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II

(Non-legislative acts)

INTERNATIONAL AGREEMENTS

COUNCIL DECISION (EU) 2015/1893

of 5 October 2015

on the conclusion, on behalf of the European Union, of the Protocol setting out the fishing opportunities and the financial contribution provided for in the Fisheries Partnership Agreement between the Republic of Madagascar and the European Community

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 43 in conjunction with Article 218(6), second subparagraph, point (a), and Article 218(7) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament,

Whereas:

- (1) On 15 November 2007, the Council adopted Regulation (EC) No 31/2008 on the conclusion of the Fisheries Partnership Agreement between the European Community and the Republic of Madagascar ⁽¹⁾ ('the Agreement'). The current Protocol expired on 31 December 2014.
- (2) The European Union has negotiated with the Republic of Madagascar a new protocol to the partnership agreement ('the Protocol') granting Union vessels fishing possibilities in the fishing zone over which the Republic of Madagascar has jurisdiction.
- (3) The Protocol was signed in accordance with Decision 2014/929/EU ⁽²⁾ and has been applied on a provisional basis since 1 January 2015.
- (4) Article 9 of the Agreement establishes a Joint Committee to monitor the application of the Agreement. Furthermore, in accordance with the Protocol, the Joint Committee may approve certain modifications to the Protocol. In order to facilitate the approval of such modifications, it is appropriate to empower the Commission, subject to specific conditions, to approve them under a simplified procedure.
- (5) The Protocol should be approved,

HAS ADOPTED THIS DECISION:

Article 1

The Protocol setting out the fishing opportunities and the financial contribution provided for by the Fisheries Partnership Agreement between the Republic of Madagascar and the European Community is hereby approved on behalf of the Union.

⁽¹⁾ OJ L 15, 18.1.2008, p. 1.

⁽²⁾ OJ L 365, 19.12.2014, p. 6.

Article 2

The President of the Council shall, on behalf of the Union, give the notification provided for in Article 16 of the Protocol.

Article 3

Subject to the provisions and conditions set out in the Annex to this Decision, the Commission shall be empowered to approve, on behalf of the Union, the modifications made to the Protocol by the Joint Committee.

Article 4

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

Done at Luxembourg, 5 October 2015.

For the Council
The President
N. SCHMIT

ANNEX

Scope of the empowerment and procedure for establishing the position of the Union in the Joint Committee

- (1) The Commission shall be authorised to negotiate with the Republic of Madagascar and, where appropriate and, subject to complying with point 3 of this Annex, agree on modifications to the Protocol in respect of the following issues:
 - (a) review of fishing opportunities, as well as the review of the financial contribution and amendments of this Protocol and the Annex thereto, in accordance with Article 8(1) and (2) of the Protocol;
 - (b) determining fishing possibilities in accordance with Article 9(6) of the Protocol;
 - (c) a decision on the detailed arrangements of the sectoral support in accordance with Article 6 of the Protocol;
 - (d) adoption of measures to ensure sustainable fishing resources covered by this Protocol and affecting the activities of fishing vessels of the Union, in accordance with Article 7(4) of the Protocol;
 - (e) amendment of the provisions relating to conditions governing fishing activities and the rules on the implementation of the Protocol and the Annexes in accordance with Article 8(3) of the Protocol.
 - (2) In the Joint Committee, the Union shall:
 - (a) act in accordance with the objectives pursued by the Union within the framework of the common fisheries policy;
 - (b) follow the Council Conclusions of 19 March 2012 on a Communication on the external dimension of the common fisheries policy;
 - (c) promote positions that are consistent with the relevant rules adopted by Regional Fisheries Management Organisations.
 - (3) When a decision on modifications to the Protocol referred to in point 1 is foreseen to be adopted during a Joint Committee Meeting, the necessary steps shall be taken so as to ensure that the position to be expressed on behalf of the Union takes account of the latest statistical, biological and other relevant information transmitted to the Commission.

To this effect and based on that information, a document setting out the particulars of the proposed Union position shall be transmitted by the Commission services, in sufficient time before the relevant Joint Committee Meeting, to the Council or to its preparatory bodies for consideration and approval.

In respect of the issues referred to in point 1(a) and (b), the approval of the envisaged Union position by the Council shall require a qualified majority of votes. In the other cases, the Union position envisaged in the preparatory document shall be deemed to be agreed, unless a number of Member States equivalent to a blocking minority objects during a meeting of the Council's preparatory body or within 20 days from receipt of the preparatory document, whichever occurs earlier. In case of such objection, the matter shall be referred to the Council.

If, in the course of further meetings, including on the spot, it is impossible to reach an agreement in order for the Union position to take account of new elements, the matter shall be referred to the Council or its preparatory bodies.
 - (4) The Commission is invited to take, in due time, any steps necessary as a follow up to the decision of the Joint Committee, including, where appropriate, a publication of the relevant decision in the *Official Journal of the European Union* and a submission of any proposal necessary for the implementation of such decision.
-

COUNCIL DECISION (EU) 2015/1894**of 5 October 2015****on the conclusion of the Protocol between the European Union and the Republic of Cape Verde setting out the fishing opportunities and the financial contribution provided for in the Fisheries Partnership Agreement between the European Community and the Republic of Cape Verde**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 43 in conjunction with Article 218(6)(a) and Article 218(7) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament,

Whereas:

- (1) On 19 December 2006, by adopting Regulation (EC) No 2027/2006 ⁽¹⁾ the Council approved the Fisheries Partnership Agreement between the European Community and the Republic of Cape Verde (the 'Agreement'). The Protocol agreed between the European Union and the Republic of Cape Verde setting out the fishing opportunities and the financial contribution provided for in the Fisheries Partnership Agreement between the two parties ⁽²⁾ expired on 31 August 2014.
- (2) The Union has negotiated with the Republic of Cape Verde a new protocol (the 'Protocol') to the Agreement granting Union vessels fishing opportunities in the fishing zone in which the Republic of Cape Verde exercises sovereignty or jurisdiction in fishing matters.
- (3) By Decision 2014/948/EU ⁽³⁾, the Council authorised the signing and provisional application of the Protocol, subject to its later conclusion.
- (4) The Agreement set up a Joint Committee to monitor its application. Furthermore, in accordance with the Protocol, the Joint Committee may approve certain modifications to it. In order to facilitate the approval of such modifications, it is appropriate to empower the European Commission, subject to specific conditions, to approve them under a simplified procedure.
- (5) The Protocol should be approved,

HAS ADOPTED THIS DECISION:

Article 1

The Protocol between the European Union and the Republic of Cape Verde setting out the fishing opportunities and the financial contribution provided for in the Fisheries Partnership Agreement between the European Community and the Republic of Cape Verde is hereby approved on behalf of the Union.

Article 2

The President of the Council shall, on behalf of the Union, make the notification provided for in Article 16 of the Protocol.

⁽¹⁾ Council Regulation (EC) No 2027/2006 of 19 December 2006 on the conclusion of the Fisheries partnership agreement between the European Community and the Republic of Cape Verde (OJ L 414, 30.12.2006, p. 1).

