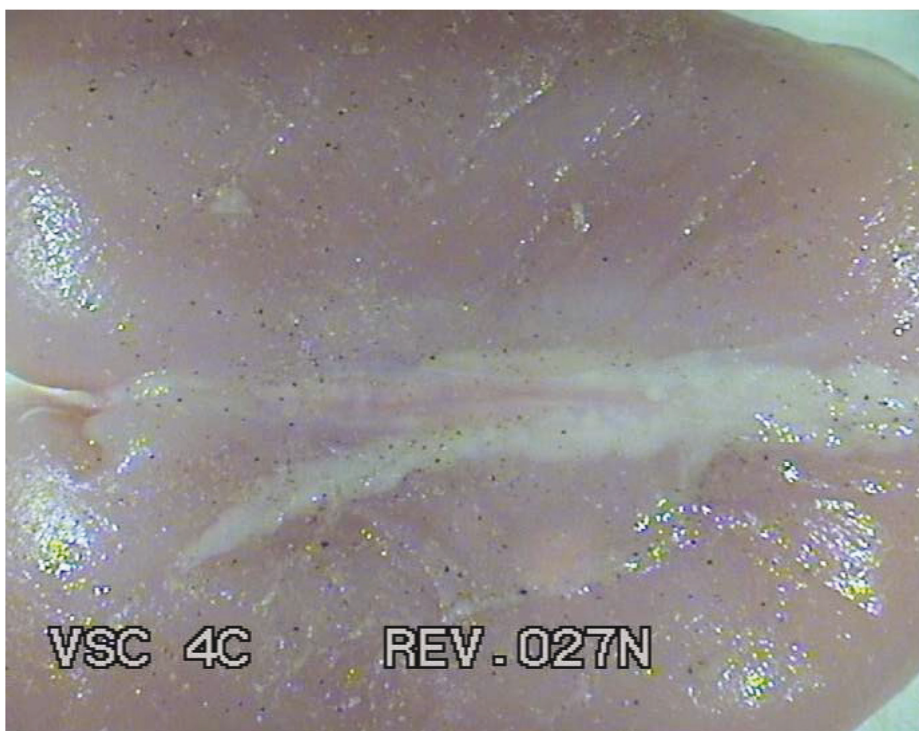
Result of the visual examination: the seasoning is visible to the naked eye but does **NOT** cover the whole surface of the sample.

Picture 6



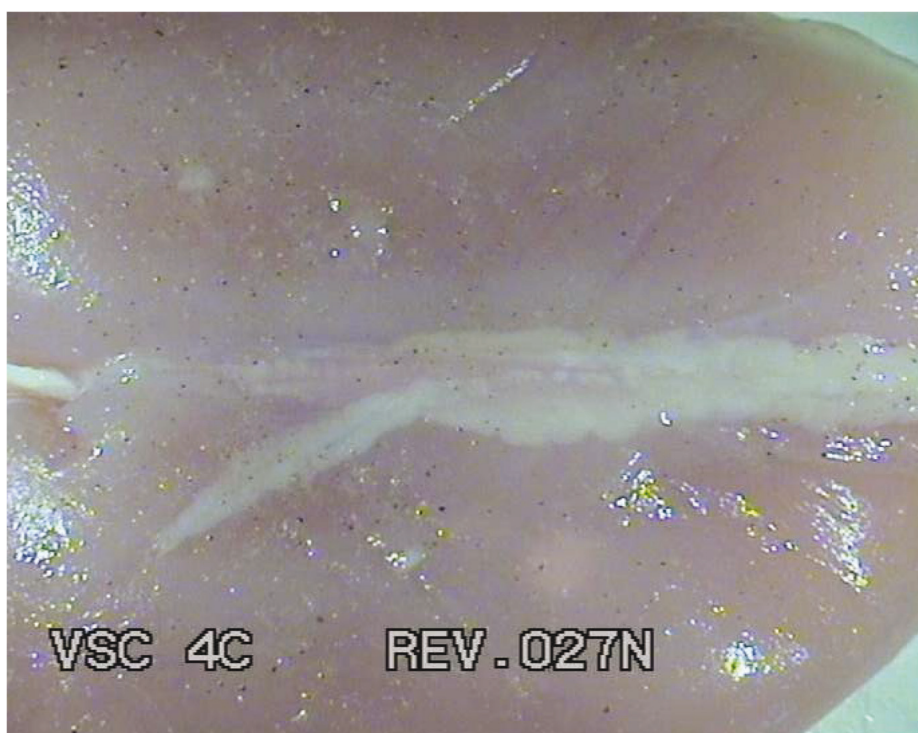
Result of the visual examination: the sample is seasoned over the whole surface and the seasoning is visible to the naked eye.

Picture 7



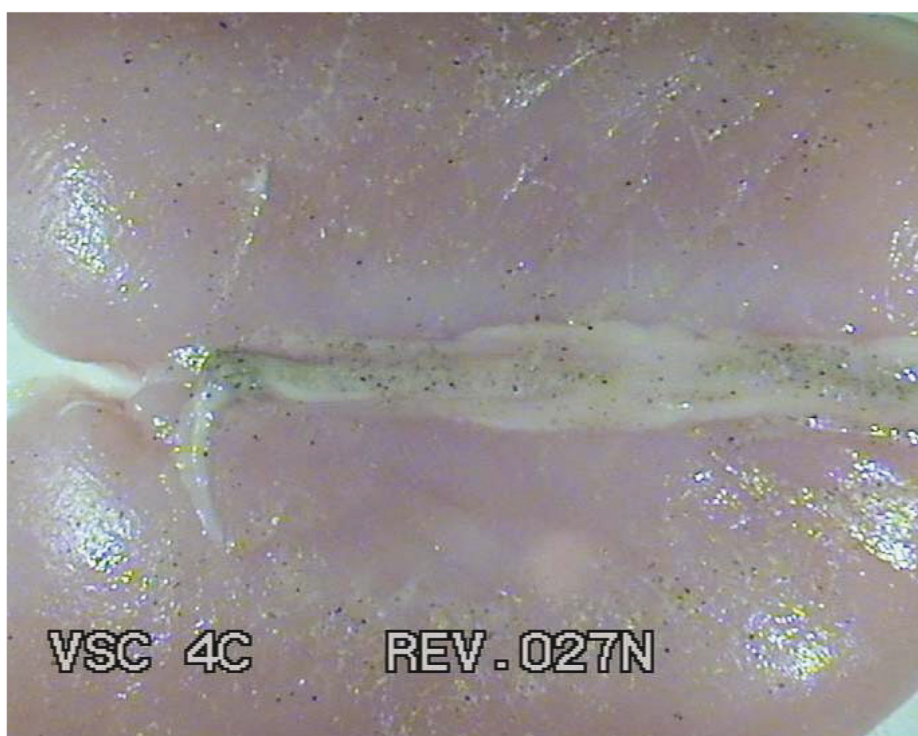
Result of the visual examination: the seasoning is visible to the naked eye but does **NOT** cover the whole surface of the sample.

Picture 8



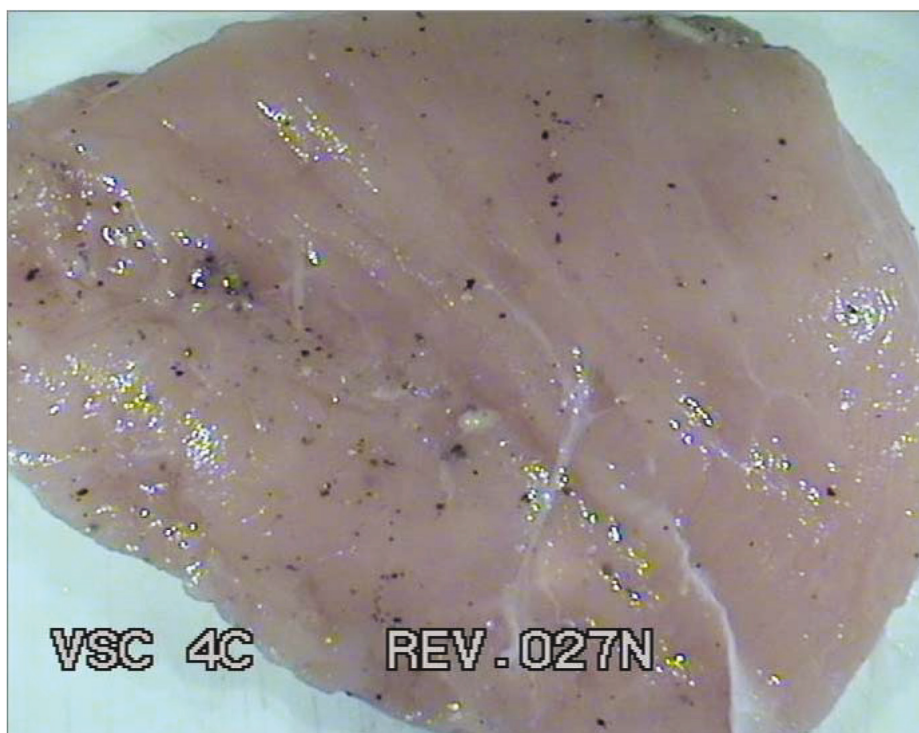
Result of the visual examination: the seasoning is visible to the naked eye but does **NOT** cover the whole surface of the sample.

Picture 9



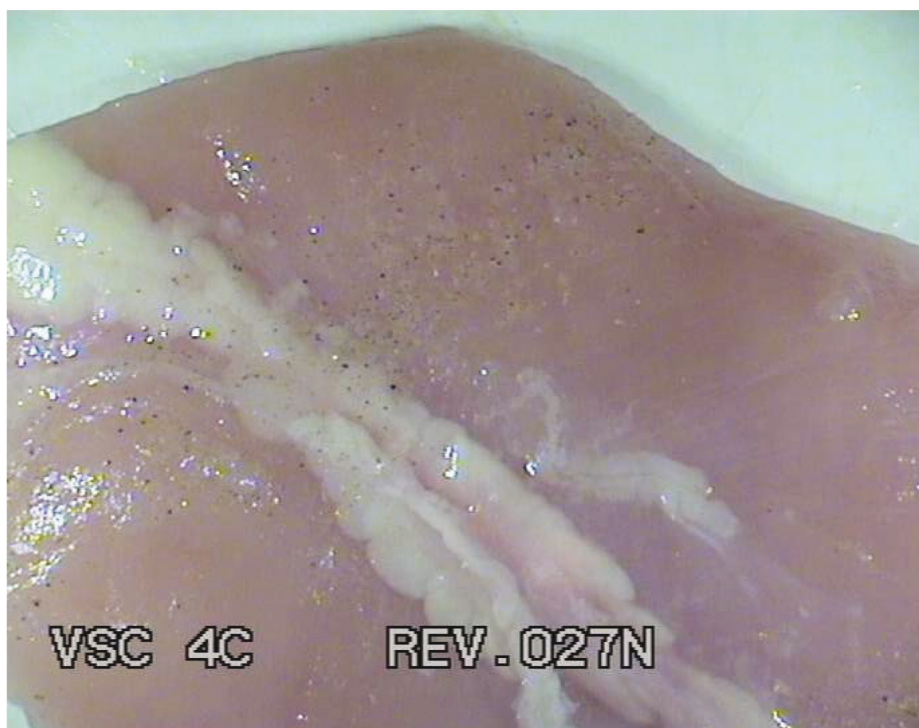
Result of the visual examination: the seasoning is visible to the naked eye but does **NOT** cover the whole surface of the sample.

Picture 10



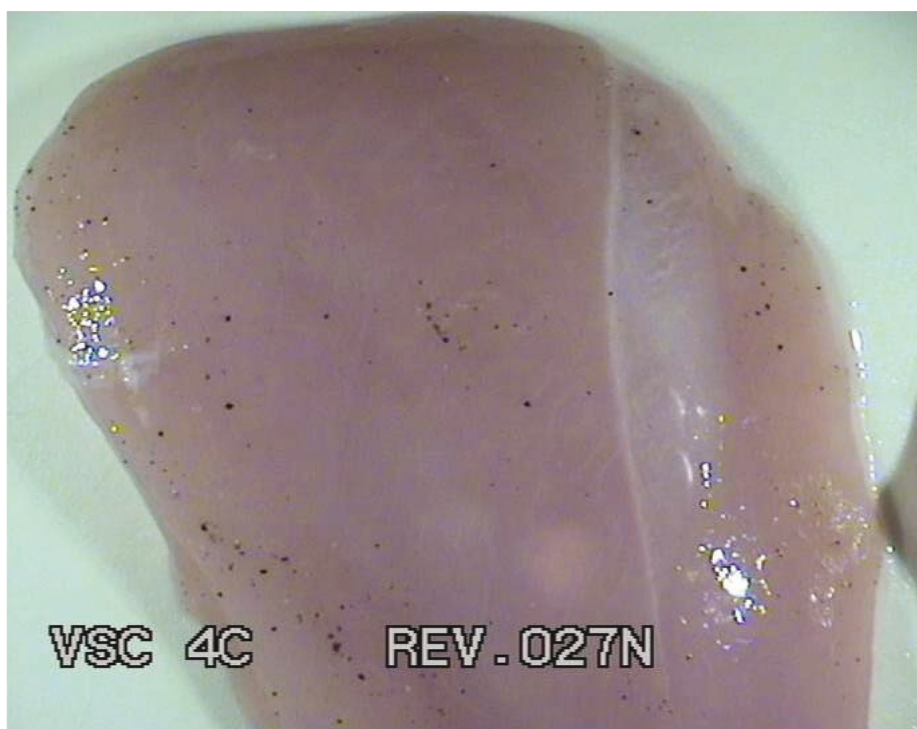
Result of the visual examination: the seasoning is visible to the naked eye but does **NOT** cover the whole surface of the sample.

Picture 11



Result of the visual examination: the seasoning is visible to the naked eye but does **NOT** cover the whole surface of the sample.

Picture 12



Result of the visual examination: the seasoning is visible to the naked eye but does **NOT** cover the whole surface of the sample.

Picture 13



Result of the visual examination: the seasoning is visible to the naked eye but does **NOT** cover the whole surface of the sample.

PART II: TASTING OF SEASONED POULTRY MEAT

1. Objective and definition

The objective of this method is to determine whether uncooked seasoned poultry meat has to be classified in Chapter 2 or in Chapter 16 of the Combined Nomenclature because it can be established that:

- (1) the poultry meat has been seasoned in depth or over the whole surface and
- (2) the seasoning is clearly distinguishable by taste.

The method consists of tasting one or more samples of poultry meat after cooking.

2. Equipment of the testing premises

The premises in which the tasting is carried out must have the following minimum equipment:

- a microwave oven,
- chopping boards,
- sharp knives,
- plain plates (e.g. polystyrene or crockery) labelled with random 3-digit codes,
- forks for serving,
- probe (food thermometer),
- disposable gloves.

3. Preparation of samples

A sample must consist of a representative portion of the poultry meat destined for consumption.

If there is any doubt about a sample, for example in respect of the addition of atypical compound(s) or possible microbial contamination, a risk assessment or a pre-test microbiological analysis must be carried out.

The sample is to be fully cooked in a microwave. When tested, the sample must be suitable for human consumption.

The sample must reach an internal temperature of at least 77 °C. The temperature is checked using a probe (food thermometer) at the end of the cooking time. If the specifications of the microwave request a 'standing time', the temperature is taken when the standing time has ended. Standing time allows for additional cooking after the power is turned off, with the heat already generated, while the door of the microwave is closed.

The outer surface of the sample is to be removed using a sharp knife to expose the cooked flesh in the centre. Care is to be taken not to contaminate the central part of the flesh with the outer surface.

The central part of the flesh is to be cut in about 2 cm³ portions.

The samples are to be left to cool for at least 10 minutes.

The samples are to be served to the assessors on labelled plates.

4. Carrying out of the tasting

Between five and eight qualified and trained assessors are presented with one or more samples. No more than five samples may be assessed in one session.

Sufficient time and/or a suitable palate cleanser (bottled water and unsalted crackers) must be provided between sample servings.

The assessors must be able to conduct the assessment with minimal distraction.

The assessors must taste the sample and objectively describe the key flavour, aftertaste and mouthfeel attributes of the sample.

The assessors must fill in the following two forms:

- (a) Attribute Generation Form for Customs Testing of Poultry Products.
- (b) Free Description Collation Form for Customs Testing of Poultry Products.

Specimens of the forms are set out in Appendices 2 and 3.

Each assessor individually writes down on the Attribute Generation Form the characteristics indicating on a scale from 1 to 3 the intensity of each characteristic by using only the terms 'SLIGHT' (1), 'CLEARLY DISTINGUISHABLE' (2) and 'STRONG' (3).

The key descriptive terms used by the assessors are recorded in the Free Description Collation Form, indicating the number of assessors using each term for each sample.

The intensity or strength of the characteristic is also summarised on the Free Description Collation Form.

Where different assessors use different terms that are known to carry a similar meaning, such as 'fatty' and 'greasy', they shall be considered to have used the same terms.

The results for added flavours or spices (for example, 'sour', 'sweet', 'hot', 'spicy', 'pepper', 'garlic' etc.) are to be filled in on the Free Description Collation Form.

5. Evaluation of results

Where in the Attribute Generation Form and the Free Description Collation Form at least half of the assessors indicated that they tasted added flavours or spices reaching at least scale 2 ('CLEARLY DISTINGUISHABLE') pursuant to point 4, the seasoning of the sample is considered to be clearly distinguishable by taste.

The forms must give the full details of the samples, their preparation, as well as the procedure(s) followed to reach and interpret the obtained results.

Test report on the visual examination of uncooked seasoned poultry meat

Date:

	Code ...	Code ...	Code ...	Code ...	Code ...
Seasoning over the whole surface of the product	YES / NO	YES / NO	YES / NO	YES / NO	YES / NO
Seasoning visible to the naked eye	YES / NO	YES / NO	YES / NO	YES / NO	YES / NO
Relevant information					

Appendix 2

Attribute generation form for customs testing of poultry products

Name:

Date:

Product:

Code	Flavour / Aftertaste / Mouthfeel	Intensity

Scale

1	2	3
SLIGHT	CLEARLY DISTINGUISHABLE	STRONG

Free description collation form for customs testing of poultry products

Date:

Attributes mentioned for: Flavour / Aftertaste / Mouthfeel	Code	1	2	3	Code	1	2	3	Code	1	2	3
		Slight	Clearly distinguishable	Strong		Slight	Clearly distinguishable	Strong		Slight	Clearly distinguishable	Strong

Compiled by:

Checked by:

In columns 1, 2, and 3 please enter the number of assessors who identified that attribute.

COMMISSION DELEGATED REGULATION (EU) No 1363/2013

of 12 December 2013

amending Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers as regards the definition of ‘engineered nanomaterials’

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers ⁽¹⁾, and in particular Article 18(5) thereof,

Whereas:

- (1) Article 18(3) of Regulation (EU) No 1169/2011 provides that all food ingredients present in the form of engineered nanomaterials have to be clearly indicated in the list of food ingredients to ensure consumer information. In addition, the names of food ingredients present in the form of engineered nanomaterials have to be followed by the word ‘nano’ in brackets. Accordingly, Regulation (EU) No 1169/2011 provides for a definition of ‘engineered nanomaterials’.
- (2) Article 18(5) of that Regulation empowers the Commission to adjust and adapt the definition of ‘engineered nanomaterials’ referred to therein to technical and scientific progress or to definitions agreed at international level, by means of delegated acts, for the purposes of achieving the objectives of that Regulation.
- (3) On 18 October 2011, Commission Recommendation 2011/696/EU ⁽²⁾ was adopted, responding, amongst others, to a request from the European Parliament for the introduction of a comprehensive science-based definition of nanomaterials in the Union legislation. The definition set out in that Recommendation is based solely on the size of the constituent particles of a material and covers natural, incidental and manufactured materials. It takes into account, amongst others, the European Commission Joint Research Centre’s Reference Report ‘Considerations on a Definition of Nanomaterial for Regulatory purposes’ ⁽³⁾, the opinion of the Scientific

Committee on Emerging and Newly Identified Health Risks (SCENIHR) concerning the ‘Scientific basis for the definition of the term “Nanomaterial”’ ⁽⁴⁾ and the definition of ‘nanomaterial’ developed by the International Organization for Standardization (ISO) ⁽⁵⁾.

- (4) According to Recommendation 2011/696/EU, the definition of ‘nanomaterial’ set out therein does not prejudice, nor reflect the scope of application of any piece of Union legislation.
- (5) In a Communication to the European Parliament, the Council and the European Economic and Social Committee on the Second Regulatory Review on Nanomaterials ⁽⁶⁾, the Commission expressed its intent to apply the definition of ‘nanomaterial’ as set out in Recommendation 2011/696/EU to Union legislation. Where other definitions are used in EU legislation, provisions will be adapted in order to ensure a consistent approach, although sector specific solutions may remain necessary.
- (6) It is therefore appropriate to adapt the definition of ‘engineered nanomaterials’ laid down in Regulation (EU) No 1169/2011 to that provided in Recommendation 2011/696/EU, which reflects technical and scientific progress to date.
- (7) Since the definition laid down in Regulation (EU) No 1169/2011 refers to ‘engineered nanomaterials’ and not to ‘nanomaterials’ in general, natural and incidental nanomaterials should not be included in the definition.
- (8) Moreover, it is appropriate to link the definition of ‘engineered nanomaterials’ to intentionally manufactured material, which should be explicitly defined. This definition should take into account the definition adopted by ISO, according to which ‘engineered nanomaterial’ is ‘nanomaterial designed for a specific purpose or function’ ⁽⁷⁾.

⁽¹⁾ OJ L 304, 22.11.2011, p. 18.⁽²⁾ Commission Recommendation 2011/696/EU of 18 October 2011 on the definition of nanomaterial (OJ L 275, 20.10.2011, p. 38).⁽³⁾ EUR 24 403 EN, June 2010.⁽⁴⁾ http://ec.europa.eu/health/scientific_committees/emerging/docs/scenihr_o_032.pdf⁽⁵⁾ <http://cdb.iso.org>⁽⁶⁾ COM(2012) 572 final, dated 3.10.2012.⁽⁷⁾ <http://cdb.iso.org>

- (9) Pursuant to Article 4 of Regulation (EC) No 1333/2008 of the European Parliament and of the Council ⁽¹⁾, only approved food additives included in the Union lists may be placed on the market as such and used in foods, in food additives, in food enzymes and in food flavourings under the conditions of use specified therein and following a safety assessment.
- (10) Those Union lists were established by Commission Regulations (EU) No 1129/2011 ⁽²⁾ and (EU) No 1130/2011 ⁽³⁾. These lists, as established, set out the food additives that were permitted for use prior to the entry into force of Regulation (EC) No 1333/2008 after a review of their compliance with the provisions thereof. All these approved food additives are currently subject to a re-evaluation programme by the European Food Safety Authority (hereinafter 'the Authority') in accordance with Commission Regulation (EU) No 257/2010 ⁽⁴⁾. The re-evaluation of food additives is being carried out in accordance with the priorities laid down in that Regulation and by group of food additives according to the main functional class to which they belong. It also covers any nano-related issues, which may be addressed in a revision of the conditions of use, where appropriate. As a result, 30 food colours have already been evaluated. None of the colours are produced in nano-form. For calcium carbonate (E170) and vegetable carbon (E153) the Authority recommended to lay down the particle size in the specifications. Other additives that could be in a nano-form will be evaluated by:
- (a) 31 December 2015: Titanium dioxide (E171), Iron oxides and hydroxides (E172), Silver (E174) and Gold (E175);
- (b) 31 December 2016: Silicon dioxide (E551);
- (c) 31 December 2018: Calcium silicate (E552), Magnesium silicate (E553a) and Talc (E553b).
- (11) Certain food additives included in the Union lists as established by Regulations (EU) No 1129/2011 and (EU) No 1130/2011 could be in the form of 'engineered nanomaterial' in the final food. However, indicating such food additives in the list of ingredients followed by the word 'nano' in brackets may confuse the consumers as it may suggest that those additives are new while in reality they have been used in foods in that form for decades.
- (12) Therefore, food additives included in the Union lists by Regulations (EU) No 1129/2011 and (EU) No 1130/2011 should not be [mandatorily] qualified as 'nano' in the list of ingredients and should not be covered by the definition of engineered nanomaterials. The need for specific nano-related labelling requirements relating to those additives should be addressed in the context of the re-evaluation programme, by amending, if necessary, the conditions of use in Annex II to Regulation (EC) No 1333/2008 and the specifications of those food additives, set out in Commission Regulation (EU) No 231/2012 ⁽⁵⁾. That exception should not apply to food additives inserted in those lists at a later date, including new entries pursuant to Article 12 of Regulation (EC) No 1333/2008.
- (13) The number based size distribution threshold of 50 % should be reviewed with the view to assess whether it should be replaced by a threshold between 1 % and 50 % in the future in light of technological developments concerning detection and quantification methods and where warranted by concerns for health and safety.
- (14) Therefore, Regulation (EU) No 1169/2011 should be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Point (t) of Article 2(2) of Regulation (EU) No 1169/2011 is replaced by the following:

'(t) "engineered nanomaterial" means any intentionally manufactured material, containing particles, in an unbound state or as an aggregate or as an agglomerate and where, for 50 % or more of the particles in the number size distribution, one or more external dimensions is in the size range 1 nm to 100 nm.

⁽¹⁾ Regulation (EC) No 1333/2008 of the European Parliament and of the Council of 16 December 2008 on food additives (OJ L 354, 31.12.2008, p. 16).

⁽²⁾ Commission Regulation (EU) No 1129/2011 of 11 November 2011 amending Annex II to Regulation (EC) No 1333/2008 of the European Parliament and of the Council by establishing a Union list of food additives (OJ L 295, 12.11.2011, p. 1).

⁽³⁾ Commission Regulation (EU) No 1130/2011 of 11 November 2011 amending Annex III to Regulation (EC) No 1333/2008 of the European Parliament and of the Council on food additives by establishing a Union list of food additives approved for use in food additives, food enzymes, food flavourings and nutrients (OJ L 295, 12.11.2011, p. 178).

⁽⁴⁾ Commission Regulation (EU) No 257/2010 of 25 March 2010 setting up a programme for the re-evaluation of approved food additives in accordance with Regulation (EC) No 1333/2008 of the European Parliament and of the Council on food additives (OJ L 80, 26.3.2010, p. 19).

⁽⁵⁾ Commission Regulation (EU) No 231/2012 of 9 March 2012 laying down specifications for food additives listed in Annexes II and III to Regulation (EC) No 1333/2008 of the European Parliament and of the Council (OJ L 83, 22.3.2012, p. 1).

By way of derogation:

- (a) food additives covered by the definition set out in the first paragraph shall not be considered as engineered nanomaterials, if they have been included in the Union lists referred to in Article 4 of Regulation (EC) No 1333/2008 by Commission Regulations (EU) No 1129/2011 (*) and (EU) No 1130/2011 (**);
- (b) fullerenes, graphene flakes and single wall carbon nanotubes with one or more external dimensions below 1 nm shall be considered as engineered nanomaterials.

For the purposes of the definition set out in the first paragraph:

- (i) “particle” means a minute piece of matter with defined physical boundaries;
- (ii) “agglomerate” means a collection of weakly bound particles or aggregates where the resulting external surface area is similar to the sum of the surface areas of the individual components;
- (iii) “aggregate” means a particle comprising of strongly bound or fused particles;

- (iv) “intentionally manufactured” means that the material is manufactured to perform/fulfil a specific function or purpose;.

(*) Commission Regulation (EU) No 1129/2011 of 11 November 2011 amending Annex II to Regulation (EC) No 1333/2008 of the European Parliament and of the Council by establishing a Union list of food additives (OJ L 295, 12.11.2011, p. 1).

(**) Commission Regulation (EU) No 1130/2011 of 11 November 2011 amending Annex III to Regulation (EC) No 1333/2008 of the European Parliament and of the Council on food additives by establishing a Union list of food additives approved for use in food additives, food enzymes, food flavourings and nutrients (OJ L 295, 12.11.2011, p. 178).

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, 12 December 2013.

For the Commission
The President

José Manuel BARROSO

COMMISSION IMPLEMENTING REGULATION (EU) No 1364/2013**of 17 December 2013****amending Regulation (EC) No 889/2008 laying down detailed rules for the implementation of Council Regulation (EC) No 834/2007 as regards the use of non-organic aquaculture juveniles and non-organic seed of bivalve shellfish in organic aquaculture**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 834/2007 of 28 June 2007 on organic production and labelling of organic products and repealing Regulation (EEC) No 2092/91 ⁽¹⁾ and in particular Article 13(3), Article 15(2) and Article 40 thereof,

Whereas:

(1) Regulation (EC) No 834/2007 establishes basic requirements for the organic production of seaweed and aquaculture animals. Detailed rules for the implementation of those requirements are laid down in Commission Regulation (EC) No 889/2008 ⁽²⁾.

(2) In the period between November 2012 and April 2013 certain Member States submitted requests for revision of the rules about products, substances and techniques which can be used in organic aquaculture production. Those requests are to be evaluated by the expert group for technical advice on organic production set up by Commission Decision 2009/427/EC ⁽³⁾; on the basis of that evaluation, the Commission intends to assess the need for any revision of those rules in 2014.

(3) In some of those requests it was stated that there was insufficient availability of organic juveniles and shellfish seed on the market to comply with the requirements of Articles 25e and 25o of Regulation (EC) No 889/2008.

(4) As organic juveniles and shellfish seed are not yet available in sufficient quantities, in order to allow for continuity, to avoid disruption of organic aquaculture production in the Union, and to give time to the market for organic juveniles and shellfish seed to develop further, it is justified, pending the receipt of expert advice, to postpone the application of the percentage of 50 % provided for in Article 25e(3) and the third subparagraph of 25o(1) of Regulation (EC) No 889/2008 by one year until 31 December 2014.

(5) Regulation (EC) No 889/2008 should therefore be amended accordingly.

(6) The measures provided for in this Regulation are in accordance with the opinion of the regulatory Committee on organic production,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 889/2008 is amended as follows:

1. In Article 25e, paragraph 3 is replaced by the following:

‘3. The maximum percentage of non-organic aquaculture juveniles introduced to the farm shall be 80 % by 31 December 2011, 50 % by 31 December 2014 and 0 % by 31 December 2015.’

2. In Article 25o(1), the third subparagraph is replaced by the following:

‘However, the maximum percentage of seed from non-organic bivalve shellfish hatcheries that may be introduced to the organic production units shall be 80 % by 31 December 2011, 50 % by 31 December 2014 and 0 % by 31 December 2015.’

⁽¹⁾ OJ L 189, 20.7.2007, p. 1.

⁽²⁾ Commission Regulation (EC) No 889/2008 of 5 September 2008 laying down detailed rules for the implementation of Council Regulation (EC) No 834/2007 on organic production and labelling of organic products with regard to organic production, labelling and control (OJ L 250, 18.9.2008, p. 1).

⁽³⁾ Commission Decision 2009/427/EC of 3 June 2009 establishing the expert group for technical advice on organic production (OJ L 139, 5.6.2009, p. 29).

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 as from 31 December 2013.

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

Done at Brussels, 17 December 2013.

For the Commission
The President
José Manuel BARROSO

COMMISSION IMPLEMENTING REGULATION (EU) No 1365/2013

of 18 December 2013

concerning the authorisation of a preparation of alpha-galactosidase produced by *Saccharomyces cerevisiae* (CBS 615.94) and endo-1,4-beta-glucanase produced by *Aspergillus niger* (CBS 120604) as a feed additive for minor poultry species for fattening and for chickens reared for laying (holder of authorisation Kerry Ingredients and Flavours)

(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.
- (2) In accordance with Article 7 of Regulation (EC) No 1831/2003, an application was submitted for a new use of a preparation of alpha-galactosidase produced by *Saccharomyces cerevisiae* (CBS 615.94) and endo-1,4-beta-glucanase produced by *Aspergillus niger* (CBS 120604). That application was accompanied by the particulars and documents required under Article 7(3) of Regulation (EC) No 1831/2003.
- (3) That application concerns the authorisation of a new use of a preparation of alpha-galactosidase produced by *Saccharomyces cerevisiae* (CBS 615.94) and endo-1,4-beta-glucanase produced by *Aspergillus niger* (CBS 120604) as a feed additive for minor poultry species for fattening and for chickens reared for laying, to be classified in the additive category 'zootechnical additives'.

- (4) The use of that preparation was authorised for 10 years for chickens for fattening by Commission Implementing Regulation (EU) No 237/2012⁽²⁾.
- (5) The European Food Safety Authority ('the Authority') concludes in its opinion of 18 June 2013⁽³⁾ that, under the proposed conditions of use, the preparation of alpha-galactosidase produced by *Saccharomyces cerevisiae* (CBS 615.94) and endo-1,4-beta-glucanase produced by *Aspergillus niger* (CBS 120604) does not have an adverse effect on animal health, human health or the environment and it has the potential to be efficacious on chickens reared for laying and that can be extrapolated to minor poultry species for fattening. The Authority does not consider that there is a need for specific requirements of post-market monitoring. 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.
- (6) The assessment of the preparation of alpha-galactosidase produced by *Saccharomyces cerevisiae* (CBS 615.94) and endo-1,4-beta-glucanase produced by *Aspergillus niger* (CBS 120604) 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.
- (7) 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 'digestibility enhancers', is authorised as an additive in animal nutrition subject to the conditions laid down in that Annex.

⁽¹⁾ OJ L 268, 18.10.2003, p. 29.

⁽²⁾ Commission Implementing Regulation (EU) No 237/2012 of 19 March 2012 concerning the authorisation of alpha-galactosidase (EC 3.2.1.22) produced by *Saccharomyces cerevisiae* (CBS 615.94) and endo-1,4-beta-glucanase (EC 3.2.1.4) produced by *Aspergillus niger* (CBS 120604) as a feed additive for chickens for fattening (holder of authorisation Kerry Ingredients and Flavours) (OJ L 80, 20.3.2012, p. 1).

⁽³⁾ EFSA Journal 2013; 11(7):3286.

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, 18 December 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
						Units of activity/kg of complete feedingstuff with a moisture content of 12 %			
Category of zootechnical additives. Functional group: digestibility enhancers									
4a17	Kerry Ingredients and Flavours	Alpha-galactosidase EC 3.2.1.22 Endo-1,4-beta-glucanase EC 3.2.1.4	<i>Additive composition</i> Preparation of alpha-galactosidase produced by <i>Saccharomyces cerevisiae</i> (CBS 615.94) and endo-1,4-beta-glucanase produced by <i>Aspergillus niger</i> (CBS 120604) having a minimum activity of: — 1 000 U ⁽¹⁾ alpha-galactosidase/g, — 5 700 U ⁽²⁾ endo-1,4-beta-glucanase/g. Solid form <i>Characterisation of the active substance</i> alpha-galactosidase (EC 3.2.1.22) produced by <i>Saccharomyces cerevisiae</i> (CBS 615.94) and endo-1,4-beta-glucanase (EC 3.2.1.4) produced by <i>Aspergillus niger</i> (CBS 120604). <i>Analytical method</i> ⁽³⁾ For the determination of: — alpha-galactosidase: colorimetric method measuring p-nitrophenol released by action of alpha-galactosidase from p-nitrophenyl-alpha-galactopyranoside substrate, — endo-1,4-beta-glucanase: colorimetric method measuring water soluble dye released by action of endo-1,4-beta-glucanase from azurine-crosslinked barley glucan substrate.	Minor poultry species for fattening. Chickens reared for laying.	—	alpha-galactosidase 50 U endo-1,4-beta-glucanase 285 U	—	1. In the directions for use of the additive and premixture, indicate the storage conditions and stability to pelleting. 2. Maximum recommended dose: — 100 U alpha-galactosidase/kg of complete feed, — 570 U endo-1,4-beta-glucanase/kg of complete feed. 3. For safety: breathing protection, glasses and gloves shall be used during handling.	8 January 2024

⁽¹⁾ 1 U is the amount of the enzyme which liberates 1 µmol of p-nitrophenol per minute from p-nitrophenyl-alpha-galactopyranoside (pNPG) at pH 5,0 and 37 °C.

⁽²⁾ 1 U is the amount of the enzyme which liberates 1 mg of reducing sugar (glucose equivalent) per minute from beta-glucan at pH 5,0 and 50 °C.

⁽³⁾ Details of the analytical methods are available at the following address of the Reference Laboratory:
http://irmm.jrc.ec.europa.eu/EURLs/EURL_feed_additives/Pages/index.aspx

COMMISSION IMPLEMENTING REGULATION (EU) No 1366/2013

of 18 December 2013

on the derogations from the rules of origin laid down in Annex II to the Agreement establishing an Association between the European Union and its Member States, on the one hand, and Central America on the other, that apply within quotas for certain products from Guatemala

THE EUROPEAN COMMISSION,

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

Having regard to Council Decision 2012/734/EU of 25 June 2012 on the signing, on behalf of the European Union, of the Agreement establishing an Association between the European Union and its Member States, on the one hand, and Central America on the other, and the provisional application of Part IV thereof concerning trade matters ⁽¹⁾, and in particular Article 6 thereof,

Whereas:

(4) Entitlement to benefit from the tariff concessions should be subject to the presentation of the relevant proof of origin to the customs authorities, as provided for in the Agreement.