⁽²⁾ OJ L 181, 9.7.2011, p. 2.

⁽³⁾ Council Decision 2014/948/EU of 15 December 2014 on the signing, on behalf of the European Union, and provisional application of the Protocol between the European Union and the Republic of Cape Verde setting out the fishing opportunities and the financial contribution provided for by the Fisheries Partnership Agreement between the European Community and the Republic of Cape Verde (OJ L 369, 24.12.2014, p. 1).

Article 3

Subject to the provisions and conditions set out in the Annex to this Decision and in Article 9 of the Agreement, the Commission shall be empowered to approve, on behalf of the Union, modifications to the Protocol in the Joint Committee.

Article 4

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

Done at Luxembourg, 5 October 2015.

For the Council

The President

N. SCHMIT

ANNEX

Scope of the empowerment and procedure for the establishment of the Union position in the Joint Committee

1. The Commission shall be authorised to negotiate with the Republic of Cape Verde where appropriate and, subject to complying with paragraph 3 of this Annex, approve amendments to the Protocol in respect of the following issues:
 - (a) review of fishing opportunities, proportionate adjustment of the financial contribution and making the necessary amendments in accordance with Article 5 of the Protocol;
 - (b) decision on the rules on sectoral support in accordance with Article 3 of the Protocol;
 - (c) adapting the provisions governing the pursuit of fishing activities and the rules for implementing the Protocol and its Annexes in accordance with Article 5(2) of the Protocol;
 - (d) adopting measures aimed at the sustainable management of the fishery resources which affect the activities of Union vessels in accordance with Article 4(4) and (6) of the Protocol.
2. In the Joint Committee set up under Article 9 of the Agreement, the Union shall:
 - (a) act in accordance with the objectives pursued by the Union within the framework of the common fisheries policy;
 - (b) follow the Council Conclusions of 19 March 2012 on a communication on the external dimension of the common fisheries policy;
 - (c) promote positions that are consistent with the relevant rules adopted by Regional Fisheries Management Organisations.
3. When a decision on amendments to the Protocol as referred to in paragraph 1 is expected to be adopted during a Joint Committee meeting, the necessary steps shall be taken in order that the position to be expressed on the Union's behalf take account of the latest statistical, biological and other relevant data transmitted to the Commission.

To this effect and based on that information, a document setting out the particulars of the proposed Union position shall be transmitted by the Commission services, in sufficient time before the relevant Joint Committee Meeting, to the Council or to its preparatory bodies for consideration and approval.

In respect of issues referred to in paragraph 1(a), the approval of the envisaged Union position by the Council shall require a qualified majority of votes. In the other cases, the Union position envisaged in the preparatory document shall be deemed to be agreed, unless a number of Member States equivalent to a blocking minority objects during a meeting of the Council's preparatory body or within 20 days from receipt of the preparatory document, whichever occurs earlier. In the case of such objection, the matter shall be referred to the Council.

If, in the course of further meetings, including on the spot, it is impossible to reach an agreement in order for the Union position to take account of new elements, the matter shall be referred to the Council or its preparatory bodies.

The Commission is invited to take, in due time, any steps necessary as a follow-up to the decision of the Joint Committee, including, where appropriate, publication of the relevant decision in the *Official Journal of the European Union* and submission of any proposal required for the implementation of that decision.

REGULATIONS

COMMISSION REGULATION (EU) 2015/1895

of 16 October 2015

establishing a prohibition of fishing for anglerfish in areas VIIIa, VIIIb, VIId and VIIE by vessels flying the flag of Belgium

THE EUROPEAN COMMISSION,

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

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

Whereas:

- (1) Council Regulation (EU) 2015/104 ⁽²⁾, lays down quotas for 2015.
- (2) According to the information received by the Commission, catches of the stock referred to in the Annex to this Regulation by vessels flying the flag of or registered in the Member State referred to therein have exhausted the quota allocated for 2015.
- (3) It is therefore necessary to prohibit fishing activities for that stock,

HAS ADOPTED THIS REGULATION:

Article 1

Quota exhaustion

The fishing quota allocated to the Member State referred to in the Annex to this Regulation for the stock referred to therein for 2015 shall be deemed to be exhausted from the date set out in that Annex.

Article 2

Prohibitions

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

Article 3

Entry into force

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

⁽¹⁾ OJ L 343, 22.12.2009, p. 1.

⁽²⁾ Council Regulation (EU) 2015/104 of 19 January 2015 fixing for 2015 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union vessels, in certain non-Union waters, amending Regulation (EU) No 43/2014 and repealing Regulation (EU) No 779/2014 (OJ L 22, 28.1.2015, p. 1).

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

Done at Brussels, 16 October 2015.

*For the Commission,
On behalf of the President,
João AGUIAR MACHADO
Director-General for Maritime Affairs and Fisheries*

ANNEX

No	49/TQ104
Member State	Belgium
Stock	ANF/8ABDE.
Species	Anglerfish (<i>Lophiidae</i>)
Zone	VIIIa, VIIIb, VIId and VIIf
Closing date	19.9.2015

COMMISSION REGULATION (EU) 2015/1896**of 16 October 2015****establishing a prohibition of fishing for hake in areas VIIIa, VIIIb, VIId and VIIE by vessels flying the flag of Belgium**

THE EUROPEAN COMMISSION,

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

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

Whereas:

- (1) Council Regulation (EU) 2015/104 ⁽²⁾ lays down quotas for 2015.
- (2) According to the information received by the Commission, catches of the stock referred to in the Annex to this Regulation by vessels flying the flag of or registered in the Member State referred to therein have exhausted the quota allocated for 2015.
- (3) It is therefore necessary to prohibit fishing activities for that stock,

HAS ADOPTED THIS REGULATION:

*Article 1***Quota exhaustion**

The fishing quota allocated to the Member State referred to in the Annex to this Regulation for the stock referred to therein for 2015 shall be deemed to be exhausted from the date set out in that Annex.

*Article 2***Prohibitions**

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

*Article 3***Entry into force**

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

⁽¹⁾ OJ L 343, 22.12.2009, p. 1.

⁽²⁾ Council Regulation (EU) 2015/104 of 19 January 2015 fixing for 2015 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union vessels, in certain non-Union waters, amending Regulation (EU) No 43/2014 and repealing Regulation (EU) No 779/2014 (OJ L 22, 28.1.2015, p. 1).

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

Done at Brussels, 16 October 2015.

*For the Commission,
On behalf of the President,
João AGUIAR MACHADO
Director-General for Maritime Affairs and Fisheries*

ANNEX

No	48/TQ104
Member State	Belgium
Stock	HKE/8ABDE.
Species	Hake (<i>Merluccius merluccius</i>)
Zone	VIIIa, VIIIb, VIId and VIIf
Closing date	19.9.2015

COMMISSION IMPLEMENTING REGULATION (EU) 2015/1897
of 21 October 2015
amending Commission Regulation (EC) No 2056/2001 as regards the landing obligation

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 850/98 of 30 March 1998 for the conservation of the fishery resources through technical measures for the protection of juveniles of marine organisms ⁽¹⁾, and in particular Article 48 thereof,

Whereas:

- (1) Regulation (EU) No 1380/2013 of the European Parliament and of the Council ⁽²⁾ established as one of its objectives the gradual elimination of discards through the introduction of a landing obligation for catches of species subject to catch limits. Certain provisions of the Commission Regulation (EC) No 2056/2001 ⁽³⁾ establishing additional technical measures for the recovery of the stocks of cod in the North Sea and to the west of Scotland oblige fisherman to discard fish. In order to remove incompatibilities between that Regulation and the landing obligation, and make the landing obligation operational, those provisions should be amended.
- (2) In particular, in order to ensure the implementation of the landing obligation, Regulation (EC) No 2056/2001 should be amended by requiring that all unintended catches of marine organisms of species subject to the landing obligation and caught in excess of the catch composition limits be landed and counted against quotas.
- (3) The measures provided for in this Regulation are in accordance with the opinion of the Committee for Fisheries and Aquaculture,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 2056/2001 is amended as follows:

- (1) in Article 2, the following point 3 is added:

‘3. “unintended catches” means incidental catches of marine organisms which, under Article 15 of Regulation (EU) No 1380/2013 of the European Parliament and of the Council ^(*), must be landed and counted against quotas either because they are below the minimum conservation reference size or because they exceed the quantities permitted under the catch composition and by-catch rules.

^(*) Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC (OJ L 354, 28.12.2013, p. 22).’;

- (2) the following Article 9a is inserted:

‘Article 9a

Where marine organisms of a species subject to the landing obligation are caught in excess of permitted percentages or quantities specified in Article 4(1) to (6), Article 5(2), Article 6(2), Article 7 and Article 8 of this Regulation, Article 15 of Regulation (EU) No 1380/2013 shall apply. Those unintended catches shall be landed and counted against quotas. Such unintended catches shall not be deemed to represent a breach of the permitted percentages of the catch composition specified in those Articles.’

⁽¹⁾ OJ L 125, 27.4.1998, p. 1.

⁽²⁾ Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC (OJ L 354, 28.12.2013, p. 22).

⁽³⁾ Commission Regulation (EC) No 2056/2001 of 19 October 2001 establishing additional technical measures for the recovery of the stocks of cod in the North Sea and to the west of Scotland (OJ L 277, 20.10.2001, p. 13).

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, 21 October 2015.

For the Commission

The President

Jean-Claude JUNKER

COMMISSION REGULATION (EU) 2015/1898**of 21 October 2015****refusing to authorise a health claim made on foods, other than those referring to the reduction of disease risk and to children's development and health****(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 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods ⁽¹⁾, and in particular Article 18(5) thereof,

Whereas:

- (1) Pursuant to Regulation (EC) No 1924/2006 health claims made on foods are prohibited unless they are authorised by the Commission in accordance with that Regulation and included in a list of permitted claims.
- (2) Regulation (EC) No 1924/2006 also provides that applications for authorisations of health claims may be submitted by food business operators to the national competent authority of a Member State. The national competent authority is to forward valid applications to the European Food Safety Authority (EFSA), hereinafter referred to as 'the Authority', for a scientific assessment, as well as to the Commission and the Member States for information.
- (3) The Authority is to deliver an opinion on the health claim concerned.
- (4) The Commission is to decide on the authorisation of health claims taking into account the opinion delivered by the Authority.
- (5) Following an application from Clasado Limited, submitted pursuant to Article 13(5) of Regulation (EC) No 1924/2006, the Authority was required to deliver an opinion on a health claim related to Bimuno® GOS and reducing gastrointestinal discomfort (Question No EFSA-Q-2014-00022 ⁽²⁾). The claim proposed by the applicant was worded as follows: 'Regular daily consumption of 1,37 g galacto-oligosaccharides from Bimuno® may reduce abdominal discomfort'.
- (6) On 16 July 2014, the Commission and the Member States received the scientific opinion from the Authority, which concluded that on the basis of the data presented, a cause and effect relationship had not been established between the consumption of Bimuno® GOS and reducing gastrointestinal discomfort. In that opinion, the Authority also noted that except for one unpublished human intervention study, all the human and non-human studies provided by the applicant for this claim were already submitted in previous applications for the same claim, and they were assessed with unfavourable outcomes ⁽³⁾. Accordingly, as the claim does not comply with the requirements of Regulation (EC) No 1924/2006, it should not be authorised.
- (7) The comments from the applicant and the members of the public received by the Commission pursuant to Article 16(6) of Regulation (EC) No 1924/2006 have been considered when setting the measures provided for in this Regulation.
- (8) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

⁽¹⁾ OJ L 404, 30.12.2006, p. 9.

⁽²⁾ EFSA Journal 2014; 12(7):3756.

⁽³⁾ EFSA Journal 2011;9(12):2472, EFSA Journal 2013;11(6):3259.

HAS ADOPTED THIS REGULATION:

Article 1

The health claim listed in the Annex to this Regulation shall not be included in the Union list of permitted claims as provided for in Article 13(3) of Regulation (EC) No 1924/2006.

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, 21 October 2015.

For the Commission

The President

Jean-Claude JUNCKER

ANNEX

Rejected health claim

Application — Relevant provisions of Regulation (EC) No 1924/2006	Nutrient, substance, food or food category	Claim	EFSA opinion reference
Article 13(5) health claim based on newly developed scientific evidence and/or including a request for the protection of proprietary data	Bimuno® GOS	Regular daily consumption of 1,37 g galacto-oligosaccharides from Bimuno® may reduce abdominal discomfort	Q-2014-00022

COMMISSION IMPLEMENTING REGULATION (EU) 2015/1899**of 21 October 2015****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 Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 ⁽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 multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in Annex XVI, Part A thereto.
- (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, 21 October 2015.

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

Jerzy PLEWA
Director-General for Agriculture and Rural Development

⁽¹⁾ OJ L 347, 20.12.2013, p. 671.

⁽²⁾ OJ L 157, 15.6.2011, p. 1.

ANNEX

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

(EUR/100 kg)		
CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	AL	40,5
	MA	115,6
	MK	60,3
	TR	95,4
	ZZ	78,0
0707 00 05	AL	38,5
	MK	46,1
	TR	112,1
	ZZ	65,6
0709 93 10	MA	107,9
	TR	143,0
	ZZ	125,5
0805 50 10	AR	152,4
	TR	101,4
	UY	74,0
	ZA	148,6
	ZZ	119,1
0806 10 10	BR	249,3
	EG	199,4
	MK	96,9
	PE	73,3
	TR	167,2
	ZZ	157,2
0808 10 80	AR	124,2
	CL	121,6
	NZ	137,0
	US	120,3
	ZA	157,5
	ZZ	132,1
0808 30 90	TR	133,5
	XS	96,6
	ZZ	115,1

⁽¹⁾ Nomenclature of countries laid down by Commission Regulation (EU) No 1106/2012 of 27 November 2012 implementing Regulation (EC) No 471/2009 of the European Parliament and of the Council on Community statistics relating to external trade with non-member countries, as regards the update of the nomenclature of countries and territories (OJ L 328, 28.11.2012, p. 7). Code 'ZZ' stands for 'of other origin'.