(5) Since the Agreement applies on a provisional basis as of 1 December 2013, this Regulation should apply from the same date.

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

HAS ADOPTED THIS REGULATION:

(1) By Decision 2012/734/EU, the Council authorised the signing, on behalf of the Union, of the Agreement establishing an Association between the European Union and its Member States, on the one hand, and Central America on the other (hereinafter referred to as 'the Agreement'). Pursuant to Decision 2012/734/EU, the Agreement is to be applied on a provisional basis, pending the completion of the procedures for its conclusion.

(2) Annex II to the Agreement concerns the definition of the concept of 'originating products' and methods of administrative cooperation. For a number of products, Appendix 2A to that Annex provides for the possibility of derogations from the rules of origin set out in Appendix 2 to Annex II in the framework of annual quotas. As the Union has decided to use that possibility, it is necessary to provide the conditions for the application of those derogations for imports from Guatemala.

(3) The quotas set out in Appendix 2A to Annex II should be managed on a first-come, first-served basis in accordance with 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⁾.

Article 1

1. The rules of origin set out in Appendix 2A to Annex II to the Agreement establishing an Association between the European Union and its Member States, on the one hand, and Central America on the other (hereinafter referred to as 'the Agreement'), shall apply to the products listed in Annex to this Regulation.

2. The rules of origin referred to in paragraph 1 shall apply by derogation from the rules of origin set out in Appendix 2 to Annex II to the Agreement, within the quotas set out in Annex to this Regulation.

Article 2

To benefit from the derogation set out in Article 1, the products shall be accompanied by a proof of origin as set out in Annex II to the Agreement.

Article 3

The quotas set out in Annex shall be managed in accordance with Articles 308a, 308b and 308c of Regulation (EEC) No 2454/93.

⁽¹⁾ OJ L 346, 15.12.2012, p. 1.

⁽²⁾ OJ L 253, 11.10.1993, p. 1.

Article 4

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 December 2013.

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

Done at Brussels, 18 December 2013.

For the Commission
The President
José Manuel BARROSO

ANNEX

GUATEMALA

Notwithstanding the rules for the interpretation of the Combined Nomenclature, the wording of the description of the products is to be considered as having no more than an indicative value, the scope of the preferential scheme being determined, within the context of this Annex, by CN codes as they exist at the time of adoption of this Regulation.

Order No	CN code	Description of goods	Quota period	Annual quota volume (in items (pairs) if not otherwise specified)
09.7047	6104 62 00	Women's or girls' trousers, bib and brace overalls, breeches and shorts, of cotton	From 1.12.2013 to 31.12.2013	87 500
			From 1.1.2014 to 31.12.2014	1 144 500
			From 1.1.2015 to 31.12.2015	1 239 000
			From 1.1.2016 to 31.12.2016	1 333 500
			From 1.1.2017 to 31.12.2017	1 428 000
			From 1.1.2018 to 31.12.2018 and for each period thereafter from 1.1 to 31.12	1 522 500
09.7048	6105 20	Men's or boys' shirts, knitted or crocheted, of man-made fibres	From 1.12.2013 to 31.12.2013	291 667
			From 1.1.2014 to 31.12.2014	3 815 000
			From 1.1.2015 to 31.12.2015	4 130 000
			From 1.1.2016 to 31.12.2016	4 445 000
			From 1.1.2017 to 31.12.2017	4 760 000
			From 1.1.2018 to 31.12.2018 and for each period thereafter from 1.1 to 31.12	5 075 000
09.7049	6203 42	Men's or boys' trousers, bib and brace overalls, breeches and shorts, of cotton	From 1.12.2013 to 31.12.2013	87 500
			From 1.1.2014 to 31.12.2014	1 144 500
			From 1.1.2015 to 31.12.2015	1 239 000
			From 1.1.2016 to 31.12.2016	1 333 500
			From 1.1.2017 to 31.12.2017	1 428 000
			From 1.1.2018 to 31.12.2018 and for each period thereafter from 1.1 to 31.12	1 522 500
09.7050	6203 43	Men's or boys' trousers, bib and brace overalls, breeches and shorts, of synthetic fibres	From 1.12.2013 to 31.12.2013	58 334
			From 1.1.2014 to 31.12.2014	763 000
			From 1.1.2015 to 31.12.2015	826 000
			From 1.1.2016 to 31.12.2016	889 000
			From 1.1.2017 to 31.12.2017	952 000
			From 1.1.2018 to 31.12.2018 and for each period thereafter from 1.1 to 31.12	1 015 000

Order No	CN code	Description of goods	Quota period	Annual quota volume (in items (pairs) if not otherwise specified)
09.7051	6204 62	Women's or girls' trousers, bib and brace overalls, breeches and shorts, of cotton	From 1.12.2013 to 31.12.2013	58 334
			From 1.1.2014 to 31.12.2014	763 000
			From 1.1.2015 to 31.12.2015	826 000
			From 1.1.2016 to 31.12.2016	889 000
			From 1.1.2017 to 31.12.2017	952 000
			From 1.1.2018 to 31.12.2018 and for each period thereafter from 1.1 to 31.12	1 015 000

COMMISSION IMPLEMENTING REGULATION (EU) No 1367/2013**of 18 December 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, 18 December 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	55,3
	IL	216,6
	MA	74,7
	TN	111,2
	TR	111,2
	ZZ	113,8
0707 00 05	AL	106,5
	MA	158,2
	TR	135,9
	ZZ	133,5
0709 93 10	MA	120,5
	TR	138,4
	ZZ	129,5
0805 10 20	AR	26,3
	MA	57,5
	TR	58,5
	ZA	57,8
	ZZ	50,0
0805 20 10	MA	54,3
	ZZ	54,3
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	IL	104,4
	MA	69,9
	TR	70,1
	ZZ	81,5
0805 50 10	AR	102,8
	TR	72,5
	ZZ	87,7
0808 10 80	CN	77,6
	MK	31,3
	NZ	153,0
	US	131,8
	ZZ	98,4
0808 30 90	TR	121,9
	US	158,4
	ZZ	140,2

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

DECISIONS

COUNCIL DECISION

of 17 December 2013

appointing five members of the Court of Auditors

(2013/772/EU)

THE COUNCIL OF THE EUROPEAN UNION,

— Mr Alex BRENNINKMEIJER,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 286(2) thereof,

— Mr Henri GRETHEN,

Having regard to the opinion of the European Parliament ⁽¹⁾,

— Ms Danièle LAMARQUE,

Whereas:

— Mr Nikolaos MILIONIS,

(1) The terms of office of Mr Gijs DE VRIES, Mr Henri GRETHEN, Mr Michel CRETIN, Mr Ioannis SARMAS and Mr David BOSTOCK are due to expire on 31 December 2013.

— Mr Phil WYNN OWEN.

Article 2

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

(2) New appointments should therefore be made,

HAS ADOPTED THIS DECISION:

Done at Brussels, 17 December 2013.

Article 1

The following are hereby appointed members of the Court of Auditors for the period from 1 January 2014 to 31 December 2019:

For the Council

The President

L. LINKEVIČIUS

⁽¹⁾ Opinion of 11 December 2013 (not yet published in the Official Journal).

COUNCIL DECISION
of 17 December 2013
appointing a German member of the Committee of the Regions
(2013/773/EU)

THE COUNCIL OF THE EUROPEAN UNION,

HAS ADOPTED THIS DECISION:

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 305 thereof,

Article 1

The following is hereby appointed as member of the Committee of the Regions for the remainder of the current term of office, which runs until 25 January 2015:

Having regard to the proposal of the German Government,

— Dr Beate MERK, *Bayerische Staatsministerin für Europaangelegenheiten und regionale Beziehungen.*

Whereas:

Article 2

- (1) On 22 December 2009 and on 18 January 2010, the Council adopted Decisions 2009/1014/EU ⁽¹⁾ and 2010/29/EU ⁽²⁾ appointing the members and alternate members of the Committee of the Regions for the period from 26 January 2010 to 25 January 2015.

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

Done at Brussels, 17 December 2013.

- (2) A member's seat on the Committee of the Regions will become vacant following the end of the term of office of Ms Emilia MÜLLER,

For the Council

The President

L. LINKEVIČIUS

⁽¹⁾ OJ L 348, 29.12.2009, p. 22.

⁽²⁾ OJ L 12, 19.1.2010, p. 11.

COMMISSION IMPLEMENTING DECISION

of 17 December 2013

approving restrictions of authorisations of biocidal products containing bromadiolone notified by Germany in accordance with Directive 98/8/EC of the European Parliament and of the Council

*(notified under document C(2013) 9030)***(Only the German text is authentic)**

(2013/774/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing of biocidal products on the market⁽¹⁾, and in particular Article 4(4) thereof,

Whereas:

- (1) Annex I to Directive 98/8/EC contains the list of active substances approved at Union level for inclusion in biocidal products. Commission Directive 2009/92/EC⁽²⁾ added the active substance bromadiolone for use in products belonging to product-type 14, Rodenticides, as defined in Annex V to Directive 98/8/EC.
- (2) Bromadiolone is an anticoagulant rodenticide known to pose risks of accidental incidents with children, as well as risks for non-target animals and the environment. It has been identified as potentially persistent, liable to bioaccumulate and toxic ('PBT'), or very persistent and very liable to bioaccumulate ('vPvB').
- (3) For reasons of public health and hygiene, it was nevertheless found to be justified to include bromadiolone and other anticoagulant rodenticides in Annex I to Directive 98/8/EC, thus allowing Member States to authorise bromadiolone-based products. However, Member States were obliged to ensure, when granting authorisation of products containing bromadiolone, that primary as well as secondary exposure of humans, non-target animals

and the environment is minimised, by considering and applying all appropriate and available risk mitigation measures. The risk mitigation measures mentioned in Directive 2009/92/EC therefore include, amongst others, restriction to professional use only.

- (4) The company Belgagri SA ('the applicant') has, in accordance with Article 8 of Directive 98/8/EC, submitted applications to Ireland for authorisation of four rodenticides containing bromadiolone ('the products').
- (5) Ireland granted the authorisations of the products on 30 September 2012. The products were authorised with restrictions to ensure that the conditions of Article 5 of Directive 98/8/EC were met in Ireland. Those restrictions did not include restriction to trained or licensed professional users.
- (6) On 5 February 2013, the applicant submitted complete applications to Germany for mutual recognition of the first authorisations in respect of the products.
- (7) On 17 April 2013, Germany notified the Commission, the other Member States and the applicant of its proposal to restrict the first authorisations in accordance with Article 4(4) of Directive 98/8/EC. Germany proposed to impose a restriction on the products to use by trained or licensed professionals.
- (8) The Commission invited the other Member States and the applicant to submit comments to the notification in writing within 90 days in accordance with Article 27(1) of Directive 98/8/EC. No comments were submitted within that deadline. The notification was also discussed between the Commission and Member States' Competent Authorities for biocidal products in the meeting of the Product Authorisation and Mutual Recognition Facilitation Group of 14 May 2013.

⁽¹⁾ OJ L 123, 24.4.1998, p. 1.

⁽²⁾ Commission Directive 2009/92/EC of 31 July 2009 amending Directive 98/8/EC of the European Parliament and of the Council to include bromadiolone as an active substance in Annex I thereto (OJ L 201, 1.8.2009, p. 43).

(9) In accordance with Directive 98/8/EC, authorisations of biocidal products containing bromadiolone are to be subject to all appropriate and available risk mitigation measures, including the restriction to professional use only. The scientific evaluation leading to the inclusion of bromadiolone in Directive 98/8/EC concluded that only professional users could be expected to follow the instructions minimising the risk of secondary poisoning of non-target animals, and to use products in a way that prevents the selection and spreading of resistance. A restriction to professional users should therefore in principle be considered to be an appropriate risk mitigation measure, in particular in Member States where resistance to bromadiolone occurs.

(10) In the absence of any indication to the contrary, restriction to professional users is therefore an appropriate and available risk mitigation measure for the authorisation of products containing bromadiolone in Germany. This conclusion is reinforced by the arguments put forward by Germany that resistance against bromadiolone in rats has been found and is thought to be developing in the country. Furthermore, Germany has a well-functioning infrastructure of trained pest control operators and licensed professionals, such as farmers, gardeners and foresters who received professional training, which means that the proposed restriction does not hinder infection prevention.

(11) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Biocidal Products,

HAS ADOPTED THIS DECISION:

Article 1

Germany may restrict the authorisations granted in accordance with Article 4 of Directive 98/8/EC for the products mentioned in the Annex to this Decision to use by trained or licensed professionals.

Article 2

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 17 December 2013.

For the Commission

Janez POTOČNIK

Member of the Commission

ANNEX

Products for which Germany may restrict the authorisations granted in accordance with Article 4 of Directive 98/8/EC to use by trained or licensed professionals:

Product name in Ireland	Irish application reference number in the Register for Biocidal Products	Product name in Germany	German application reference number in the Register for Biocidal Products
Control	2011/6289/13066/IE/AA/21745	Control	2011/6289/13066/DE/MA/21749
Control Bloc	2011/6289/13146/IE/AA/21805	Control Bloc	2011/6289/13146/DE/MA/21809
Control Pasta	2011/6289/13126/IE/AA/21785	Control Pasta	2011/6289/13126/DE/MA/21788
Control Bar	2011/6289/13166/IE/AA/21825	Control Bar	2011/6289/13166/DE/MA/21829

COMMISSION IMPLEMENTING DECISION

of 17 December 2013

on a financial contribution from the Union towards emergency measures to combat avian influenza in Germany, Italy and the Netherlands in 2012 and 2013 and in Denmark and Spain in 2013

*(notified under document C(2013) 9084)***(Only the Danish, Dutch, German, Italian, and Spanish texts are authentic)**

(2013/775/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Council Decision 2009/470/EC of 25 May 2009 on expenditure in the veterinary field ⁽¹⁾, and in particular Article 4 thereof,

Whereas:

- (1) Avian influenza is an infectious viral disease of poultry and other captive birds with a severe impact on the profitability of poultry farming causing disturbance to trade within the Union and export to third countries.
- (2) In the event of an outbreak of avian influenza, there is a risk that the disease agent spreads to other poultry holdings within that Member State, but also to other Member States and to third countries through trade in live poultry or their products.
- (3) Council Directive 2005/94/EC ⁽²⁾ introducing Community measures for the control of avian influenza sets out measures which in the event of an outbreak have to be immediately implemented by Member States as a matter of urgency to prevent further spread of the virus.
- (4) In accordance with Article 84 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council ⁽³⁾, the commitment of expenditure from the Union budget shall be preceded by a financing decision setting out the essential elements of the action involving expenditure and adopted by the institution or the authorities to which powers have been delegated by the institution.
- (5) Decision 2009/470/EC lays down the procedures governing the financial contribution from the Union towards specific veterinary measures, including emergency measures. Pursuant to Article 4(2) of that

Decision, Member States shall obtain a financial contribution towards the costs of certain measures to eradicate avian influenza.

- (6) Article 4(3), first and second indents, of Decision 2009/470/EC lays down rules on the percentage of the costs incurred by the Member State that may be covered by the financial contribution from the Union.
- (7) The payment of a financial contribution from the Union towards emergency measures to eradicate avian influenza is subject to the rules laid down in Commission Regulation (EC) No 349/2005 of 28 February 2005 laying down rules on the Community financing of emergency measures and of the campaign to combat certain animal diseases under Council Decision 90/424/EEC ⁽⁴⁾.
- (8) Outbreaks of avian influenza occurred in Germany, Italy and the Netherlands in 2012 and 2013 and in Denmark and Spain in 2013. Denmark, Germany, Spain, Italy and the Netherlands took measures in accordance with Council Directive 2003/85/EC ⁽⁵⁾ to combat those outbreaks.
- (9) The authorities of Denmark, Germany, Spain, Italy and the Netherlands informed the Commission and the other Member States in the framework of the Standing Committee on the Food Chain and Animal Health of the measures applied in accordance with Union legislation on notification and eradication of the disease and the results thereof.
- (10) The authorities of Denmark, Germany, Spain, Italy and the Netherlands have therefore fulfilled their technical and administrative obligations with regard to the measures provided for in Article 4(2) of Decision 2009/470/EC and Article 6 of Regulation (EC) No 349/2005.
- (11) At this stage, the exact amount of the financial contribution from the Union cannot be determined as the information on the cost of compensation and on operational expenditure provided are estimates.

⁽¹⁾ OJ L 155, 18.6.2009, p. 30.

⁽²⁾ OJ L 10, 14.1.2006, p. 16.

⁽³⁾ OJ L 298, 26.10.2012, p. 1.

⁽⁴⁾ OJ L 55, 1.3.2005, p. 12.

⁽⁵⁾ OJ L 306, 22.11.2003, p. 1.

- (12) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS DECISION:

Article 1

Financial contribution from the Union to Denmark, Germany, Spain, Italy and the Netherlands

1. A financial contribution from the Union shall be granted to Denmark, Germany, Spain, Italy and the Netherlands towards the costs incurred by these Member States in taking measures pursuant to Article 4(2) and (3) of Decision 2009/470/EC, to combat avian influenza in Germany, Italy and the Netherlands in 2012 and 2013 and in Denmark and Spain in 2013.

2. The amount of the financial contribution mentioned in paragraph 1 shall be fixed in a subsequent decision to be adopted in accordance with the procedure established in Article 40(2) of Decision 2009/470/EC.

Article 2

Payment arrangements

A first tranche of EUR 500 000,00 shall be paid to Germany as part of the Union financial contribution provided for in Article 1(1).

A first tranche of EUR 40 000,00 for 2012 and EUR 2 600 000,00 for 2013 shall be paid to Italy as part of the Union financial contribution provided for in Article 1(1).

A first tranche of EUR 210 000,00 for 2012 and EUR 250 000,00 for 2013 shall be paid to the Netherlands as part of the Union financial contribution provided for in Article 1(1).

A first tranche of EUR 33 000,00 for 2013 shall be paid to Denmark as part of the Union financial contribution provided for in Article 1(1).

A first tranche of EUR 30 000,00 for 2013 shall be paid to Spain as part of the Union financial contribution provided for in Article 1(1).

Article 3

Addressees

This Decision is addressed to the Kingdom of Denmark, the Federal Republic of Germany, the Kingdom of Spain, the Italian Republic and the Kingdom of the Netherlands.

Done at Brussels, 17 December 2013.

For the Commission

Tonio BORG

Member of the Commission

COMMISSION IMPLEMENTING DECISION**of 18 December 2013****establishing the ‘Education, Audiovisual and Culture Executive Agency’ and repealing Decision 2009/336/EC****(2013/776/EU)**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 58/2003 of 19 December 2002 laying down the statute for executive agencies to be entrusted with certain tasks in the management of Community programmes ⁽¹⁾, and in particular Article 3 thereof,

Whereas:

- (1) Regulation (EC) No 58/2003 empowers the Commission to delegate powers to the executive agencies to implement all or part of a Union programme or project, on its behalf and under its responsibility, in accordance with that Regulation.
- (2) The purpose of entrusting the executive agencies with programme implementation tasks is to enable the Commission to focus on its core activities and functions which cannot be outsourced, without relinquishing control over, and ultimate responsibility for, activities managed by those executive agencies.
- (3) The delegation of tasks related to programme implementation to an executive agency requires a clear separation between the programming stages involving a large measure of discretion in making choices driven by policy considerations, this being carried out by the Commission, and programme implementation, which should be entrusted to the executive agency.
- (4) By Decision 2005/56/EC ⁽²⁾, the Commission created the Education, Audiovisual and Culture Executive Agency (hereinafter referred to as the Agency) and entrusted it with the management of Community actions in the field of education, audiovisual and culture.

- (5) The Commission amended the Agency’s mandate on several occasions, extending it to cover the management of new projects and programmes in the field of education, audiovisual, citizenship and youth and subsequently replaced Decision 2005/56/EC by Commission Decision 2009/336/EC ⁽³⁾.

- (6) In its Communication of 29 June 2011 ‘A budget for Europe 2020’ ⁽⁴⁾, the Commission proposed to use the option of more extensive recourse to existing executive agencies for the implementation of Union programmes in the next multiannual financial framework.

- (7) The Agency has demonstrated a high level technical and financial expertise in the management of Union programmes. Satisfaction surveys conducted as part of the first and second interim evaluations of EACEA (2009 and 2013) show that beneficiaries and other stakeholders believe that EACEA delivers a better quality of service as compared to previous arrangements (Technical Assistance Office). EACEA is able to attract and retain highly qualified personnel, which in turn provides staffing stability. The Agency continuously streamlines its internal operations to improve its efficiency and seeks to standardise approaches across programmes. It benefits from its status as a public body specifically created to manage programmes in the area of education, audiovisual and culture and this focus enhances the visibility of the EU programmes among stakeholders and the general public. The existence of a single entity managing a number of complementary programmes generates synergy effects in terms of visibility of EU action to the mutual benefit of all programmes. The *ex-post* control error rates are low for EACEA and well below the limit of 2 %. The second interim evaluation notes a steady improvement in EACEA’s technical and financial expertise which in turn is reflected in a general improvement in the Agency’s performance as observed in its KPIs.

- (8) In terms of the cost comparison with the ‘in-house option’, the cost-benefit analysis carried out in accordance with Article 3(1) of Regulation (EC) No 58/2003 found it would be more costly to manage the tasks at the Commission, by a margin of 23 % in net present value terms. The new programmes envisaged for delegation to EACEA are in line with the Agency’s current mandate and mission and represent a continuation of its existing activities. The Agency has

⁽¹⁾ OJ L 11, 16.1.2003, p. 1.

⁽²⁾ OJ L 24, 27.1.2005, p. 35.

⁽³⁾ OJ L 101, 21.4.2009, p. 26.

⁽⁴⁾ COM(2011) 500 final.

built up competence, skills and capacity in the management of these programmes over several years. The new programmes would therefore benefit from EACEA's accumulated experience and expertise in programme management, and resultant productivity gains. A shift to an in-house arrangement would be disruptive as most programmes have never been managed internally by the parent DGs, which lack the capacity to manage programmes in-house. Delegation of programme management to EACEA would thus ensure business continuity for programme beneficiaries and stakeholders. Delegation to EACEA will also continue to allow the Commission to better focus on its institutional tasks.

(9) In order to give executive agencies a coherent identity, the Commission has, as far as possible, grouped work by thematic policy area in establishing their new mandates.

(10) The Agency should be made responsible for implementing parts of the following new Union programmes and actions:

— Erasmus+ ⁽¹⁾; (successor to Lifelong Learning Programme ⁽²⁾, Youth in Action ⁽³⁾ and Erasmus Mundus ⁽⁴⁾, among others),

— Creative Europe ⁽⁵⁾; (successor to the Media ⁽⁶⁾ and Culture ⁽⁷⁾ programmes, among others),

— Europe for Citizens ⁽⁸⁾ (successor to the Europe for Citizens programme ⁽⁹⁾),

— EU Aid Volunteers ⁽¹⁰⁾ (successor to pilot programme Preparatory action — European Voluntary Humanitarian Aid Corps),

— projects in the field of higher education falling under external cooperation instruments ⁽¹¹⁾ (successor to external cooperation instruments to 2013 ⁽¹²⁾),

— projects in the field of higher education under the multiannual financial framework regarding the financing of EU cooperation for African, Caribbean and Pacific States and Overseas Countries and Territories for the 2014-2020 period (11th European Development Fund) ⁽¹³⁾.

(11) The Agency should remain responsible for implementing the following existing Union programmes and actions:

— projects in the field of higher education eligible for funding under the provisions on economic aid for certain countries of central and eastern Europe (Phare), as provided for in Council Regulation (EEC) No 3906/89 ⁽¹⁴⁾,

— the programme encouraging the development and distribution of European audiovisual works (MEDIA II — Development and distribution) (1996-2000), established by Council Decision 95/563/EC ⁽¹⁵⁾,

— the training programme for professionals in the European audiovisual programme industry (MEDIA II — Training) (1996-2000), approved by Council Decision 95/564/EC ⁽¹⁶⁾,

— the second phase of the Community action programme in the field of education, Socrates (2000-2006), approved by Decision No 253/2000/EC of the European Parliament and of the Council ⁽¹⁷⁾,

⁽¹⁾ Proposal for a Regulation of the European Parliament and of the Council COM(2011) 788 of 23 November 2011 establishing 'Erasmus for All': The Union Programme for Education, Training, Youth and Sport (hereinafter 'Erasmus+ Programme').

⁽²⁾ OJ L 327, 24.11.2006, p. 45.

⁽³⁾ OJ L 327, 24.11.2006, p. 30.

⁽⁴⁾ OJ L 340, 19.12.2008, p. 83.

⁽⁵⁾ Proposal for Regulation of the European Parliament and of the Council COM(2011) 785 of 23 November 2011 establishing the Creative Europe Programme.

⁽⁶⁾ OJ L 327, 24.11.2006, p. 12.

⁽⁷⁾ OJ L 372, 27.12.2006, p. 1.

⁽⁸⁾ Proposal for a Council Regulation COM(2011) 884 of 14 December 2011 establishing for the period 2014-2020 the programme 'Europe for Citizens'.

⁽⁹⁾ OJ L 378, 27.12.2006, p. 32.

⁽¹⁰⁾ Proposal for a Regulation of the European Parliament and of the Council COM(2012) 514 establishing the European Voluntary Humanitarian Aid Corps 'EU Aid Volunteers'.

⁽¹¹⁾ Proposal for a Regulation of the European Parliament and of the Council COM(2011) 843 establishing a Partnership Instrument for cooperation with third countries; Proposal for a Regulation of the European Parliament and of the Council COM(2011) 840 establishing a financing instrument for development cooperation; Proposal for a Regulation of the European Parliament and of the Council COM(2011) 839 establishing a European Neighbourhood Instrument; Proposal for a Regulation of the European Parliament and of the Council COM(2011) 838 on the Instrument for Pre-accession Assistance (IPA II).

⁽¹²⁾ OJ L 210, 31.7.2006, p. 82; OJ L 310, 9.11.2006, p. 1; OJ L 378, 27.12.2006, p. 41.

⁽¹³⁾ COM(2011) 837 final.

⁽¹⁴⁾ OJ L 375, 23.12.1989, p. 11.

⁽¹⁵⁾ OJ L 321, 30.12.1995, p. 25.

⁽¹⁶⁾ OJ L 321, 30.12.1995, p. 33.

⁽¹⁷⁾ OJ L 28, 3.2.2000, p. 1.

- the second phase of the Community vocational training action programme 'Leonardo da Vinci' (2000-2006), approved by Council Decision 1999/382/EC ⁽¹⁾,
- the 'Youth' Community action programme (2000-2006), approved by Decision No 1031/2000/EC of the European Parliament and of the Council ⁽²⁾,
- the 'Culture 2000' programme (2000-2006), approved by Decision No 508/2000/EC of the European Parliament and of the Council ⁽³⁾,
- projects in the field of higher education eligible for funding under the provisions on assistance for the partner States of Eastern Europe and Central Asia (2000-2006), as provided for in Council Regulation (EC, Euratom) No 99/2000 ⁽⁴⁾,
- projects in the field of higher education eligible for funding under the provisions on assistance for Albania, Bosnia-Herzegovina, Croatia, the Former Yugoslav Republic of Macedonia, Montenegro, Serbia and Kosovo (UNSCR 1244) (2000-2006), approved under Council Regulation (EC) No 2666/2000 ⁽⁵⁾,
- projects in the field of higher education eligible for funding under the provisions on financial and technical measures to accompany the reform of economic and social structures in the framework of the euro-Mediterranean partnership (MEDA), approved under Council Regulation (EC) No 2698/2000 ⁽⁶⁾,
- the third phase of the trans-European cooperation scheme for higher education (Tempus III) (2000-2006), approved by Council Decision 1999/311/EC ⁽⁷⁾,
- projects eligible for funding under the provisions of the Agreement between the European Community and the United States of America renewing a programme of cooperation in the field of higher education and vocational education and training (2001-2005), approved by Council Decision 2001/196/EC ⁽⁸⁾,
- projects eligible for funding under the provisions of the Agreement between the European Community and the Government of Canada renewing a cooperation programme in the field of higher education and training (2001-2005), approved by Council Decision 2001/197/EC ⁽⁹⁾,
- the programme to encourage the development of European audiovisual works (MEDIA Plus — Development, Distribution and Promotion) (2001-2006), approved by Council Decision 2000/821/EC ⁽¹⁰⁾,
- the training programme for professionals of the European audiovisual programme industry (MEDIA — Training) (2001-2006), approved by Decision No 163/2001/EC of the European Parliament and of the Council ⁽¹¹⁾,
- the multiannual programme for the effective integration of information and communication technologies (ICT) in education and training systems in Europe (e-Learning) (2004-2006), approved by Decision No 2318/2003/EC of the European Parliament and of the Council ⁽¹²⁾,
- the Community action programme to promote active European citizenship (civic participation) (2004-2006), approved by Council Decision 2004/100/EC ⁽¹³⁾,
- the Community action programme to promote bodies active at European level in the field of youth (2004-2006), approved by Decision No 790/2004/EC of the European Parliament and of the Council ⁽¹⁴⁾,
- the Community action programme to promote bodies active at European level and support specific activities in the field of education and training (2004-2006), approved by Decision No 791/2004/EC of the European Parliament and of the Council ⁽¹⁵⁾,

⁽¹⁾ OJ L 146, 11.6.1999, p. 33.

⁽²⁾ OJ L 117, 18.5.2000, p. 1.

⁽³⁾ OJ L 63, 10.3.2000, p. 1.

⁽⁴⁾ OJ L 12, 18.1.2000, p. 1.

⁽⁵⁾ OJ L 306, 7.12.2000, p. 1.

⁽⁶⁾ OJ L 311, 12.12.2000, p. 1.

⁽⁷⁾ OJ L 120, 8.5.1999, p. 30.

⁽⁸⁾ OJ L 71, 13.3.2001, p. 7.

⁽⁹⁾ OJ L 71, 13.3.2001, p. 15.

⁽¹⁰⁾ OJ L 336, 30.12.2000, p. 82.

⁽¹¹⁾ OJ L 26, 27.1.2001, p. 1.

⁽¹²⁾ OJ L 345, 31.12.2003, p. 9.

⁽¹³⁾ OJ L 30, 4.2.2004, p. 6.

⁽¹⁴⁾ OJ L 138, 30.4.2004, p. 24.

⁽¹⁵⁾ OJ L 138, 30.4.2004, p. 31.

- the Community action programme to promote bodies active at European level in the field of culture (2004-2006), approved by Decision No 792/2004/EC of the European Parliament and of the Council ⁽¹⁾,
- the programme for the enhancement of quality in higher education and the promotion of intercultural understanding through cooperation with third countries (Erasmus Mundus) (2004-2008), approved by Decision No 2317/2003/EC of the European Parliament and of the Council ⁽²⁾,
- projects eligible for funding under the provisions of the Agreement between the European Community and the United States of America renewing the programme of cooperation in the field of higher education and vocational education and training (2006-2013), approved by Council Decision 2006/910/EC ⁽³⁾,
- projects eligible for funding under the provisions of the Agreement between the European Community and the Government of Canada establishing a cooperation framework in the fields of higher education, training and youth (2006-2013), approved by Council Decision 2006/964/EC ⁽⁴⁾,
- the action programme in the field of lifelong learning (2007-2013), approved by Decision No 1720/2006/EC of the European Parliament and of the Council ⁽⁵⁾,
- the 'Culture' programme (2007-2013), approved by Decision No 1855/2006/EC of the European Parliament and of the Council ⁽⁶⁾,
- the 'Europe for Citizens' programme to promote active European citizenship (2007-2013), approved by Decision No 1904/2006/EC of the European Parliament and of the Council ⁽⁷⁾,
- the 'Youth in Action' programme (2007-2013), approved by Decision No 1719/2006/EC of the European Parliament and of the Council ⁽⁸⁾,
- the support programme for the European audiovisual sector (MEDIA 2007) (2007-2013), approved by Decision No 1718/2006/EC of the European Parliament and of the Council ⁽⁹⁾,
- the Erasmus Mundus (II) action programme 2009-2013 for the enhancement of quality in higher education and the promotion of intercultural understanding through cooperation with third countries, approved by Decision No 1298/2008/EC of the European Parliament and of the Council ⁽¹⁰⁾,
- the audiovisual cooperation programme with professionals from third countries (MEDIA Mundus) (2011-2013), established by Decision No 1041/2009/EC of the European Parliament and of the Council ⁽¹¹⁾,
- projects in the field of higher education eligible for funding under the provisions on aid for economic cooperation with the developing countries in Asia, approved under Council Regulation (EEC) No 443/92 ⁽¹²⁾,
- projects in the fields of higher education and youth eligible for funding under the provisions of the Instrument for Pre-Accession Assistance (IPA), established by Council Regulation (EC) No 1085/2006 ⁽¹³⁾,
- projects in the field of primary, secondary and higher education and youth eligible for funding under the provisions of the European Neighbourhood and Partnership Instrument, created by Regulation (EC) No 1638/2006 of the European Parliament and of the Council ⁽¹⁴⁾,
- projects in the field of higher education eligible for funding under the provisions of the financing instrument for development cooperation, established by Regulation (EC) No 1905/2006 of the European Parliament and of the Council ⁽¹⁵⁾,

⁽¹⁾ OJ L 138, 30.4.2004, p. 40.

⁽²⁾ OJ L 345, 31.12.2003, p. 1.

⁽³⁾ OJ L 346, 9.12.2006, p. 33.

⁽⁴⁾ OJ L 397, 30.12.2006, p. 14.

⁽⁵⁾ OJ L 327, 24.11.2006, p. 45.

⁽⁶⁾ OJ L 372, 27.12.2006, p. 1.

⁽⁷⁾ OJ L 378, 27.12.2006, p. 32.

⁽⁸⁾ OJ L 327, 24.11.2006, p. 30.

⁽⁹⁾ OJ L 327, 24.11.2006, p. 12.

⁽¹⁰⁾ OJ L 340, 19.12.2008, p. 83.

⁽¹¹⁾ OJ L 288, 4.11.2009, p. 10.

⁽¹²⁾ OJ L 52, 27.2.1992, p. 1.

⁽¹³⁾ OJ L 210, 31.7.2006, p. 82.

⁽¹⁴⁾ OJ L 310, 9.11.2006, p. 1.

⁽¹⁵⁾ OJ L 378, 27.12.2006, p. 41.

— projects in the field of higher education and youth eligible for funding under the provisions of the financing instrument for cooperation with industrialised and other high-income countries and territories, established by Council Regulation (EC) No 1934/2006 ⁽¹⁾,

— projects in the field of higher education eligible for funding from the European Development Fund, pursuant to the Partnership Agreement between members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000 (Council Decision 2003/159/EC ⁽²⁾), as amended by the Agreement signed in Luxembourg on 25 June 2005 (Council Decision 2005/599/EC ⁽³⁾).

(12) Management of those parts of these programmes and actions involves implementation of technical projects which do not entail political decision-making and requires a high level of technical and financial expertise throughout the project cycle.

(13) In order to ensure a consistent implementation in time of this Decision and of the programmes concerned, it is necessary to ensure that the Agency shall exercise its tasks linked to the implementation of those programmes subject to and from the date on which those programmes enter into force.

(14) The Education, Audiovisual and Culture Executive Agency should be established. It should replace and succeed the Education, Audiovisual and Culture Executive Agency established by Decision 2009/336/EC. It should operate in accordance with the general statute laid down by Regulation (EC) No 58/2003.

(15) Decision 2009/336/EC setting up the executive agency should be repealed and transitional provisions should be set out.

(16) The measures provided for by this Decision are in accordance with the opinion of the Committee for Executive Agencies,

HAS ADOPTED THIS DECISION:

Article 1

Establishment and term

The Education, Audiovisual and Culture Executive Agency (hereinafter referred to as the Agency) is hereby established for a period from 1 January 2014 until 31 December 2024, its statute being governed by Regulation (EC) No 58/2003.

⁽¹⁾ OJ L 405, 30.12.2006, p. 41.

⁽²⁾ OJ L 65, 8.3.2003, p. 27.

⁽³⁾ OJ L 209, 11.8.2005, p. 26.

Article 2

Location

The Agency shall be located in Brussels.

Article 3

Objectives and tasks

1. The Agency is hereby entrusted with the implementation of certain parts of the following Union programmes:

(a) Erasmus+;

(b) The Creative Europe Programme;

(c) The programme 'Europe for Citizens';

(d) The European Voluntary Humanitarian Aid Corps — EU Aid Volunteers;

(e) Projects in the field of higher education under the following external cooperation instruments:

— Regulation of the European Parliament and of the Council on the Instrument for Pre-accession Assistance (IPA II) ⁽⁴⁾,

— Regulation of the European Parliament and of the Council establishing a European Neighbourhood Instrument ⁽⁵⁾,

— Regulation of the European Parliament and of the Council establishing a financing instrument for development cooperation ⁽⁶⁾,

— Regulation of the European Parliament and of the Council establishing a Partnership Instrument for cooperation with third countries ⁽⁷⁾,

— Council Regulation on the implementation of the 11th European Development Fund ⁽⁸⁾.