DECISIONS

COUNCIL DECISION (EU) 2015/1900

of 5 October 2015

establishing the position to be taken on behalf of the European Union within the Stabilisation and Association Council established by the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and Bosnia and Herzegovina, of the other part, concerning a Decision of the Stabilisation and Association Council adopting its rules of procedure

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 217 in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Article 115 of the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and Bosnia and Herzegovina, of the other part ('the Agreement'), establishes a Stabilisation and Association Council.
- (2) Article 116 of the Agreement provides that the Stabilisation and Association Council is to adopt its own rules of procedure.
- (3) Article 118 of the Agreement provides that the Stabilisation and Association Council is to be assisted by a Stabilisation and Association Committee ('the Committee').
- (4) Article 118 of the Agreement also provides that the Stabilisation and Association Council is to, in its rules of procedure, determine the duties of the Committee and that the Stabilisation and Association Council may delegate any of its powers to the Committee.
- (5) Article 120 of the Agreement provides that the Stabilisation and Association Council may decide to set up other special committees or bodies that can assist it in carrying out its duties. It further provides that the Stabilisation and Association Council is to, in its rules of procedure, determine the composition and the duties of such committees and bodies and how they are to function,

HAS ADOPTED THIS DECISION:

Sole Article

The position to be adopted on behalf of the European Union, within the Stabilisation and Association Council established by Article 115 of the Agreement in relation to a Decision of this Stabilisation and Association Council adopting its rules of procedure, shall be based on the draft Decision of the Stabilisation and Association Council, attached to this Decision.

Minor amendments to this draft Decision may be accepted without further decision by the Council.

Done at Luxembourg, 5 October 2015.

For the Council
The President
N. SCHMIT

**DECISION No 1 OF THE EU — BOSNIA AND HERZEGOVINA STABILISATION AND
ASSOCIATION COUNCIL**

of [date]

adopting its rules of procedure

THE STABILISATION AND ASSOCIATION COUNCIL,

Having regard to the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and Bosnia and Herzegovina, of the other part ('the Agreement'), and in particular Articles 115, 116, 118 and 120 thereof,

Whereas the Agreement entered into force on 1 June 2015,

HAS ADOPTED THIS DECISION:

Article 1

Chairmanship

The Parties shall hold the chairmanship of the Stabilisation and Association Council alternately for a period of 12 months. The first period shall begin on the date of the first Stabilisation and Association Council meeting and end on 31 December of the same year.

Article 2

Meetings

The Stabilisation and Association Council shall meet at ministerial level once a year. Special sessions of the Stabilisation and Association Council may be held at the request of either Party, if the Parties so agree. Unless otherwise agreed by the Parties, each session of the Stabilisation and Association Council shall be held at the usual venue for meetings of the Council of the European Union at a date agreed by both Parties. Meetings of the Stabilisation and Association Council shall be jointly convened by the Secretaries of the Stabilisation and Association Council in agreement with the Chair.

Article 3

Representation

The members of the Stabilisation and Association Council may be represented if unable to attend. If a member wishes to be so represented, he must notify the Chair of the name of his representative before the meeting at which he is to be so represented. The representative of a member of the Stabilisation and Association Council shall exercise all the rights of that member.

Article 4

Delegations

The members of the Stabilisation and Association Council may be accompanied by officials. Before each meeting, the Chair shall be informed of the intended composition of the delegation of each Party. A representative of the European Investment Bank shall attend the meetings of the Stabilisation and Association Council, as an observer, when matters which concern the Bank appear on the agenda. The Stabilisation and Association Council may invite non-members to attend its meetings in order to provide information on particular subjects.

*Article 5***Secretariat**

An official of the General Secretariat of the Council of the European Union and an official of the Mission of Bosnia and Herzegovina to the European Union shall act jointly as Secretaries of the Stabilisation and Association Council.

*Article 6***Correspondence**

Correspondence addressed to the Stabilisation and Association Council shall be sent to the Chair of the Stabilisation and Association Council at the address of the General Secretariat of the Council of the European Union.

The two Secretaries shall ensure that correspondence is forwarded to the Chair of the Stabilisation and Association Council and, where appropriate, circulated to other members of the Stabilisation and Association Council. Correspondence circulated shall be sent to the Secretariat-General of the Commission, the European External Action Service, the Permanent Representations of the Member States and the Mission of Bosnia and Herzegovina to the European Union.

Communications from the Chair of the Stabilisation and Association Council shall be sent to the addressees by the two Secretaries and circulated, where appropriate, to the other members of the Stabilisation and Association Council referred to in the second paragraph.

*Article 7***Publicity**

Unless otherwise decided, the meetings of the Stabilisation and Association Council shall not be public.

*Article 8***Agendas for meetings**

1. The Chair shall draw up a provisional agenda for each meeting. It shall be forwarded by the Secretaries of the Stabilisation and Association Council to the addressees referred to in Article 6 not later than 15 days before the beginning of the meeting. The provisional agenda shall include the items in respect of which the Chair has received a request for inclusion on the agenda not later than 21 days before the beginning of the meeting, although items shall not be written into the provisional agenda unless the supporting documentation has been forwarded to the Secretaries not later than the date of despatch of the agenda. The agenda shall be adopted by the Stabilisation and Association Council at the beginning of each meeting. An item other than those appearing on the provisional agenda may be placed on the agenda if the two Parties so agree.

2. The Chair may, in agreement with the two Parties, shorten the time limits specified in paragraph 1 in order to take account of the requirements of a particular case.

*Article 9***Minutes**

Draft minutes of each meeting shall be drawn up by the two Secretaries. The minutes shall, as a general rule, indicate in respect of each item on the agenda:

- the documentation submitted to the Stabilisation and Association Council,
- statements requested for entry by a member of the Stabilisation and Association Council,
- the decisions taken and recommendations made, the statements agreed upon and the conclusions adopted.

The draft minutes shall be submitted to the Stabilisation and Association Council for approval. When approved, the minutes shall be signed by the Chair and the two Secretaries. The minutes shall be filed in the archives of the General Secretariat of the Council of the European Union, which will act as depository of the documents of the Association. A certified copy shall be forwarded to each of the addressees referred to in Article 6.

Article 10

Decisions and recommendations

1. The Stabilisation and Association Council shall take its decisions and make recommendations by common agreement of the Parties. The Stabilisation and Association Council may take decisions or make recommendations by written procedure if both Parties so agree.

2. The decisions and recommendations of the Stabilisation and Association Council, within the meaning of Article 117 of the Agreement, shall be entitled respectively 'Decision' and 'Recommendation' followed by a serial number, by the date of their adoption and by a description of their subject matter. The decisions and recommendations of the Stabilisation and Association Council shall be signed by the Chair and authenticated by the two Secretaries. Decisions and recommendations shall be forwarded to each of the addressees referred to in Article 6. Each Party may decide on the publication of decisions and recommendations of the Stabilisation and Association Council in its respective official publication.

Article 11

Languages

The official languages of the Stabilisation and Association Council shall be the official languages of the two Parties. Unless otherwise decided, the Stabilisation and Association Council shall base its deliberations on documentation drawn up in these languages.