⁽⁴⁾ Proposal for a Regulation of the European Parliament and of the Council COM(2011) 838 on the Instrument for Pre-accession Assistance (IPA II).

⁽⁵⁾ Proposal for a Regulation of the European Parliament and of the Council COM(2011) 839 establishing a European Neighbourhood Instrument.

⁽⁶⁾ Proposal for a Regulation of the European Parliament and of the Council COM(2011) 840 establishing a financing instrument for development cooperation.

⁽⁷⁾ Proposal for a Regulation of the European Parliament and of the Council COM(2011) 843 establishing a Partnership Instrument for cooperation with third countries.

⁽⁸⁾ Proposal for a Council Regulation COM(2013) 445 on the implementation of the 11th European Development Fund.

The first subparagraph shall apply subject to and as from the date of entry into force of each of these programmes.

2. The Agency is hereby entrusted with the implementation of the legacy of certain parts of the following Union programmes:

- (a) projects in the field of higher education eligible for funding under the provisions on economic aid for certain countries of central and eastern Europe (Phare), as provided for in Regulation (EEC) No 3906/89;
- (b) the programme encouraging the development and distribution of European audiovisual works (MEDIA II — Development and distribution) (1996-2000), established by Decision 95/563/EC;
- (c) the training programme for professionals in the European audiovisual programme industry (MEDIA II — Training) (1996-2000), approved by Decision 95/564/EC;
- (d) the second phase of the Community action programme in the field of education, Socrates (2000-2006), approved by Decision No 253/2000/EC;
- (e) the second phase of the Community vocational training action programme 'Leonardo da Vinci' (2000-2006), approved by Decision 1999/382/EC;
- (f) the 'Youth' Community action programme (2000-2006), approved by Decision No 1031/2000/EC;
- (g) the 'Culture 2000' programme (2000-2006), approved by Decision No 508/2000/EC;
- (h) projects in the field of higher education eligible for funding under the provisions on assistance for the partner States of Eastern Europe and Central Asia (2000-2006), as provided for in Regulation (EC, Euratom) No 99/2000;
- (i) projects in the field of higher education eligible for funding under the provisions on assistance for Albania, Bosnia-Herzegovina, Croatia, the Former Yugoslav Republic of Macedonia, Montenegro, Serbia and Kosovo (UNSCR 1244) (2000-2006), approved under Regulation (EC) No 2666/2000;
- (j) projects in the field of higher education eligible for funding under the provisions on financial and technical measures to accompany the reform of economic and social structures in the framework of the euro-Mediterranean partnership (MEDA), approved under Regulation (EC) No 2698/2000;
- (k) the third phase of the trans-European cooperation scheme for higher education (Tempus III) (2000-2006), approved by Decision 1999/311/EC;
- (l) projects eligible for funding under the provisions of the Agreement between the European Community and the United States of America renewing a programme of cooperation in the field of higher education and vocational education and training (2001-2005), approved by Decision 2001/196/EC;
- (m) projects eligible for funding under the provisions of the Agreement between the European Community and the Government of Canada renewing a cooperation programme in the field of higher education and training (2001-2005), approved by Decision 2001/197/EC;
- (n) the programme to encourage the development of European audiovisual works (MEDIA Plus — Development, Distribution and Promotion) (2001-2006), approved by Decision 2000/821/EC;
- (o) the training programme for professionals of the European audiovisual programme industry (MEDIA — Training) (2001-2006), approved by Decision No 163/2001/EC;
- (p) the multiannual programme for the effective integration of information and communication technologies (ICT) in education and training systems in Europe (e-Learning) (2004-2006), approved by Decision No 2318/2003/EC;
- (q) the Community action programme to promote active European citizenship (civic participation) (2004-2006), approved by Decision 2004/100/EC;
- (r) the Community action programme to promote bodies active at European level in the field of youth (2004-2006), approved by Decision No 790/2004/EC;
- (s) the Community action programme to promote bodies active at European level and support specific activities in the field of education and training (2004-2006), approved by Decision No 791/2004/EC;

- (t) the Community action programme to promote bodies active at European level in the field of culture (2004-2006), approved by Decision No 792/2004/EC;
 - (u) the programme for the enhancement of quality in higher education and the promotion of intercultural understanding through cooperation with third countries (Erasmus Mundus) (2004-2008), approved by Decision No 2317/2003/EC;
 - (v) projects eligible for funding under the provisions of the Agreement between the European Community and the United States of America renewing the programme of cooperation in the field of higher education and vocational education and training (2006-2013), approved by Decision 2006/910/EC;
 - (w) projects eligible for funding under the provisions of the Agreement between the European Community and the Government of Canada establishing a cooperation framework in the fields of higher education, training and youth (2006-2013), approved by Decision 2006/964/EC;
 - (x) the action programme in the field of lifelong learning (2007-2013), approved by Decision No 1720/2006/EC;
 - (y) the 'Culture' programme (2007-2013), approved by Decision No 1855/2006/EC;
 - (z) the 'Europe for Citizens' programme to promote active European citizenship (2007-2013), approved by Decision No 1904/2006/EC;
 - (aa) the 'Youth in Action' programme (2007-2013), approved by Decision No 1719/2006/EC;
 - (bb) the support programme for the European audiovisual sector (MEDIA 2007) (2007-2013), approved by Decision No 1718/2006/EC;
 - (cc) the Erasmus Mundus (II) action programme 2009-2013 for the enhancement of quality in higher education and the promotion of intercultural understanding through cooperation with third countries, approved by Decision No 1298/2008/EC;
 - (dd) the audiovisual cooperation programme with professionals from third countries (MEDIA Mundus) (2011-2013), established by Decision No 1041/2009/EC;
 - (ee) projects in the field of higher education eligible for funding under the provisions on aid for economic cooperation with the developing countries in Asia, approved under Regulation (EEC) No 443/92;
 - (ff) projects in the fields of higher education and youth eligible for funding under the provisions of the Instrument for Pre-Accession Assistance (IPA), established by Regulation (EC) No 1085/2006;
 - (gg) projects in the field of primary, secondary and higher education and youth eligible for funding under the provisions of the European Neighbourhood and Partnership Instrument, created by Regulation (EC) No 1638/2006;
 - (hh) projects in the field of higher education eligible for funding under the provisions of the financing instrument for development cooperation, established by Regulation (EC) No 1905/2006;
 - (ii) projects in the field of higher education and youth eligible for funding under the provisions of the financing instrument for cooperation with industrialised and other high-income countries and territories, established by Regulation (EC) No 1934/2006;
 - (jj) projects in the field of higher education eligible for funding from the European Development Fund, pursuant to the Partnership Agreement between members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000 (Decision 2003/159/EC), as amended by the Agreement signed in Luxembourg on 25 June 2005 (Decision 2005/599/EC).
3. The Agency shall be responsible for the following tasks related to the implementation of the parts of the Union programmes referred to in paragraphs 1 and 2:
- (a) managing all stages of programme implementation and all phases in the lifetime of specific projects on the basis of the relevant work programmes adopted by the Commission, where the Commission has empowered it to do so in the instrument of delegation;
 - (b) adopting the instruments of budget execution for revenue and expenditure and carrying out all the operations necessary for the management of the programme, where the Commission has empowered it to do so in the instrument of delegation;

- (c) providing support in programme implementation where the Commission has empowered it to do so in the instrument of delegation, including support in dissemination activities, where relevant in cooperation with national agencies;
- (d) the implementation, at Union level, of the network of information on education in Europe (Eurydice) and activities intended to improve understanding and knowledge of the field of youth;
- (e) the implementation, at Union level, of activities intended to improve understanding and knowledge in the field of vocational education and training.

4. The Agency may be responsible for the provision of administrative and logistical support services if provided in the instrument of delegation, for the benefit of the programme-implementing bodies and within the scope of the programmes referred to therein.

Article 4

Duration of the appointments

1. The members of the Steering Committee shall be appointed for two years.
2. The Director shall be appointed for four years.

Article 5

Supervision and reporting requirement

The Agency shall be subject to supervision by the Commission and shall report regularly on progress in implementing the Union programmes or parts thereof for which it is responsible in accordance with the arrangements and at the intervals stipulated in the instrument of delegation.

Article 6

Implementation of the operating budget

The Agency shall implement its operating budget in accordance with the provisions of Commission Regulation (EC) No 1653/2004 ⁽¹⁾.

Article 7

Repeal and transitional provisions

1. Decision 2009/336/EC is repealed with effect from 1 January 2014. References to the repealed Decision shall be construed as references to this Decision.
2. The Agency shall be considered the legal successor of the executive agency established by Decision 2009/336/EC.
3. Without prejudice to the revision of the grading of seconded officials foreseen by the instrument of delegation, this Decision shall not affect the rights and obligations of staff employed by the Agency, including its Director.

Article 8

Entry into force

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

It shall apply from 1 January 2014.

Done at Brussels, 18 December 2013.

For the Commission

The President

José Manuel BARROSO

⁽¹⁾ OJ L 297, 22.9.2004, p. 6.

III

(Other acts)

EUROPEAN ECONOMIC AREA

EFTA SURVEILLANCE AUTHORITY DECISION

No 28/13/COL

of 30 January 2013

amending for the eighty-eight time the procedural and substantive rules in the field of state aid by introducing a new chapter on short-term export-credit insurance

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 6 December 2012, the European Commission adopted a new Communication on the application of Article 107 and 108 of the Treaty on the Functioning of the European Union to *short-term export-credit insurance* ⁽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 short-term export-credit insurance. 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 of 3.9.1994 p. 1 and EEA Supplement No 32 of 3.9.1994 p. 1. Hereinafter referred to as the State Aid Guidelines. The updated version of the State Aid Guidelines is published on the Authority's website: <http://www.eftasurv.int/state-aid/legal-framework/state-aid-guidelines/>

⁽⁴⁾ Communication from the European Commission to the Member States on the application of Article 107 and 108 of the Treaty on the Functioning of the European Union to short-term export-credit insurance, (OJ C 392, 19.12.2012, p. 1).

Article 2

Only the English version is authentic.

Done at Brussels, 30 January 2013.

For the EFTA Surveillance Authority

Oda Helen SLETNES
President

Sabine MONAUNI-TÖMÖRDY
College Member

ANNEX

GUIDELINES ON SHORT-TERM EXPORT-CREDIT INSURANCE ⁽¹⁾**1 Introduction**

- (1) Export subsidies can adversely affect competition in the marketplace among potential rival suppliers of goods and services. That is why the European Commission and the EFTA Surveillance Authority ('the Authority'), as the guardians of competition under the the EC Treaty and the EEA Agreement, have always strongly condemned export aid for intra-EEA trade and for exports outside the EEA. To prevent EEA States' support for export-credit insurance from distorting competition, its assessment under EEA state aid rules needs to be clarified.
- (2) In 1998, the Authority laid down the principles for state intervention in its Guidelines on short-term export-credit insurance ⁽²⁾. The 1998 Guidelines were to be applied for a period of almost five years from 1 June 1998. They were subsequently amended and their period of application was prolonged in 2001 ⁽³⁾.
- (3) Experience gained in applying the 1998 Guidelines, in particular during the financial crisis between 2009 and 2011, suggests that the Authority's policy in this area should be reviewed.
- (4) The rules set out in these Guidelines will help to ensure that state aid does not distort competition among private and public or publicly supported export-credit insurers and to create a level-playing field among exporters.
- (5) Their aim is to give the EFTA States more detailed guidance about the principles on which the Authority intends to base its interpretation of Articles 61 and 62 of the EEA Agreement and their application to short-term export-credit insurance. They should make the Authority's policy in this area as transparent as possible and ensure predictability and equal treatment. To that end, they lay down a set of conditions that must be fulfilled when state insurers wish to enter the short-term export- credit insurance market for marketable risks.
- (6) Risks that are in principle non-marketable are outside the scope of these Guidelines.
- (7) Section 2 describes the scope of these Guidelines and the definitions used. Section 3 deals with the applicability of Article 61(1) of the EEA Agreement and the general prohibition of state aid for the export-credit insurance of marketable risks. Finally, Section 4 provides for some exceptions from the definition of marketable risks and specifies the conditions for state intervention in the insurance of temporarily non-marketable risks.

2 Scope of the Guidelines and definitions**2.1 Scope**

- (8) The Authority will apply the principles set out in these Guidelines only to export-credit insurance with a risk period of less than two years. All other export finance instruments are excluded from the scope of these Guidelines.

2.2 Definitions

- (9) For the purposes of these Guidelines the following definitions will apply:

'co-insurance' means the percentage of each insured loss that is not indemnified by the insurer but is borne by another insurer;

'credit period' means the period of time given to the buyer to pay for the delivered goods and services under an export-credit transaction;

'commercial risks' means risks including, in particular:

— arbitrary repudiation of a contract by a buyer, that is to say any arbitrary decision made by a non-public buyer to interrupt or terminate the contract without a legitimate reason;

— arbitrary refusal of a non-public buyer to accept the goods covered by the contract without a legitimate reason;

⁽¹⁾ These Guidelines correspond to the Communication from the European Commission to the Member States on the application of Article 107 and 108 of the Treaty on the Functioning of the European Union to short-term export-credit insurance, 6.12.2012 (OJ C 392, 19.12.2012, p. 1).

⁽²⁾ OJ L 120, 23.4.1998, p. 27 and EEA Supplement No 16, 23.4.1998, p. 1.

⁽³⁾ OJ L 30, 31.1.2002, p. 52 and EEA Supplement No 7, 31.1.2002, p. 1.

— insolvency of a non-public buyer and its guarantor;

— protracted default, that is to say non-payment by a non-public buyer and by its guarantor of a debt resulting from the contract;

'export-credit insurance' means an insurance product whereby the insurer provides insurance against a commercial and political risk related to payment obligations in an export transaction;

'manufacturing period' means the period between the date of an order and the delivery of the goods or services;

'marketable risks' means commercial and political risks with a maximum risk period of less than two years, on public and non-public buyers in the countries listed in the Appendix; all other risks are considered non-marketable for the purposes of these Guidelines.

'political risks' means risks including, in particular:

— the risk that a public buyer or country prevents the completion of a transaction or does not pay on time;

— a risk that is beyond the scope of an individual buyer or falls outside the individual buyer's responsibility;

— the risk that a country fails to transfer to the country of the insured the moneys paid by buyers domiciled in that country;

— the risk that a case of force majeure occurs outside the country of the insurer, which could include warlike events, in so far as its effects are not otherwise insured;

'private credit insurer' means a company or organisation other than a state insurer that provides export-credit insurance;

'quota-share' means reinsurance that requires the insurer to transfer, and the reinsurer to accept, a given percentage of every risk within a defined category of business written by the insurer;

'reinsurance' means insurance that is purchased by an insurer from another insurer to manage risk by lowering its own risk;

'risk period' means the manufacturing period plus the credit period;

'single-risk cover' means cover for all sales to one buyer or for a single contract with one buyer;

'state insurer' means a company or other organisation that provides export-credit insurance with the support of, or on behalf of, an EEA State, or an EEA State that provides export-credit insurance;

'top-up cover' means additional cover over a credit limit established by another insurer;

'whole turnover policy' means a credit insurance policy other than single risk-cover; that is to say, a credit insurance policy that covers all or most of the credit sales of the insured as well as payment receivables from sales to multiple buyers.

3 Applicability of Article 61(1) of the EEA Agreement

3.1 General principles

(10) Article 61(1) of the EEA Agreement states that 'any aid granted by a EC Member States, EFTA States or through state resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Contracting Parties, be incompatible with the functioning of this Agreement'.

(11) If export-credit insurance is provided by state insurers, it involves state resources. The involvement of the State may give the insurers and/or the exporters a selective advantage and could thereby distort or threaten to distort competition and affect trade between EEA States. The following principles are designed to provide guidance on how such measures will be assessed under state aid rules.

3.2 Aid for insurers

- (12) If state insurers have certain advantages compared to private credit insurers, state aid may be involved. The advantages can take different forms and might include, for example:
- (a) state guarantees of borrowing and losses;
 - (b) exemption from the requirement to constitute adequate reserves and the other requirements stemming from the exclusion of export-credit insurance operations for the account of or guaranteed by the State from First Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance ⁽¹⁾;
 - (c) relief or exemption from taxes normally payable (such as company taxes and taxes levied on insurance policies);
 - (d) awards of aid or provisions of capital by the State or other forms of financing that are not in accordance with the market economy investor principle;
 - (e) provision by the State of services in kind, such as access to and use of state infrastructure, facilities or privileged information, on terms that do not reflect their market value;
 - (f) direct reinsurance by the State or a direct state reinsurance guarantee on terms more favourable than those available on the private reinsurance market, leading to under-pricing of the reinsurance cover or to the artificial creation of capacity that would not be forthcoming from the private market.

3.3 Prohibition of state aid for export credits

- (13) The advantages for state insurers listed in point 12 with regard to marketable risks affect intra-EEA trade in credit insurance services. They lead to variations in the insurance cover available for marketable risks in different EEA States. This distorts competition among insurers in different EEA States and has secondary effects on intra-EEA trade regardless of whether intra-EEA exports or exports outside the EEA are concerned ⁽²⁾. It is necessary to define the conditions under which state insurers can operate if they have such advantages compared to private credit insurers, in order to ensure they do not benefit from state aid. This requires that they should not be able to insure marketable risks.
- (14) Advantages for state insurers are also sometimes passed on to exporters, at least in part. Such advantages may distort competition and trade and constitute state aid within the meaning of Article 61(1) of the EEA Agreement. However, if the conditions for the provision of export-credit insurance for temporarily non-marketable risks, as set out in section 4.3 of these Guidelines, are fulfilled, the Authority will consider that no undue advantage has been passed on to exporters.

4 Conditions for providing export-credit insurance for temporarily non-marketable risks

4.1 General principles

- (15) As stated in point 13, if state insurers have any advantages compared to private credit insurers, as described in point 12, they must not insure marketable risks. If state insurers or their subsidiaries wish to insure marketable risks, it must be ensured that in so doing, they do not directly or indirectly benefit from state aid. To this end, they must have a certain amount of own funds (a solvency margin, including a guarantee fund) and technical provisions (an equalisation reserve) and must have obtained the required authorisation in accordance with Directive 73/239/EEC. They must also at least keep a separate administration account and separate accounts for their insurance of marketable risks and non-marketable risks for the account of or guaranteed by the State, to show that they do not receive state aid for their insurance of marketable risks. The accounts for businesses insured on the insurer's own account should comply with Council Directive 91/674/EC ⁽³⁾.
- (16) EFTA States providing reinsurance cover to an export-credit insurer by way of participation or involvement in private sector reinsurance treaties covering marketable and non-marketable risks, must be able to demonstrate that the arrangements do not involve state aid as referred to in point 12(f).

⁽¹⁾ OJ L 228, 16.8.1973, p. 3, cf. Point 2 of Annex IX to the EEA Agreement.

⁽²⁾ In its judgment in Case C-142/87 *Kingdom of Belgium v Commission of the European Communities*, the European Court of Justice held that not only aid for intra-Union exports, but also aid for exports outside the Union, can influence intra-Union competition and trade. Both types of operation are insured by export-credit insurers and aid for both can therefore affect intra-Union competition and trade.

⁽³⁾ Council Directive 91/674/EC of 19.12.1991 on the annual accounts and consolidated accounts of insurance undertakings (OJ L 374, 31.12.1991, p. 7), as adapted for the purpose of the EEA Agreement by the EEA Joint Committee Decision No 7/94 (OJ L 160, 28.6.1994; EEA Supplement No 17, 28.6.1994).

- (17) State insurers may provide export-credit insurance for temporarily non-marketable risks, subject to the conditions set out in these Guidelines.

4.2 Exceptions to the definition of marketable risks: temporarily non-marketable risks

- (18) Notwithstanding the definition of marketable risks, certain commercial and political risks on buyers established in the countries listed in the Appendix, are considered temporarily non-marketable in the following cases:
- (a) if the Authority decides to temporarily remove one or more countries from the list of marketable risk countries in the Appendix, by means of the mechanism described in Section 5.2, because the capacity of the private insurance market is insufficient to cover all economically justifiable risks in the country or countries concerned;
 - (b) if the Authority, after having received a notification from an EFTA State, decides that the risks incurred by small and medium-sized enterprises as defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises ⁽¹⁾, with a total annual export turnover not exceeding EUR 2 million, are temporarily non-marketable for exporters in the notifying EFTA State;
 - (c) if the Authority, after having received a notification from an EFTA State, decides that single-risk cover with a risk period of at least 181 days and less than two years is temporarily non-marketable for exporters in the notifying EFTA State;
 - (d) if the Authority, after having received a notification from an EFTA State, decides that due to a shortage of export-credit insurance, certain risks are temporarily non-marketable for exporters in the notifying EFTA State.
- (19) To minimise distortions of competition in the EEA market, risks which are considered temporarily non-marketable in accordance with point 18 can be covered by state insurers, provided they fulfil the conditions in section 4.3.

4.3 Conditions for providing cover for temporarily non-marketable risks

4.3.1 Quality of cover

- (20) The quality of cover offered by state insurers must be consistent with market standards. In particular, only economically justified risks, that is to say, risks that are acceptable on the basis of sound underwriting principles, can be covered. The maximum percentage of cover must be 95 % for commercial risks and political risks and the claims waiting period must be a minimum of 90 days.

4.3.2 Underwriting principles

- (21) Sound underwriting principles must always be applied to the assessment of risks. Accordingly, the risk of financially unsound transactions must not be eligible for cover under publicly supported schemes. With regard to such principles, risk acceptance criteria must be explicit. If a business relationship already exists, exporters must have a positive trading and/or payment experience. Buyers must have a clean claims record, the probability of the buyers' default must be acceptable and their internal and/or external financial ratings must also be acceptable.

4.3.3 Adequate pricing

- (22) Risk-carrying in the export-credit insurance contract must be remunerated by an adequate premium. To minimise the crowding out of private credit insurers, average premiums under publicly supported schemes must be higher than the average premiums charged by private credit insurers for similar risks. This requirement ensures the phasing out of state intervention, because the higher premium will ensure that exporters return to private credit insurers as soon as market conditions allow them to do so and the risk becomes marketable again.
- (23) Pricing is considered adequate if the minimum premium ⁽²⁾ ('safe-harbour premium') for the relevant buyers' risk category ⁽³⁾ as set out in the following table is charged. The safe-harbour premium applies unless EFTA States provide evidence that these rates are inadequate for the risk in question. For a whole turnover policy, the risk category must correspond to the average risk of buyers covered by the policy.

⁽¹⁾ OJ L 124, 20.5.2003, p. 36.

⁽²⁾ For each relevant risk category, the safe-harbour risk premium range was established on the basis of one-year Credit Default Swap (CDS) spreads, based on a composite rating including ratings of all three main credit rating agencies (Standard & Poor, Moody's and Fitch), for the past five years (2007–11), assuming that average recovery ratios for short-term export-credit insurance are 40 %. The ranges were subsequently made continuous to better cater for the fact that risk premiums do not remain constant over time.

⁽³⁾ The buyers' risk categories are based on credit ratings. Ratings do not need to be obtained from specific rating agencies. National rating systems or rating systems used by banks are equally acceptable. For firms without a public rating, a rating based on verifiable information could be applied.

Risk category	Annual risk premium ⁽¹⁾ (% of insured volume)
Excellent ⁽²⁾	0,2 – 0,4
Good ⁽³⁾	0,41 – 0,9
Satisfactory ⁽⁴⁾	0,91 – 2,3
Weak ⁽⁵⁾	2,31 – 4,5

⁽¹⁾ Safe harbour for a 30-day insurance contract can be obtained by dividing the annual risk premium by 12.

⁽²⁾ The excellent risk category includes risks equivalent to AAA, AA+, AA, AA-, A+, A, A- in Standard & Poor's credit ratings.

⁽³⁾ The good risk category includes risks equivalent to BBB+, BBB or BBB- in Standard & Poor's credit ratings.

⁽⁴⁾ The satisfactory risk category includes risks equivalent to BB+, BB or BB- in Standard & Poor's credit ratings.

⁽⁵⁾ The weak risk category includes risks equivalent to B+, B or B- in Standard & Poor's credit ratings.

(24) For co-insurance, quota share and top-up cover, pricing is considered adequate only if the premium charged is at least 30 % higher than the premium for the (original) cover provided by a private credit insurer.

(25) An administration fee must be added to the risk premium regardless of the term of the contract in order for pricing to be considered adequate.

4.3.4. Transparency and reporting

(26) EFTA States must publish the schemes put in place for risks which are considered temporarily non-marketable in accordance with point 18 on the websites of state insurers, specifying all applicable conditions.

(27) They must submit annual reports to the Authority on risks which are considered temporarily non-marketable in accordance with point 18 and are covered by state insurers. They must do so at the latest on 31 July of the year following the intervention.

(28) The report must contain information on use of each scheme, including in particular the total volume of credit limits granted, turnover insured, premiums charged, claims registered and paid, amounts recovered and the administrative costs of the scheme. The Authority will publish the reports on its website.

5 Procedural Issues

5.1 General principles

(29) The risks specified in point 18(a) can be covered by state insurers, subject to the conditions in section 4.3. The Authority does not have to be notified in such cases.

(30) The risks specified in point 18(b), (c) and (d) can be covered by state insurers, subject to the conditions in section 4.3 and following notification to and approval by the Authority.

(31) Failure to fulfil any one of the conditions set out in Section 4.3 does not mean that the export-credit insurance or insurance scheme is automatically prohibited. If an EFTA State wishes to deviate from any of the conditions or if there is any doubt about whether a planned export-credit insurance scheme fulfils the conditions set out in these Guidelines, the EFTA State must notify the scheme to the Authority.

(32) Analysis under state aid rules does not prejudice the compatibility of a given measure with other EEA Agreement provisions.

5.2 Modification of the list of marketable risk countries

(33) When determining whether the lack of sufficient private capacity justifies the temporary removal of a country from the list of marketable risk countries, as referred to in point 18(a), the Authority will take the following factors into account, in order of priority:

(a) contraction of private credit insurance capacity; in particular, the decision of a major credit insurer not to cover risks on buyers in the country concerned, a significant decrease in total insured amounts or a significant decrease in acceptance ratios for the country concerned within a six-month period;

- (b) deterioration of sovereign sector ratings: in particular, sudden changes in credit ratings within a six-month period, for example multiple downgrading by independent rating agencies, or a big increase in Credit Default Swap spreads;
 - (c) deterioration of corporate sector performance: in particular, a sharp increase in insolvencies in the country concerned within a six-month period.
- (34) When market capacity becomes insufficient to cover all economically justifiable risks, the Authority may revise the list of marketable risk countries at the written request of an EFTA State or on its own initiative.
- (35) If the Authority intends to modify the list of marketable risk countries in the Appendix, it will consult and seek information from EFTA States, private credit insurers and interested parties. The consultation and the type of information sought will be announced on the Authority's website. The consultation period will usually not be longer than 20 working days. When, on the basis of the information gathered, the Authority decides to modify the list of marketable risk countries, it will inform the EFTA States in writing and announce the decision on its website.
- (36) The temporary removal of a country from the list of marketable risk countries will be valid for no less than 12 months. Insurance policies relating to the temporarily removed country which are signed during that period may be valid for a maximum of 180 days after the date on which the temporary removal ceases. New insurance policies may not be signed after that date. Three months before the temporary removal ceases, the Authority will consider whether to prolong the removal of the country concerned from the list. If the Authority determines that market capacity is still insufficient to cover all economically justifiable risks, taking into account the factors set out in point 33, it may prolong the temporary removal of the country from the list, in accordance with point 35.

5.3 Notification obligation for exceptions in point 18(b) and (c)

- (37) The evidence currently available to the Authority suggests that there may be a market gap as regards the risks specified in points 18(b) and (c) and that those risks are therefore non-marketable.⁽¹⁾ It must be borne in mind, however, that the lack of cover does not exist in every EEA State and that the situation could change over time, as the private sector might become interested in this segment of the market. State intervention should only be allowed for risks which the market would otherwise not cover.
- (38) For these reasons, if an EFTA State wants to cover the risks specified in point 18(b) or (c), it must make a notification to the Authority pursuant to Protocol 3 of the Surveillance and Court Agreement and demonstrate in its notification that it has contacted the main credit insurers and brokers in that EFTA State⁽²⁾ and given them an opportunity to provide evidence that cover for the risks concerned is available there. If the credit insurers concerned do not give the EFTA State or the Authority information about the conditions of cover and insured volumes for the type of risks the EFTA State wants to cover within 30 days of receiving a request from the EFTA State to do so, or if the information provided does not demonstrate that cover for the risks concerned is available in that EFTA State, the Authority will consider the risks temporarily non-marketable.

5.4 Notification obligation in other cases

- (39) As regards the risks specified in point 18(d), the EFTA State concerned must, in its notification to the Authority pursuant to Protocol 3 of the Surveillance and Court Agreement, demonstrate that cover is unavailable for exporters in that particular EFTA State due to a supply shock in the private insurance market, in particular the withdrawal of a major credit insurer from the EFTA State concerned, reduced capacity or a limited range of products compared to other EFTA States.

6 Date of application and duration

- (40) The Authority will apply the principles in these Guidelines from the date of their adoption until 31 December 2018.

⁽¹⁾ See the Communication from the European Commission to the EU Member States on the application of Article 107 and 108 of the Treaty on the Functioning of the European Union to short-term export-credit insurance, 6.12.2012 (OJ C 392, 19.12.2012, p. 1) para. 37.

⁽²⁾ The contacted credit insurers and brokers should be representative in terms of the products offered (for example, specialised providers for single risks) and the size of the market they cover (for example, representing jointly a minimum share of 50 % of the market).

*Appendix***List of Marketable Risk Countries**

All the EU Member States and the EEA EFTA States

Australia

Canada

Japan

New Zealand

Switzerland

United States of America

EFTA SURVEILLANCE AUTHORITY DECISION

No 258/13/COL

of 19 June 2013

to close the formal investigation procedure into the sale of Narvik municipality's entitlement to concession power to Narvik Energi AS ('NEAS') (Norway)

THE EFTA SURVEILLANCE AUTHORITY ('the Authority'),

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

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

HAVING REGARD to Protocol 3 to the Surveillance and Court Agreement ('Protocol 3'), in particular to Articles, 7(2) and 13(1) of Part II,

HAVING called on interested parties to submit their comments pursuant to those provisions⁽¹⁾, and having regard to their comments,

Whereas:

I. FACTS

1. Procedure

- (1) By letter dated 7 January 2009, a complaint was filed against Narvik municipality ('Narvik') regarding the sale of Narvik's entitlement to concession power to Narvik Energi AS ('NEAS'). The letter was received and registered by the Authority on 14 January 2009⁽²⁾. By letter dated 16 July 2009⁽³⁾, the Authority requested additional information from the Norwegian authorities. By letter dated 2 October 2009⁽⁴⁾, the Norwegian authorities replied to the information request.
- (2) On 14 December 2011, the Authority initiated the procedure provided for in Article 1(2) of Part I of Protocol 3 to the Surveillance and Court Agreement by

adopting Decision No 393/11/COL ('Decision 393/11/COL'). By letter dated 23 February 2012⁽⁵⁾, the Norwegian authorities provided comments to the Decision.

- (3) On 26 April 2012, the Decision was published in the *Official Journal of the European Union* and in the EEA Supplement to it⁽⁶⁾. By email of 25 May 2012⁽⁷⁾, the Authority received comments from an interested party. By email of 28 June 2012⁽⁸⁾, the Authority forwarded these to the Norwegian authorities. By letter dated 30 November 2012⁽⁹⁾, the Norwegian authorities submitted further information.

2. The complaint

- (4) The complainant alleges that Narvik by entering into a contract with NEAS for the sale of 128 GWh of annual concession power for a period of 50,5 years, has sold its rights to buy the concession power significantly below the market price and thereby granted illegal state aid to NEAS.
- (5) The complainant further alleges that the decision to enter into the contract was adopted by Narvik Municipal Council on the basis of incorrect and/or incomplete information. Allegedly expert reports critical of the duration of the contract and the inherent difficulty in establishing a market price for electricity were not disclosed to the Municipal Council prior to taking the decision to enter into the contract.

3. The Norwegian concession power regime

- (6) In Norway, a concession is generally required for the operation of larger hydro power plants. The plants holding concessions for waterfall exploitation is obliged to sell a certain volume of their annual production to the municipality within which they are located. The volume of electricity that the municipality is entitled to purchase is referred to as concession power. This system is laid down in Section 2(12) of the Industrial Licensing Act⁽¹⁰⁾ and Section 12(15) of the Waterfalls Regulation Act⁽¹¹⁾.

⁽¹⁾ Published in OJ C 121, 26.4.2012, p. 25 and EEA Supplement No 23 26.4.2012 p. 1.

⁽²⁾ Event No 504391.

⁽³⁾ Event No 519710.

⁽⁴⁾ Events No 532247-532256.

⁽⁵⁾ Event No 626050.

⁽⁶⁾ See footnote 1.

⁽⁷⁾ Event No 635920.

⁽⁸⁾ Event No 639486.

⁽⁹⁾ Events No 655297-655305.

⁽¹⁰⁾ 1917.12.14 nr 16 Lov om erverv av vannfall mv. (industrikonsesjonsloven) ('the Industrial Licensing Act').

⁽¹¹⁾ 1917.12.14 nr 17 Lov om vassdragsreguleringer (vassdragsreguleringsloven) ('the Waterfalls Regulation Act').

(7) The legislative rationale is that the municipalities should be ensured a sufficient supply of electricity at a fair price, thus the volume of the concession power is determined on the basis of the general electric power supply needs of each individual municipality⁽¹²⁾ and can be up to ten per cent of a plant's annual production. There are, however, no restrictions imposed on the municipalities' exploitation of concession power. Thus, the municipalities may use, sell or otherwise deploy it as they see fit.

(8) The entitlement does not entail that the municipalities are under an obligation to buy concession power. For concessions pre-dating 1983, the caveat generally applies that once a municipality has decided not to exercise its right to concession power, it loses its right to concession power for the future.

(9) The legislation sets out two pricing regimes for concession power; the first for concessions granted prior to 10 April 1959, the other for concessions granted on 10 April 1959 or later.

(10) For concessions granted before 10 April 1959, the concession power price is calculated as a function of the individual power plant's cost-price, plus a premium of 20 %. This model is still applied to concessions granted prior to 10 April 1959, and is in the following referred to as the 'cost price' model. Concession power sold according to this pricing model is in the following referred to as 'cost price concession power'.

(11) For concessions granted after 10 April 1959, the concession price is set by the Ministry of Energy and Petroleum on the basis of the average cost for a representative sample of hydroelectric plants throughout the country. This pricing method is in the following referred to as the 'ministry price' method. Concession power sold according to this pricing model is in the following referred to as 'ministry price concession power'.

(12) The Industrial Licensing Act provides that the municipalities entitlement to concession power may be brought up for review by Norwegian Water Resources and Energy Directorate ('NVE') 20 years after the concession was granted⁽¹³⁾. The Norwegian authorities have explained that while the review process can lead to a fine-tuning, by NVE, of the volume of concession

power, it cannot lead to substantial changes of the municipality's entitlement to concession power. The majority of Narvik's concession power entitlements are due for review in 2019.

(13) The municipalities carry the cost of feeding the concession power into the grid.

4. Narvik's concession power

(14) Per year, Narvik is entitled to a total of approximately 128 GWh of concession power, of which approximately 116,3 GWh is priced according to the ministry price method and the remaining approximately 11,7 GWh is priced according to the cost price method. The Norwegian authorities have explained that the ministry price in 2000 was approximately NOK 0,10 and the relevant cost price for Håkvik and Nygård in 2000 was in the range of NOK 0,14 to NOK 0,178.

Plant owner at time of the transaction	Plant	Approx. GWh/year	Price method
NEAS	Håkvik and Nygård	11,7	Cost price
NEAS	Taraldsvik	1,0	Ministry price
Nordkraft	Sildvik	20,9	Ministry price
Statkraft	Skjomen, Båtsvann and Norddalen	94,4	Ministry price

5. Narvik Energi AS ('NEAS')

(15) NEAS is located in Narvik municipality in the county of Nordland. It produces and sells electricity. Until 2001, NEAS was 100 per cent owned by Narvik municipality. In 2001, Narvik sold off 49,99 % of its shares to two power companies, Vesterålskraft AS and Hålogalandskraft AS.

(16) After a merger in 2006 and a name change in 2009, NEAS is now part of the company Nordkraft AS ('Nordkraft').