Article 12

Expenses

The European Union and Bosnia and Herzegovina shall each defray the expenses they incur by reason of their participation in the meetings of the Stabilisation and Association Council, both with regard to staff, travel and subsistence expenditure and to postal and telecommunications expenditure. Expenditure in connection with interpreting at meetings, translation and reproduction of documents as well as other expenditure relating to the organisation of meetings shall be borne by the Party hosting the meetings.

Article 13

Stabilisation and Association Committee

1. A Stabilisation and Association Committee ('the Committee') is hereby established in order to assist the Stabilisation and Association Council in carrying out its duties. It shall be composed of representatives of the Council of the European Union and of representatives of the European Commission, on the one hand, and of representatives of the Council of Ministers of Bosnia and Herzegovina on the other, normally at senior civil servant level.

2. The Committee shall prepare the meetings and the deliberations of the Stabilisation and Association Council, implement the decisions of the Stabilisation and Association Council where appropriate and, in general, ensure continuity of the association relationship and the proper functioning of the Agreement. It shall consider any matter referred to it by the Stabilisation and Association Council as well as any other matter which may arise in the course of the day-to-day implementation of the Agreement. It shall submit proposals or any draft decisions or recommendations for adoption to the Stabilisation and Association Council.

3. In cases where the Agreement refers to an obligation to consult or a possibility of consultation, such consultation may take place within the Committee. The consultation may continue in the Stabilisation and Association Council if the two Parties so agree.
4. The rules of procedure of the Committee are annexed to this Decision.

Done at

For the Stabilisation and Association Council
The Chair

ANNEX to DECISION No 1 OF THE EU — BOSNIA AND HERZEGOVINA STABILISATION AND ASSOCIATION COUNCIL

of [date]

Rules of Procedure of the Stabilisation and Association Committee

Article 1

Chairmanship

The Parties shall hold the chairmanship of the Committee alternately for a period of 12 months. The first period shall begin on the date of the first Stabilisation and Association Council meeting and end on 31 December of the same year.

Article 2

Meetings

The Committee shall meet when circumstances require, with the agreement of both Parties. Each meeting of the Committee shall be held at a time and place agreed by both Parties. Meetings of the Committee shall be convened by the Chair.

Article 3

Delegations

Before each meeting, the Chair shall be informed of the intended composition of the delegation of each Party.

Article 4

Secretariat

An official of the European Commission and an official of Bosnia and Herzegovina shall act jointly as Secretaries of the Committee. All communications to and from the Chair of the Committee provided for in this Decision shall be forwarded to the Secretaries of the Committee and to the Secretaries and the Chair of the Stabilisation and Association Council.

Article 5

Publicity

Unless otherwise decided, the meetings of the Committee shall not be public.

Article 6

Agendas for meetings

1. The Chair shall draw up a provisional agenda for each meeting. It shall be forwarded by the Secretaries of the Committee to the addressees referred to in Article 4 not later than 30 working days before the beginning of the meeting. The provisional agenda shall include the items in respect of which the Chair has received a request for inclusion on the agenda not later than 35 working days before the beginning of the meeting, although items shall not be written into the provisional agenda unless the supporting documentation has been forwarded to the Secretaries not later than the date of dispatch of the agenda. The Committee may ask experts to attend its meetings in order to provide information on particular subjects. The agenda shall be adopted by the Committee at the beginning of each meeting. An item other than those appearing on the provisional agenda may be placed on the agenda if the two Parties so agree.

2. The Chair may, in agreement with the two Parties, shorten the time limits specified in paragraph 1 in order to take account of the requirements of a particular case.

Article 7

Minutes

Minutes shall be taken for each meeting and shall be based on a summing up by the Chair of the conclusions arrived at by the Committee. When approved by the Committee, the minutes shall be signed by the Chair and by the Secretaries and filed by each of the Parties. A copy of the minutes shall be forwarded to each of the addressees referred to in Article 4.

Article 8

Decisions and recommendations

In the specific cases where the Committee is empowered by the Stabilisation and Association Council under Article 118 of the Agreement to take decisions or make recommendations, these acts shall be entitled respectively 'Decision' and 'Recommendation', followed by a serial number, the date of their adoption and a description of their subject matter. Decisions and recommendations shall be made by common agreement between the Parties. The Committee may take decisions or make recommendations by written procedure if both Parties so agree. The decisions and recommendations of the Committee shall be signed by the Chair and authenticated by the two Secretaries and shall be forwarded to the addressees referred to in Article 4. Each Party may decide on the publication of the decisions and recommendations of the Committee in its respective official publication.

Article 9

Expenses

The European Union and Bosnia and Herzegovina shall each defray the expenses they incur by reason of their participation in the meetings of the Committee, both with regard to staff, travel and subsistence expenditure and to postal and telecommunications expenditure. Expenditure in connection with interpreting at meetings, translation and reproduction of documents as well as other expenditure relating to the organisation of meetings shall be borne by the Party hosting the meetings.

Article 10

Subcommittees and special groups

The Committee may create subcommittees or special groups to work under its authority. They shall report to the Committee after each of their meetings. The Committee may decide to abolish any existing subcommittees or groups, lay down or modify their terms of reference or set up further subcommittees or groups to assist it in carrying out its duties. Those subcommittees and groups shall not have any decision-making powers.

ANNEX

for the information of the council only

DRAFT

**DECISION No 1/2015 OF THE EU — BOSNIA AND HERZEGOVINA STABILISATION AND
ASSOCIATION COMMITTEE**

of [...] 2015

creating subcommittees and special groups

THE STABILISATION AND ASSOCIATION COMMITTEE,

Having regard to the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and Bosnia and Herzegovina, of the other part, and in particular Article 119 thereof,

Having regard to its rules of procedure, and in particular Article 10 thereof,

HAS ADOPTED THIS DECISION:

Sole Article

The subcommittees and special groups listed in Annex I are hereby created. Their terms of reference are set out in Annex II.

Done at ..., on day/month 2015.

*For the Stabilisation and Association
Committee
The Chair*

DRAFT

**DECISION No 1/2015 OF THE EU — BOSNIA AND HERZEGOVINA STABILISATION AND
ASSOCIATION COMMITTEE**

of [...] 2015

creating subcommittees and special groups

THE STABILISATION AND ASSOCIATION COMMITTEE,

Having regard to the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and Bosnia and Herzegovina, of the other part, and in particular Article 119 thereof,

Having regard to its rules of procedure, and in particular Article 10 thereof,

HAS ADOPTED THIS DECISION:

Sole Article

The subcommittees and special groups listed in Annex I are hereby created. Their terms of reference are set out in Annex II.

Done at ..., on day/month 2015.

*For the Stabilisation and Association
Committee
The Chair*

ANNEX I

EU — BOSNIA AND HERZEGOVINA STABILISATION AND ASSOCIATION AGREEMENT

Multidisciplinary Subcommittee Structure

Title	Issues	Agreement Article
1. Trade, Industry, Customs and Taxation	Free Movement of Goods	Art. 18
	Industrial Products	Art. 19-23
	Commercial questions	Art. 32-46
	Standardisation, metrology, accreditation, certification, conformity assessment, and market surveillance	Art. 75
	Industrial co-operation	Art. 92
	SMEs	Art. 93
	Tourism	Art. 94
	Customs	Art. 97
	Taxation	Art. 98
	Rules of origin	Protocol 2
	Administrative assistance in customs matters	Protocol 5
2. Agriculture and Fisheries	Agricultural products sensu lato	Art. 24, 26(1), 26(2), 29, 30 and 33
	Agricultural products sensu stricto	Art. 27(1)(2) and 27(4)
	Fisheries products	Art. 26 and 28
	Processed agricultural products	Art. 25, Protocol 1
	Wine	Art. 27(5) and Protocol 7
	Protection of geographical indications for agricultural and fishery products and foodstuffs other than wine and spirits	Art. 31
	Agriculture and the agro-industrial sector, veterinary and phytosanitary matters	Art. 95
	Fisheries co-operation	Art. 96
	Food safety	Art. 95

Title	Issues	Agreement Article
3. Internal Market and Competition	Right of establishment	Art. 50-56
	Supply of services	Art. 57-59
	Other questions related to Title V of the Agreement	Art. 63-69
	Approximation of legislation and law enforcement	Art. 70
	Competition	Art. 71-72, Protocol 4
	Intellectual, industrial and commercial property	Art. 73
	Public procurement	Art. 74
	Banking, insurance and other financial services	Art. 89
	Consumer protection	Art. 76
	Public health	
4. Economic and financial issues and statistics	Capital movements and payments	Art. 60-62
	Economic policy	Art. 87
	Statistical co-operation	Art. 88
	Investment promotion and protection	Art. 91
	Financial co-operation	Art. 112-114
5. Justice, freedom and security	Judiciary and fundamental rights, including anti-discrimination	Art. 78
	Police co-operation and Judicial co-operation	Art. 78
	Rule of law	Art. 78
	Data protection	Art. 79
	Visa, border control, asylum and migration	Art. 80
	Illegal immigration and readmission	Art. 81
	Money laundering	Art. 82
	Drugs	Art. 83
	Counter terrorism	Art. 85
	Crime and other illegal activities	Art. 84

Title	Issues	Agreement Article
6. Innovation, information society, and social policy	Movement of workers	Art. 47-49
	Working conditions and equal opportunities	Art. 77
	Social co-operation	Art. 99
	Education and training	Art. 100
	Cultural co-operation	Art. 101
	Information and communication	Art. 105
	Co-operation in the audio-visual field	Art. 102
	Electronic communications networks and services	Art. 104
	Information society	Art. 103
	Research and technological development	Art. 109
7. Transport, energy, environment, and regional development ⁽¹⁾	Transport	Art. 53, 59, 106 and Protocol 3
	Energy	Art. 107
	Nuclear safety	Art. 107
	Environment	Art. 108
	Climate change	Art. 108
	Civil protection	Art. 108
	Regional and local development	110

⁽¹⁾ For the purposes of implementing Protocol 3 to the Agreement, this sub-committee shall act as the special sub-committee mentioned in Article 21 of this Protocol.

Structure of the Special groups

Title	Issues	Agreement Article
Special Group for reform of public administration	Public administration reform	Title VI Legal approximation and law enforcement, Art. 70 and Title VII, Justice and Home Affairs, Art. 78, Art. 111

ANNEX II

TERMS OF REFERENCE OF THE EU — BOSNIA AND HERZEGOVINA SUBCOMMITTEES AND SPECIAL GROUPS**Composition and Chairmanship**

The subcommittees and the special group on public administration reform (PAR) shall be composed of representatives of the European Commission and representatives of the government of Bosnia and Herzegovina. They shall be chaired alternately by the two parties. The Member States will be informed and invited to the meetings of the subcommittees and the special group on PAR.

Secretariat

An official of the European Commission and an official of the government of Bosnia and Herzegovina shall act jointly as secretaries of each of the subcommittees and of the special group on PAR.

All communications concerning the subcommittees shall be forwarded to the secretaries of the relevant subcommittee and of the special group on PAR.

Meetings

The subcommittees and the special group on PAR shall meet whenever circumstances require, with the agreement of both Parties. Each meeting of a subcommittee or the special group on PAR shall be held at a time and place agreed by both Parties.

If both Parties agree, the subcommittees and the special group on PAR may invite experts to their meetings to provide the specific information requested.

Agenda and supporting documentation

The Chair and the secretaries shall draw up a provisional agenda for each meeting not later than 30 working days before the beginning of the meeting.

The provisional agenda shall include items in respect of which a request for inclusion has been received by the secretaries not later than 35 working days before the beginning of the meeting.

Following the agreement of the provisional agenda for each meeting and not later than 10 working days before the beginning of the meeting the secretary from Bosnia and Herzegovina shall submit to the secretary from the European Commission the necessary written documentation following the items agreed in the provisional agenda.

In case the deadline mentioned in paragraph 3 is not respected, the meeting shall be automatically cancelled without further notice.

Subject matters

The subcommittees shall discuss issues related to the areas of the Agreement as listed in the multidisciplinary subcommittee structure. Progress regarding the approximation, implementation and enforcement of legislation shall be assessed under all subject matters. The subcommittees shall examine any problems that may arise in their relevant sectors and shall suggest possible steps to be taken.

The subcommittees shall also serve as fora for the further clarification of the *acquis* and shall review progress made by Bosnia and Herzegovina in conforming to the *acquis* in line with commitments taken under the Agreement.

The special group on PAR shall discuss issues related to public administration reform and suggest possible steps to be taken.

Minutes

Minutes shall be taken for and agreed after each meeting. A copy of the minutes shall be forwarded by the secretary of the subcommittee or the special group on PAR to the Secretary of the Committee.

Publicity

Unless otherwise decided, the meetings of the subcommittees and of special groups on PAR shall not be public.

COMMISSION IMPLEMENTING DECISION (EU) 2015/1901**of 20 October 2015****laying down certification rules and a model health certificate for importation into the Union of consignments of live animals and of animal products from New Zealand and repealing Decision 2003/56/EC***(notified under document C(2015) 7013)***(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Council Decision 97/132/EC of 17 December 1996 on the conclusion of the Agreement between the European Community and New Zealand on sanitary measures applicable to trade in live animals and animal products ⁽¹⁾, and in particular Article 4 thereof,

Having regard to Council Directive 2002/99/EC of 16 December 2002 laying down the animal health rules governing the production, processing, distribution and introduction of products of animal origin for human consumption ⁽²⁾, and in particular Article 8, Article 9(2)(b) and Article 9(4) thereof,

Having regard to Council Directive 2004/68/EC of 26 April 2004 laying down animal health rules for the importation into and transit through the Community of certain live ungulate animals, amending Directives 90/426/EEC and 92/65/EEC and repealing Directive 72/462/EEC ⁽³⁾, and in particular the first and second subparagraphs of Article 3(1), the first subparagraph of Article 6(1), Article 7(e), Article 8, the first paragraph of Article 10 and Article 13(1) thereof,