6. Events leading up to the sale of concession power

(17) Until the end of 1998, Narvik sold its annual entitlement of approximately GWh 128 of concession power to NEAS under short- or longer-term contracts. However, at the beginning of 1999, after failing to reach an agreement with NEAS, Narvik sold its concession power on a power exchange at spot prices.

⁽¹²⁾ Section 2(12)(1) of the Industrial Licensing Act.

⁽¹³⁾ Industrial Licensing Act Section 2(12)(7).

- (18) In March 1999, the municipality arranged a tender procedure for the sale of its concession power for the remainder of 1999. On 30 March 1999, Narvik concluded a contract with the highest bidder, Kraftinor AS. The price was NOK 109,50 per MWh. Since it paid NOK 111,10 per MWh plus feeding costs of NOK 20 per MWh for the concession power, Narvik incurred a loss of approximately NOK 2,3 million under this contract. Narvik had initially expected a surplus of NOK 3,5 million.
- (19) On 19 October 1999, the Municipal Council Executive Committee ('Executive Committee') recommended to the Municipal Council that the overall goal for handling the municipality's concession power should be to maximize return on a long-term basis in order to obtain a stable planning horizon. The proposed strategy for achieving this goal had four elements:
- 1) Concession power is sold to the highest bidder on long-term contracts with a fixed return, however with adjustment clauses that give additional returns if the prices are substantially higher than the projected prices in the contract period;
 - 2) Concession power is sold under different contracts of different lengths to diversify risk;
 - 3) The Mayor is granted power of attorney to enter into agreements according to the strategy decided by the Municipal Council; and
 - 4) Profits from the sale of the concession power is deposited into a fund to be dispersed according to decisions by the Municipal Council.
- (20) The Municipal Council confirmed the recommendation of the Executive Committee with one adjustment, suggested by the Mayor and confirmed by way of an amendment to the strategy: instead of the Mayor being explicitly 'granted power of attorney to enter into agreements according to the strategy decided by the Municipal Council', the final decision stated that '*as a first step in executing this strategy, NEAS is invited to discuss their interest in the matter as outlined in their letter to the municipality dated 9 November.*'
- (21) A letter from NEAS dated 9 November 1999 questioned the proposed strategy of selling the concession power under different contracts of different lengths to diversify risk. Instead, NEAS suggested one long-term contract ('for example 50 years') and was open to including a price adjustment clause in the contract with Narvik.
- (22) Also in a letter dated 15 April 1999, NEAS stated its interest in entering into a long-term contract regarding the concession power, primarily through a purchase with an upfront lump sum payment, or alternatively as a long-term lease - suggested initially at 60 years - with annual payments to Narvik.
- (23) Aside from the issue of the concession power, there were also discussions about NEAS' future role in the market, and Narvik's role as the owner of NEAS.
- (24) According to the Norwegian authorities, NEAS was at the time observing extensive regional consolidation amongst power companies and the entry of national/international operators into local markets. NEAS needed to strengthen its equity base in order to acquire shares in other electricity companies, particularly Nordkraft AS. NEAS had also signed letters of intent with Hålogaland Kraft AS and Vesterålskraft AS to form a regional production company and a regional energy transportation company. These changes were planned to take effect as of 1 January 2001. In order for NEAS to be able to complete these transactions with a combination of equity and borrowed capital, Narvik - NEAS' sole owner - was expected to inject additional equity into NEAS.
- (25) In a municipal council meeting on 16 December 1999, it was decided that the municipality's ownership stake in NEAS, the company's capital needs and the handling of concession power, should be assessed jointly by a negotiation team consisting of the Mayor, the Deputy Mayor, the leader of the opposition, as well as the Director, the Deputy Director and the Head of Procurement of the municipal administration ('the negotiation team').

7. External assessments

- (26) NEAS commissioned two reports from Arthur Andersen ('AA') and Deloitte & Touche ('DT') in order to determine the value of the ministry price concession power. The AA report applies a net present value ('NPV') methodology, but does not describe the underlying assumptions in great detail. The DT report also utilises an NPV methodology, but goes further than the AA report in explaining relevant assumptions and calculations. For example, the DT report explains in detail how the required return is determined based on the capital asset pricing model ('CAPM') and how the weighted average cost of capital ('WACC') is determined. The analysis also contains a detailed description of the calculation of the concession price and include sensitivity analysis based on incremental changes in both the price of electricity and WACC.

- (27) Narvik commissioned two reports from Danske Securities ('DS1' and 'DS2'). For the first report, DS1, Danske Securities was commissioned to assess whether or not the municipality should sell its entitlement to concession power in the market or transfer it to NEAS. In DS1, Danske Securities, on its own initiative, provided an estimate of the value of the entitlement to concession power for a period of 50 years. Apart from stating its assumptions made for future developments of electricity prices, Danske Securities provided limited guidance on how the value of the entitlement to concession power was calculated.
- (28) In DS2, Danske Securities requested price and cost expectations from 3 market operators: CBF Kraftmegling AS ('CBF'), Norwegian Energy Brokers AS ('NEB') and Statkraft SF ('Statkraft'). On the basis of these expectations, Danske Securities calculated an estimated market value of the entitlement to concession power. CBF's expectations resulted in a base case estimate of NOK 127 million. NEB's expectations resulted in a base case estimate of NOK 75 million. As NEB had not adjusted its price and cost expectations for inflation, Danske Securities stressed that it did not find NEB's expectations to be credible. Statkraft's expectations resulted in a range of NOK 115-140 million. On the basis of these three value assessments, Danske Securities concluded that the estimated NPV of the entitlement to concession power would be in the range of NOK 100-140 million.
- (29) The four reports are summarised in the following table. In the following, these reports are collectively referred to as 'the four reports'.

Report	Author of report	Date of report	Report commissioned by	Concession power volume assessed (in GWh) ⁽¹⁾	Period (in years)	Estimated NPV (in NOK million)
AA	Arthur Andersen	20.5.1999	NEAS	115,3	50	71,4-117,4 ⁽²⁾
DS1	Danske Securities	14.2.2000	Narvik	116,3	50	80-145
DS2	Danske Securities	23.2.2000	Narvik	116,3	50	100-140
DT	Deloitte & Touche	3.5.2000	NEAS	116,3	50,5	110-130

⁽¹⁾ It appears that the DS1, DS2 and DT reports covers the ministry price concession power produced by Taraldsvik, Sildvik, Skjomen, Båtsvann and Norddalen. Although the DS2 report does not explicitly state the amount of concession power assessed, there is nothing to indicate that it does not cover the same volume as the DS1 report. The AA report covers the production of the same plants with the exception of Taraldsvik.

⁽²⁾ With a base case value of NOK 87,7 million.

8. Internal assessments

- (30) In addition to the external advice, the head of procurement in Narvik municipality made his own assessments.
- (31) In the first assessment presented to the Executive Committee in October 1999, he concluded that the overall risk for the municipality was high for long-term contracts defined as contracts between 10 and 40 years.
- (32) In his second assessment, presented to the negotiation team on 16 March 2000, various options for handling the concession power were discussed. By this time, however, the negotiation team had narrowed the scope of his mandate to only assess risk, time to settlement, tax implications and profit maximization for three scenarios (all involving Narvik transferring the concession power right to NEAS for a 50-year period and reducing its ownership stake in NEAS). Notwithstanding this, in his second assessment, the head of procurement continued to focus on the importance of the length of the contract.
- His assessment of the marginal value of the entitlement to concession power over time was that *'...to enter into a very long contract such as 50 years gives very little additional value for us as sellers compared to a shorter contract (for example 20 years with NOK 83 million)'*.
- (33) After internal discussions regarding the advantages and disadvantages of a long-term contract, the negotiation team made its recommendation to the Municipal Council where it recommended a contract with a duration of 50,5 years as appropriate to reduce the municipality's risk and to provide a long-term planning horizon.

9. The sale of concession power

- (34) NEAS had only sought to purchase the 116,3 GWh of ministry price concession power. In the negotiations with the company, Narvik however insisted that its entitlement to concession power be bought in full, and that the 11,7 GWh cost price concession power therefore be bundled with the ministry price concession power.

- (35) In May 2000, the parties finally agreed to have the full 128 GWh of concession power covered by the agreement and that NEAS would pay NOK 120 million for the ministry price concession power and NOK 6 million for the cost price concession power.
- (36) On 25 May 2000, the Municipal Council formally decided that the municipality should sell its annual 128 GWh entitlement to concession power to NEAS for 50,5 years for NOK 126 million.
- (37) On 16 October 2000, Narvik and NEAS formalised the agreement by signing the contract where Narvik sold the entitlement to concession power on the above described terms. No price adjustment mechanism was included in the contract, and the money was to be paid as an upfront lump sum.
- (38) On 29 November 2000, Narvik and NEAS signed a supplementary agreement where NEAS for the purchase of the entitlement to concession power committed to pay Narvik NOK 60 million in cash, and the remaining NOK 66 million as an equity contribution in kind injected into NEAS (at the time 100 % owned by the Municipality).
- (42) The Norwegian authorities argue that the appropriate market benchmark for the 50,5 year agreement is a permanent sale of a power plant, and that adjusted for relevant differences, the prices obtained by NEAS was in line with the price levels for the sale of power plants in the same period.
- (43) For price data about the sale of power plants in 2000, the Norwegian authorities refer to a so-called real time review of the electricity market for year 2000 carried out by Pareto (the 'Pareto Review'). In that review, it appears that the market prices for power plants sold in 2000 varied between NOK 1,64 and 1,77 per KWh of annual production capacity. Narvik's sale of entitlement to concession power equals approximately NOK 1,00 per KWh of annual production capacity. According to the Norwegian authorities, the difference between these figures can be explained by the following factors.

- (44) Firstly, in 2000, the typical operating costs including ongoing reinvestment (without depreciation) for a newer power plant was about NOK 0,05 per KWh per year (plus feeding costs). NEAS' expected ongoing payment was twofold; about NOK 0,10 per KWh per year (plus feeding costs) on the ministry price concession power and between NOK 0,14 and 0,178 per KWh (plus feeding costs) per year on the pre 10 April 1959 concession power. In 2000, the expected market price was approximately NOK 0,12 per KWh. Thus, the 2000 scenario would lead to a net profit of NOK 0,07 per KWh for a plant owner, compared to NOK 0,02 per KWh on the concession power. At the time of the conclusion of the contract, the estimated 2010 price was NOK 0,20. On the basis of that estimate, the 2010 scenario would lead to a net profit of NOK 0,15 per KWh for a plant owner, compared to NOK 0,10 per KWh on the concession power.

10. Sale of NEAS shares

- (39) In 2001, Narvik divested 49,99 % of its shares in NEAS to Vesterålskraft AS and Hålogalandskraft AS.

11. Comments from the Norwegian authorities

- (40) The Norwegian authorities are of the view that the contract with NEAS was concluded at market terms. They firstly emphasise that the agreement was concluded because Narvik's finances were strained and it was in need of liquid capital. Secondly, NEAS needed to undergo recapitalization in order to restructure the company to create a larger regional company. Lastly, at the time of the conclusion of the contract, the municipality had been selling concession power at a loss because the concession power price was higher than the price obtained in the market. By way of example, in the period April 1999 to December 1999, Narvik lost NOK 2,3 million on the sale of concession power.
- (41) As regards the question of regulatory risk, the Norwegian authorities have explained that NEAS bears all risk. They argue that the risk is likely to be one of reduced quantity rather than increased quantity of concession power which would reduce the likelihood of aid.
- (45) Secondly, the Norwegian authorities argue that the prices for the sale of the five power plants from the Pareto Review must be reduced by approximately 10-15 % when applying a capitalisation rate of 4 % to make up for the difference between the capitalisation over infinite time (capitalisation factor of 25) and 50 years (capitalization factor of 21,48).
- (46) The Norwegian authorities further add that the early years have the greatest impact on the NPV calculation and that heavy reinvestment costs of ownership typically comes at a later stage, and therefore has little reduction effect on the NPV calculation.

(47) Taking this into account, the Norwegian authorities argue that there is a close correlation between on the one hand, power plant sales at approximately NOK 1,64 – NOK 1,77 per KWh of annual production capacity, and on the other hand, rents (payment for electricity access for 50,5 years) of approximately NOK 1,00 per KWh of concession power.

(48) The Norwegian authorities thus argue that a comparison which adjusts for these factors demonstrates that the price NEAS paid for the concession power was comparable to the price of power plants sold in the same period, and add that the conclusion on the price level is supported by the DT report and the two DS reports predating the conclusion of the 50,5 years concession power agreement.

(49) In reference to the Authority's Guidelines for state aid elements in sales of land and buildings by public Authorities ('the SOL')⁽¹⁴⁾, the Norwegian authorities argue that a competitive and unconditional tender procedure is only one method recognized by the Authority to determine market prices on the sale of public assets. The Norwegian authorities emphasise that in the SOL, the Authority also recognises that an aid free market price can be established on the basis of an independent expert evaluation. The Norwegian authorities note that the DT and the two DS reports were delivered before the 50,5 year contract was concluded. The second DS report determined the value on the basis of 'direct market research', which according to the Norwegian authorities resulted in a market testing similar to that of a tender procedure. The Norwegian authorities also note that the final price was within the upper level of the three valuations.

(50) The Norwegian Authorities further argue that it was appropriate for no price adjustment clause to be included, since the purchase price was paid as a lump sum, and not on an ongoing basis. The Norwegian authorities argue that the fact that the sale was settled up front – partly in cash and partly as a contribution in kind – similar to a permanent power plant sale, it is 'unnatural and very unusual' to include a price adjustment mechanism. The Norwegian authorities furthermore argue that by virtue of the contribution in kind model a subsequent adjustment would probably also have been illegal pursuant to the provisions of the Limited Liability Company Act⁽¹⁵⁾.

12. Comments from third parties

(51) One third party, NEAS (now Nordkraft), submitted comments to Decision 393/11/COL. NEAS essentially concurs with the views of the Norwegian authorities.

⁽¹⁴⁾ OJ L 137, 8.6.2000, p. 28.

⁽¹⁵⁾ 1997.6.13 nr 44 Lov om aksjeselskaper (aksjeloven) ('Limited Liability Company Act').

II. ASSESSMENT

1. The presence of state aid

(52) Article 61(1) of the EEA Agreement reads as follows:

'Save as otherwise provided in this Agreement, any aid granted by EC Member States, EFTA States or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Contracting Parties, be incompatible with the functioning of this Agreement.'

(53) It follows from this provision that, for state aid to be present, the measure must confer an economic advantage on the recipient. In the following, the Authority assesses the question of the presence, in the case at hand, of such an economic advantage.

2. Economic advantage

(54) The Court of Justice of the European Union has stated that in order to confirm whether a state measure constitutes aid, it is necessary to establish whether the recipient undertaking receives an economic advantage, which it would not have obtained under normal market conditions⁽¹⁶⁾. In order to assess the presence of an economic advantage, the Authority applies the principle of a (hypothetical) market economy investor⁽¹⁷⁾.

(55) If the transaction in question was carried out in accordance with the market economy investor principle, i.e., if the municipality sold the entitlement to concession power for its market value, and the price and terms of the transaction would have been acceptable for a prudent private investor operating in a market economy, the transaction would not confer an economic advantage on NEAS and thus not involve the grant of state aid. On the contrary, state aid could be involved if the transaction was not carried out at market price.

(56) In making this assessment, the Authority cannot replace Narvik's commercial judgement with its own, which implies that the municipality, as the owner of the concession power entitlement, enjoys a margin of discretion to choose the manner in which it operates under normal competitive conditions.

⁽¹⁶⁾ Case C-39/94 *SFEI v La Poste* [1996] ECR I-3547, paragraph 60.

⁽¹⁷⁾ The market economy investor principle is described in more depth in the Authority's guidelines on the application of state aid provisions to public enterprises in the manufacturing sector (OJ L 274, 26.10.2000, p. 29).

- (57) An assessment of the price and terms of the contract between the municipality and NEAS should be based on the information available to Narvik at the time of the conclusion of the contract. Generally, an informed *ex ante* assessment would be sufficient to exclude the presence of state aid, even if the assumptions used in the assessment prove to be wrong with hindsight.
- (58) In the following, the Authority therefore assesses whether Narvik acted as a private market investor when it entered into a contract to sell its entitlement to concession power.
- (59) The Authority is mindful of the context in which the transaction was entered into. From the information provided by the Norwegian authorities, the Authority understands that at the time the contract was entered into the municipality was in a situation where it needed both access to liquidity (in order to meet its loan obligations), as well as capital to inject into NEAS. In addition, it is noted that the Limited Liability Company Act restricted the possibility of incorporating a price adjustment mechanism in the contract when making a contribution in kind. In 1999, prior to the conclusion of the sales agreement in 2000, Narvik had furthermore incurred losses on its sale of concession power. The municipality had therefore decided to sell off its entitlement to concession power for a longer term whilst at the same time complying with its expressed strategy of maximising its return on the concession power.
- (60) The Norwegian authorities have argued that the Authority should be able to exclude the presence of an advantage by applying the principles of the SOL to the case at hand. The Authority notes that, although the SOL does not apply to the sale of entitlements to buy concession power, the SOL does indeed prescribe two methods with which public authorities normally can obtain a market price for the sale of publicly owned land and buildings and consequently ensure that the sale does not involve state aid. The first method to exclude an aid element is the sale through an unconditional bidding procedure. The second, the sale at a price established by an independent expert evaluation made in accordance with generally accepted valuation standards.
- (61) The Authority notes that the sale of an asset through an unconditional bidding procedure normally will exclude the presence of an advantage. At the least in genuinely open procedures where there is more than one bidder⁽¹⁸⁾. Narvik's entitlement to concession power was however, not sold through an unconditional bidding process.
- (62) On the other hand, Narvik and NEAS each commissioned two assessments from external advisors, as described in paragraphs (26) to (29) above. However, neither the DS1, the DS2 nor the AA reports thoroughly clarify what method is used to determine the value assessments. In the absence of further clarifications, the Authority is not in the position to assess whether the market value assessments have been made in accordance with generally accepted market indicators and valuation standards. Therefore the view of the Authority is that the DS1, the DS2 and the AA reports are of limited value in assessing the value of the entitlement of the concession power. On the other hand, the DT report does provide a detailed explanation of its assessments. Consequently its results can be tested and verified. The Authority therefore finds that the DT report is the most credible report. In the view of the Authority, the fact that all of the four reports give similar results⁽¹⁹⁾ however strengthens the results of the DT report and arguably also those of the three other reports.
- (63) The Authority notes that although a price determined by an independent value assessor normally can be held to exclude the presence of an advantage in the sale of easily appraisable generic land or buildings that have been subject to numerous transactions, this is not necessarily the case for land and buildings with more unique qualities or where the circumstances surrounding the sale are liable to cast doubt on whether the expert evaluation reflect the actual market value of the property⁽²⁰⁾.
- (64) As explained in the following, fixed price power supply contracts of a duration exceeding 6 years are unusual and not commonly observed. Due to the lack of a market

⁽¹⁸⁾ Compare the Authority's Guidelines on the application of the state aid rules to compensation granted for the provision of services of general economic interest (not yet published in the OJ), available on the Authority's website: <http://www.eftasurv.int/state-aid/legal-framework/state-aid-guidelines/>, paragraph 68.