Having regard to Regulation (EC) No 854/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption ⁽⁴⁾, and in particular Article 11(1) thereof,

Having regard to Council Regulation (EC) No 1099/2009 of 24 September 2009 on the protection of animals at the time of killing ⁽⁵⁾, and in particular Article 12 thereof,

Whereas:

- (1) Decision 97/132/EC provides for the establishment of guarantees for the importation of fresh meat and meat based products from New Zealand that are equivalent to those laid down by Council Directive 72/462/EEC ⁽⁶⁾. That Directive has been repealed and replaced as regards public health and official control rules applicable to certain animal products by Regulation (EC) No 854/2004, and as regards animal health and other import requirements by Directives 2002/99/EC and 2004/68/EC.
- (2) Annex V to the Agreement between the European Community and New Zealand on sanitary measures applicable to trade in live animals and animal products ('the Agreement'), lists the public and animal health measures for live animals and animal products from New Zealand for which equivalence has been determined.
- (3) Article 9(3) of the Agreement requires that each consignment of live animals or of animal products for which equivalence has been recognised and that is presented for import will be accompanied, unless not required, by an official health certificate ('model health certificate'), the model attestation for which is prescribed in Annex VII to the Agreement.

⁽¹⁾ OJ L 57, 26.2.1997, p. 4.

⁽²⁾ OJ L 18, 23.1.2003, p. 11.

⁽³⁾ OJ L 139, 30.4.2004, p. 321.

⁽⁴⁾ OJ L 139, 30.4.2004, p. 206.

⁽⁵⁾ OJ L 303, 18.11.2009, p. 1.

⁽⁶⁾ Council Directive 72/462/EEC of 12 December 1972 on health and veterinary inspection problems upon importation of bovine animals and swine and fresh meat from third countries (OJ L 302, 31.12.1972, p. 28).

- (4) Under Annex V to the Agreement, the model health certificate for consignments of live animals or of animal products traded between the Union and New Zealand shall bear the attestations provided for in Chapter 28 of Section 5 of that Annex.
- (5) Under Annexes V and VII to the Agreement, consignments of live animals and of animal products for which equivalence has been determined for either animal or public health measures, but not for both, may be imported into the Union, provided that the applicable additional non-equivalence attestations from the veterinary certificates laid down in accordance with the models set out in the relevant Union legislation on veterinary import certification appear on the model health certificate. For reasons of clarity, it is appropriate to list such live animals and animal products in an annex to this Decision.
- (6) Annex V to the Agreement provides that consignments of live animals and animal products for which equivalence has not been determined, may be imported into the Union when accompanied by the veterinary certificates laid down in accordance with the models set out in the relevant Union legislation on veterinary import certification or with the prevailing national health conditions of the Member States, pending adoption of harmonised Union rules in this respect.
- (7) As provided under 'Certification Systems' in Chapter 27 of Annex V to the Agreement, the health certificates may under certain conditions be issued after the departure of the consignment from New Zealand. In such circumstances, the additional attestation referred to in point (a)(iv) of Section 1 of Annex VII to the Agreement should be provided on the model health certificate.
- (8) Regulation (EC) No 1099/2009 provides for official health certificates for meat to be supplemented with an attestation certifying that certain animals referred to in that Regulation have been slaughtered under conditions that offer guarantees of humane treatment at least equivalent to those laid down in that Regulation. It is appropriate that the model health certificate makes reference to this additional attestation.
- (9) Commission Decision 2007/240/EC ⁽¹⁾ lays down standard models for veterinary certificates for importing live animals, semen, embryos, ova and products of animal origin into the Union. Article 2 of that Decision provides that those models may be used for imports from third countries.
- (10) Annexes V and VII to the Agreement, as amended by Commission Implementing Decision (EU) 2015/1084 ⁽²⁾, establish new or revised measures on equivalence for certain live animals and animal products, lay down new or updated certification requirements, such as the model attestation for equivalent commodities, and that health certification may also occur electronically through use of the Union integrated electronic system established by Commission Decision 2003/24/EC ⁽³⁾ ('TRACES') after recording the EU's agreement for the exclusive use of electronic certification for consignments of live animals and animal products from New Zealand either in one of the Annexes to the Agreement or by correspondence in accordance with Article 16(1) of the Agreement.
- (11) Subchapter 29.B. of Section 5 of Annex V to the Agreement establishes additional animal health measures for the importation into the Union of consignments of live animals and of animal products where a specific disease occurs. Annexes V and VII to the Agreement provide that in those circumstances consignments may be imported into the Union when the additional attestations referred to in that Subchapter appear on the model health certificate.
- (12) In order to allow for more rapid certification updates, as well as to facilitate electronic certification, Annex V of the Agreement provides for laying down the import certificates for live animals and animal products from New Zealand with a 'Yes (1)' status in TRACES using a model agreed to by the Union and New Zealand.

⁽¹⁾ Commission Decision 2007/240/EC of 16 April 2007 laying down new veterinary certificates for importing live animals, semen, embryos, ova and products of animal origin into the Community pursuant to Decisions 79/542/EEC, 92/260/EEC, 93/195/EEC, 93/196/EEC, 93/197/EEC, 95/328/EC, 96/333/EC, 96/539/EC, 96/540/EC, 2000/572/EC, 2000/585/EC, 2000/666/EC, 2002/613/EC, 2003/56/EC, 2003/779/EC, 2003/804/EC, 2003/858/EC, 2003/863/EC, 2003/881/EC, 2004/407/EC, 2004/438/EC, 2004/595/EC, 2004/639/EC and 2006/168/EC (OJ L 104, 21.4.2007, p. 37).

⁽²⁾ Commission Implementing Decision (EU) 2015/1084 of 18 February 2015 approving on behalf of the European Union certain amendments to Annexes II, V, VII and VIII to the Agreement between the European Community and New Zealand on sanitary measures applicable to trade in live animals and animal products (OJ L 175, 4.7.2015, p. 45).

⁽³⁾ Commission Decision 2003/24/EC of 30 December 2002 concerning the development of an integrated computerised veterinary system (OJ L 8, 14.1.2003, p. 44).

- (13) Commission Decision 2003/56/EC ⁽¹⁾ lays down certification requirements and several models of simplified health certificates for the importation into the Union of consignments of live animals and of animal products from New Zealand. Those certification requirements and models should be adapted to reflect the last amendments made to Annexes V and VII to the Agreement. In the interest of clarity and consistency of Union legislation, Decision 2003/56/EC should be repealed and replaced by this Decision.
- (14) To allow for the adjustment to the new certificate model in TRACES and to ensure the continuation of the electronic data transmission by New Zealand as well as to avoid any disruption of trade, the use of health certificates issued in accordance with Decision 2003/56/EC should be authorised during an appropriately long transitional period.
- (15) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS DECISION:

Article 1

Subject matter

This Decision lays down certification requirements concerning importation into the Union of consignments of live animals and of animal products from New Zealand.

It also sets out a model health certificate to be used for the importation of those live animals and of animal products into the Union, for which equivalence has been determined under the Agreement between the European Community and New Zealand on sanitary measures applicable to trade in live animals and animal products ('the Agreement').