⁽¹⁹⁾ The NOK 120 million purchase price agreed on for the 116,3 GWh of ministry price concession power is identical to the mean value of the estimated NPV ranges presented in the DT report (NOK 110-130 million) as well as the DS2 report (NOK 100-140 million). Furthermore, the price is above the mean value of the range indicated in the DS1 report (NOK 80-145 million) and the price exceeds the range indicated in the AA report (NOK 71,4-117,4 million for 115,3 GWh of ministry price concession power).

⁽²⁰⁾ An independent expert evaluation meeting the relevant criteria of the SOL, cannot always be held to be a true expression of the market price of a property or a building. See the Authority's Decision No 157/12/COL on the sale of land gnr 271/8 by Oppdal municipality (OJ L 350, 9.5.2012, p. 109), section II.6.2.

where comparable prices can be observed and due to the volatility of electricity prices, an expert evaluation is less suitable as an instrument to determine the market price of a fixed price 50,5 year power contract ⁽²¹⁾.

(65) In any event, the Authority recalls that it is the market economy investor test, and not the SOL, which concerns sale of public land and buildings, that is the applicable test to assess whether a power contract concluded by a public authority involves an advantage 'favouring' an undertaking. Indeed, that the general market economy investor principle applies to long term power contracts, has been confirmed by the General Court in *Budapesti Erőmű Zrt v Commission* where the General Court endorsed the approach taken by the European Commission ('the Commission') in a case concerning long term power contracts concluded by the Hungarian authorities ⁽²²⁾.

(66) In that case the Commission identified the main practices of commercial operators on European electricity markets that were relevant for the purposes of its analysis and assessed whether the agreements in the case at hand were in line with those practices, or whether the contracts were concluded on terms that would not have been acceptable to an operator acting purely on commercial grounds ⁽²³⁾.

(67) The Commission found that long term power contracts with a duration of more than 6 years are rarely concluded on the European market ⁽²⁴⁾. The information available to the Authority confirms this finding. There are therefore few if any long term power contracts with which to benchmark the price of power sold for 50,5 years into the future.

(68) Long term estimates of future power prices do however have to be made by potential buyers and sellers of power plants. It is on this basis the Norwegian authorities have

argued that the sale of Narvik's entitlement to concession power should be likened to the sale of a hydro power plant. To support this argument, the Norwegian authorities have provided the Authority with the Pareto Review which gives an overview over five hydro power plants sold in Norway in the year 2000.

(69) The Norwegian authorities argue that both in the case of a hydro power plant sale as well as Narvik's sale of its entitlement to concession power, the sales prices represent the NPV of the expected cash flows of the production volume. Thus, like Narvik and NEAS in the case at hand, any buyer or seller of a hydro power plant will have to assess the plant's value based on expected production incomes minus expected costs discounted at a relevant discount rate for as long as the new owner can exploit the relevant hydropower.

(70) The Norwegian authorities argue that, corrected for certain relevant factors, the prices of the five hydro power plants mentioned in the Pareto report are comparable to the price obtained in the sale of Narvik's entitlement to concession power. In this context, the Authority notes the correction factors referred to by the Norwegian authorities, as explained in chapter I.11 above.

(71) For the five hydro power plants, the range of sales prices per KWh of production capacity was between NOK 1,66 and 1,74. A permanent sale of an asset will increase the NPV of the asset compared to a sale of the entitlement to purchase concession power over 50,5 years, as the asset is assumed to have positive cash flow beyond year 50,5. The Norwegian authorities have assumed a 4 % capitalisation rate which result in a downward adjustment of the sales price by approximately 10-15 % in order to compare a permanent sale with the time limited concession power sale ⁽²⁵⁾.

(72) The second difference between a permanent sale and a sale of the entitlement to purchase concession power over 50,5 years concerns the cost base to use in the NPV model – total production costs vs. the concession price. The Norwegian Authorities have argued that the typical operating cost including reinvestment for a newer power plant was approximately NOK 0,05 per KWh while the ministry price at the time was approximately NOK 0,10 per KWh.

⁽²¹⁾ Furthermore, the Authority notes that the four reports do not assess the value of the 11,3 GWh of cost price concession power. Nor has the Authority been provided with an independent expert valuation assessing the value of this concession power. The Norwegian authorities have merely explained that the price of NOK 6 million for this concession power was concluded through negotiations between Narvik and NEAS. These circumstances do not make it possible for the Authority to assess the sale of the 11,3 GWh of cost price concession power according to the principles of the SOL. In addition, AA does not take into account the value of the Taraldsvik (1 GWh) power production.

⁽²²⁾ Joined Cases T-80/06 and T-182/09 *Budapesti Erőmű Zrt v Commission* [not yet reported], paragraph 65-69.

⁽²³⁾ Joined Cases T-80/06 and T-182/09 *Budapesti Erőmű Zrt v Commission* [not yet reported], paragraph 68-69.

⁽²⁴⁾ See Commission Decision in Case C 41/05 *State aid awarded by Hungary through Power Purchase Contracts* (OJ L 225, 27.8.2009, p. 53), paragraph 200.

⁽²⁵⁾ Given a 4 % capitalization rate, the actual reduction in value would be approximately 14 %.

- (73) In order to assess whether the prices for the power plants constitute appropriate proxies for the market price of the concession power at issue, it is necessary to look at each element of the argument in more detail. The Authority's assessment is based on information provided by the Norwegian authorities and other publically available information.
- (74) In the following analysis nominal figures are used in all calculations ⁽²⁶⁾.
- (75) For the five hydro power plants mentioned in the Pareto Review, the sales prices per KWh of production capacity was in the range from NOK 1,66 to 1,74. In a report issued by the economic consultancy firm Econ Pöyry analysing power plant sales between 1996 and 2005, the average transaction value in the year 2000 appears to be somewhat higher, estimated at approximately NOK 1,85. According to the same report, the same approximate price was obtained in 1999. Accordingly, the price range to compare with appears to be slightly higher than the one in the Pareto Review. Since the ECON report refers to a higher average transaction value than the Pareto review, the Authority will use a range of NOK 1,70 to 1,80 in the further analysis.
- (76) The second factor to consider is how to adjust price levels from a permanent sale to a time limited sale over 50,5 years. The Norwegian authorities have argued that the appropriate adjustment factor is 10-15 % based on a capitalization rate of 4 %. The Authority finds that the choice of capitalization rate is closely linked to the choice of discount rate in the NPV model. The nominal after tax discount rate that was used in the DT report was 6,8 % while the AA report used 7 %. It is also noted that NVE has used a 6,5 % rate when assessing new hydro power plant projects ⁽²⁷⁾. The cost price calculation model uses a 6 % rate ⁽²⁸⁾. The Authority is, on the basis of the above, of the opinion that the appropriate discount rate and hence the appropriate capitalisation rate to apply when comparing a permanent sale to a time-limited sale, is in the range of 6-7 % nominally after tax. On this basis, the appropriate adjustment of value from a permanent sale to a 50,5 year sale is not 10-15 % as argued by the Norwegian authorities but closer to 4-5 %.
- (77) The third factor to consider is the expected future market price of electricity. As explained above, forecasting future power prices for 50 years or longer is an exercise fraught with difficulty. In the valuation reports described above, in particular the AA and the DT report, the market price of power was expected to increase steadily for a period of 10-20 years beyond which the prices were expected to be constant in real terms (i.e. only increase with expected inflation) ⁽²⁹⁾. This suggest that the consensus in the market at the time was that future power prices in the long term would remain constant in real terms and not continue to increase ⁽³⁰⁾. The Authority assumes that the same uncertainty about future power prices was present for all market participants, also those that were buying and selling power plants during the same period as the sale of the concession power entitlement. As such, there is no reason to assume that different market participants have access to significantly different information concerning market price expectations.
- (78) Moving from revenue to costs, the comparison presented by the Norwegian authorities refers to a scenario where there is a difference in cash outflows per KWh between a permanent sale and the sale of concession power of NOK 0,05 due to an expected concession price of approximately NOK 0,10 and an operating cost including reinvestment of approximately NOK 0,05.
- (79) As regards the ministry price for concession power, the consultants who advised Narvik and NEAS expected the prices to remain relatively constant in real terms meaning that neither significant efficiency gains nor great volatility in the cost base was expected. In principle, the ministry price for concession power was expected to increase with inflation ⁽³¹⁾. Based on the available information, the Authority is of the opinion that the same assumptions would have been made by a prudent investor and therefore assumes that there would be no major changes to the cost price concession power price in the further analysis. These costs make up the relevant cash outflow in the calculation of the value of the concession power ⁽³²⁾.
- ⁽²⁶⁾ Nominal value refers to an economic value expressed in units of a currency in a given year. By contrast, real value adjusts nominal value to remove effects of general price level price changes (inflation) over time.
- ⁽²⁷⁾ NVE Handbook No 1 of 2007 *Kostnader ved produksjon av kraft og varme*, available at the following url: <http://www.nve.no/Global/Konsesjoner/Fjernvarme/handbok1-07.pdf>
- ⁽²⁸⁾ Figure taken from the following book: Thor Falkanger and Kjell Haagensen *Vassdrags- og energirett* 2002, page 349.
- ⁽²⁹⁾ See the AA report and the numerous reports referred to therein.
- ⁽³⁰⁾ See for instance: Frode Kjærland *Norsk vannkraft – 'arvesølv solgt på billigsalg'*? 2009, available at the following url: <http://www.magma.no/norsk-vannkraft-arvesoelv-solgt-paa-billigsalg>
- ⁽³¹⁾ See the DT report, section 4.3.1.
- ⁽³²⁾ In addition to the feeding cost, but this will be equivalent for the power plant sale scenario and can therefore be disregarded in the analysis.

- (80) As there are a number of variables that can affect the level of cash outlays over time, the NOK 0,05 figure combining operating and reinvestment cost needs to be assessed based on its various components.
- (81) Firstly, it is apparent that a power plant will have a certain level of general operating and maintenance costs. It is assumed that the operating and maintenance costs of a hydropower plant generally is relatively low and constant in the range NOK 0,02-0,05 per KWh⁽³³⁾. This is supported by the cost data used to determine the ministry price. In 2000 the compensation under that model for operating and maintenance costs were NOK 0,267 per KWh.
- (82) Also other cash outflows are relevant for the NPV calculation. In the ministry price calculation from 2000 taxes were compensated with NOK 0,021. The actual tax levied on a given power plant would of course depend on the profits but given that the ministry price is intended to be representative for the average cost of typical power plants in Norway, it appears reasonable to assume a tax cost of approximately NOK 0,02 per KWh.
- (83) The final part of the cash outflows in the NPV is the reinvestment costs which depend crucially on the timing and level of reinvestments needs of the power plant. The Authority understands that, for accounting purposes, the economic lifetime of a hydropower plant is 40 years⁽³⁴⁾, however the actual lifetime may be longer. The level of reinvestment is in many cases substantial, and therefore the timing of the cash outlay, as also argued by the Norwegian authorities, is of great importance to the NPV calculations. If the reinvestment occurs early in the calculation period, the reduction in NPV is significantly larger than if the reinvestment takes place later in the calculation period. However, the Norwegian authorities have not provided the Authority with information on the reinvestment needs of the hydro power plants sold in 1999 and 2000 that they use as a basis for their comparison. The Authority notes that it is likely not readily available nor easily obtainable due to its age and presumably business sensitive nature.
- (84) When adjusting the prices for the hydro power plants in question for the two differences mentioned above, the time period and the cost base, the Norwegian authorities argue that the price range of NOK 1,66 and 1,74 per KWh is comparable to the price obtained on the concession power of approximately NOK 1,00 per KWh⁽³⁵⁾. As explained above, the information available to the Authority indicates that the average transaction value for 1999 and 2000 was somewhat higher than this range (approximately NOK 1,85). Therefore, the Authority will compare a price range of NOK 1,70 to NOK 1,80 per KWh with the price of NOK 1,00 obtained by Narvik.
- (85) The first adjustment would be to make the permanent sales prices comparable to a 50,5 year contract. The Authority have used a capitalization rate of 6 % which reduces the permanent sales values by approximately 5,5 %. The comparable range of prices obtained in power plant sales is therefore NOK 1,61-1,70. The difference in net cash flows of NOK 0,61-0,70 per KWh between concession power prices and the operating cost of a power plant would have to explain the difference in order to satisfy the market investor test and exclude aid.
- (86) Total operating cost are as mentioned above estimated to be in the range NOK 0,02 to 0,05 per KWh plus estimate NOK 0,02 per KWh in taxes, which equals NOK 0,04-0,07 per KWh. In addition, reinvestments have to be taken into account, the financial effect of which depends on timing and size and are therefore difficult to quantify.
- (87) Taking this into account, the Authority has carried out a sensitivity analysis on the sale of the 128 GWh⁽³⁶⁾ of concession power over the 50,5 year period. The Authority has tested various combinations of costs and discount rates with nominal after tax discount rates ranging from 5,5 % to 7,5 % and total operating costs between NOK 0,05 and 0,09 per KWh, as demonstrated in the table below.

Sensitivity analysis		Discount rate				
		5,5 %	6 %	6,5 %	7 %	7,5 %
Operating cost	0,05	1,60	1,46	1,34	1,23	1,14
	0,06	1,34	1,23	1,12	1,04	0,96
	0,07	1,09	0,99	0,91	0,84	0,78
	0,08	0,83	0,76	0,70	0,64	0,59
	0,09	0,58	0,53	0,48	0,45	0,41

⁽³³⁾ NVE Handbook No 1 of 2007 section 4.2.3 and Sweco Grøner report no. 154650-2007.1 cited in Ot.prp. nr. 107 (2008-2009) section 4.4, table 4.2, available at the following url: <http://www.regjeringen.no/nno/dep/oed/dokument/proposisjonar-ogmeldingar/odelstingsproposisjonar/-2008-2009/otprp-nr-107-2008-2009-/4/4.html?id=569864>

⁽³⁴⁾ NVE Handbook No 1 of 2007 section 4.2.2, ref 2.2.

⁽³⁵⁾ I.e. NOK 126 million sales price divided by 128 GWh of annual concession power.

⁽³⁶⁾ The Authority has used NOK 0,10 as the ministry price and for simplicity NOK 0,15 as the cost price, see paragraph (14) above.

- (88) The results are below the NOK 0,61 to NOK 0,70 range in the case where the operating costs are NOK 0,09 at any discount rate in the 5,5 % - 7,5 % range or in the case where both the operating costs are NOK 0,08 and the discount rate is 7,5 % or higher. In these scenarios the difference between the concession power price and the operating cost is so small that when the NPV of the difference is calculated, it does not explain the difference in the higher prices obtained in the permanent hydro power plant sales. However, this is the case only in situations where the operating cost, when reinvestment costs are included, are 60 to 80 % higher than the cost estimates put forward by the Norwegian authorities.

3. Conclusion and summary

- (89) The Authority has assessed the question of whether Narvik's agreement with NEAS conferred an advantage on the latter on the basis of the information provided by the Norwegian authorities. The Authority has found the four expert evaluations to be of limited value. There are numerous uncertainties connected to the developments of future electricity prices over longer periods. Long term power contracts without price adjustment clauses are unusual.
- (90) Moreover, it is not obvious that the sale of power plants as such can be compared with a sale of concession power since a permanent sale is a final decision for which the risk concerning the infinite or future value must be assessed. This is not the case of concession power sale where the optimal length of the contract in terms of risk and value might be different.
- (91) However, the Authority has taken note of the particular circumstances of the case including the fact that Narvik suffered losses on the sale of concession power just before the 50,5 year contract with NEAS was concluded, coupled with the fact that the municipality needed access to liquidity in order to both repay its debt as well as making the planned investment in NEAS.
- (92) It is in the light of these particular circumstances that the Authority accepts the argument that the transaction at issue, despite its very long duration and the uncertainty about future power prices, may be compared with hydro power plant sales that took place in 1999 and 2000. The Authority thus, in this particular case, accepts that the

prices for the hydro power plants sold represent an adequate proxy for the market price in the long term sale of concession power entitlements at issue. Based on the evidence made available to the Authority by the Norwegian authorities, and the explanations about the relevant differences, it appears that Narvik obtained a price comparable to the power plant sales of 1999 and 2000.

- (93) On the basis of those elements the Authority has, on balance, come to the conclusion that Narvik, when it concluded the contract with NEAS for the sale of its entitlement to concession power acted within its discretion as a market economy investor.
- (94) The contract therefore cannot be considered to confer an advantage on NEAS and consequently, it does not involve state aid within the meaning of Article 61 of the EEA Agreement.

HAS ADOPTED THIS DECISION:

Article 1

The sale of Narvik municipality's entitlement to concession power to Narvik Energi AS does not involve state aid within the meaning of Article 61 of the EEA Agreement.

Article 2

This Decision is addressed to the Kingdom of Norway.

Article 3

Only the English language version of this decision is authentic.

Done at Brussels, 19 June 2013.

For the EFTA Surveillance Authority

Oda Helen SLETNES
President

Sabine MONAUNI-TÖMÖRDY
College Member

2013/775/EU:

- ★ **Commission Implementing Decision of 17 December 2013 on a financial contribution from the Union towards emergency measures to combat avian influenza in Germany, Italy and the Netherlands in 2012 and 2013 and in Denmark and Spain in 2013** (*notified under document C(2013) 9084*) 44

2013/776/EU:

- ★ **Commission Implementing Decision of 18 December 2013 establishing the ‘Education, Audio-visual and Culture Executive Agency’ and repealing Decision 2009/336/EC** 46

III *Other acts*

EUROPEAN ECONOMIC AREA

- ★ **EFTA Surveillance Authority Decision No 28/13/COL of 30 January 2013 amending for the eighty-eight time the procedural and substantive rules in the field of state aid by introducing a new chapter on short-term export-credit insurance** 54
- ★ **EFTA Surveillance Authority Decision No 258/13/COL of 19 June 2013 to close the formal investigation procedure into the sale of Narvik municipality’s entitlement to concession power to Narvik Energi AS (‘NEAS’) (Norway)** 63

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