Article 2

Importation of live animals and animal products

1. The Member States shall authorise the importation into the Union of consignments of live animals and of animal products from New Zealand provided they are accompanied by a health certificate, issued before departure of the consignment from New Zealand and drawn up in accordance with the following models:

- (a) where equivalence has been established for animal or public health measures and has been recorded in Annex V to the Agreement as 'Yes (1)', the model health certificate as set out in Annex I to this Decision, and, when required, supplemented by the relevant additional attestations in accordance with:
 - (i) the special conditions referred to in Chapter 28 of Section 5 of Annex V to the Agreement;
 - (ii) the special conditions referred to in Annex II to this Decision;
 - (iii) the special conditions referred in Subchapter 29.B. of Section 5 of Annex V to the Agreement;
 - (iv) the guarantees of humane treatment at the time of killing at least equivalent to those provided for in Regulation (EC) No 1099/2009;
- (b) where equivalence has not been established and certification requirements have been laid down in Union legislation, the model health certificate set out in relevant Union legislation on veterinary import certification.

2. Pending the adoption by the Union of harmonised importation requirements for certain live animals and certain animal products, national health requirements of the Member States shall continue to apply to the importation of those live animals and animal products.

⁽¹⁾ Commission Decision 2003/56/EC of 24 January 2003 on health certificates for the importation of live animals and animal products from New Zealand (OJ L 22, 25.1.2003, p. 38).

3. The health certificates issued in accordance with the model referred to in paragraph (1)(a) may be issued after departure of the consignment from New Zealand of live animals and animal products with certification systems equivalence recorded in Chapter 27 of Annex V to the Agreement, provided that they include a reference to the appropriate Eligibility Document ('ED') and its date of issuance and that they are provided to the border inspection post on arrival of the consignment.

Article 3

General certification conditions for the importation of live animals and of animal products

The animal and public health attestations may be combined in a single health certificate also in cases where equivalence has been determined for only animal or only public health measures.

Article 4

Repeal

Decision 2003/56/EC is repealed.

Article 5

Transitional provision

For a transitional period until 31 May 2016, consignments of live animals and of animal products accompanied by health certificates issued no later than 1 May 2016 in accordance with the model certificates set out in Annexes II, III, IV, V and VI to Decision 2003/56/EC, may continue to be imported into the Union.

Article 6

Applicability

This Decision shall apply from 1 December 2015.

Article 7

Addressees

This Decision is addressed to the Member States.

Done at Brussels, 20 October 2015.

For the Commission
Vytenis ANDRIUKAITIS
Member of the Commission

ANNEX I

MODEL HEALTH CERTIFICATE

European Union

Veterinary certificate to EU

Part I: Details of dispatched consignment	I.1. Consignor		I.2. Certificate reference No	I.2.a. TRACES reference number:
	Name		I.3. Central competent authority	
	Address		I.4. Local competent authority	
	Country			
	I.5. Consignee		I.6. Person responsible for the consignment in EU	
	Name			
Address				
Country				
I.7. Country of origin	ISO code	I.8.	I.9. Country of destination	I.10.
I.11. Place of origin		I.12. Place of destination		
Name		Name		
Approval number		Approval number		
Address		Address		
		Postal code		
I.13. Place of loading		I.14. Date and time of departure		
Name				
Postal code/Region				
I.15. Means of transport		I.16. Entry BIP in EU		
Aeroplane ☐ Ship ☐ Railway wagon ☐		Name		
Road vehicle ☐ Other ☐		BIP unit no		
Identification:		I.17.		
Number(s):				
I.18. Temperature of products		I.19. Total Gross Weight	I.20. Total number of packages	
Ambient ☐ Chilled ☐ Frozen ☐				
I.21. Seal/Container numbers				
I.22. Commodities certified for:				
Slaughter ☐ Breeding ☐ Fattening ☐ Human consumption ☐ Approved body ☐				
Quarantine ☐ Registered equidae ☐ Game restocking ☐ Pets ☐ Circus/exhibition ☐				
Relaying ☐ Other ☐ Further process ☐ Animal feedingstuff ☐				
Technical use ☐				

I.23. For transit through EU to 3 rd Country ☐				I.24. For import or temporary admission into EU ☐		
3 rd country		ISO code				
I.25. Identification of the commodities						
Custom code (HS code) and title:						
Species (Scientific name)	Nature of commodity	Establishment	Batch number	Number of packages	Type of packages	Net weight (kg)
Species (Scientific name)	Breed/ Category	Identification of the donor	Identification of the straw	Collection date	Approval number of the centre/team	Quantity
Species (Scientific name)	Breed/ Category	Identification method	Identification number	Age	Sex	Quantity

COUNTRY

II. Health attestation

II.a. Certificate reference No

II.b.

The live animal(s) or animal product(s) herein described, complies/y with the relevant New Zealand standards and requirements that have been recognized as equivalent to the European Union standards and requirements as prescribed in the European Union-New Zealand Agreement on sanitary measures (Decision 97/132/EC).

⁽¹⁾ III. Additional attestations

either

⁽¹⁾ [III.1. The live animal(s) or animal product(s) herein described complies/y with the relevant special conditions laid down in Chapter 28 of Section 5 of Annex V to Decision 97/132/EC: *[insert relevant attestation]*.]

and/or

⁽¹⁾ [III.2. The live animal(s) or animal product(s) herein described complies/y with the relevant certification provisions laid down in Annex II to Commission Implementing Decision (EU) 2015/1901: *[insert relevant attestation]*.]

and/or

⁽¹⁾ [III.3. The live animal(s) or animal product(s) herein described complies/y with the additional conditions laid down in Chapter 29.B. of Section 5 of Annex V to Decision 97/132/EC in the event of the occurrence of a specific disease: *[insert relevant attestation]*.]

and/or

⁽²⁾ [III.4. The animal products are derived from animals that have been handled in the slaughterhouse before and at the time of slaughter or killing under conditions at least equivalent to the Union standards and requirements.]

and/or

⁽³⁾ ⁽⁴⁾ [III.5. The undersigned officer certifies this consignment on the basis of Eligibility Document(s) (ED) issued on, which were ascertained by him or her and were issued prior to the departure of the consignment.]

Notes

This health certificate is for veterinary purposes only.

Part I

Box I.6: Complete only in case of transit through the Union.

Box I.8: Region of origin: if applicable, otherwise must be crossed out: for animal species or for products affected by the regionalisation measures or by the setting up of approved zones in accordance with Union decisions. The names of the approved regions and the zones (production areas in case of frozen or processed bivalve molluscs) must be entered as published in the *Official Journal of the European Union*.

Box I.12: Complete only in case of storage of products in transit: name and address (street, town and postal code) and the approval or registration number of the warehouse in a free zone, the customs warehouse or the ship supplier.

Box. I.14: For live animals: enter the date and the time at which the animals are scheduled to depart in their means of transport (aeroplane, ship, railway or road vehicle).

For animal products: indicate the date of departure of the means of transport (aeroplane, ship, railway or road vehicle).

Box. I.18: Complete only in case of animal products.

Box I.19: Enter the 'Total gross weight (kg)' and 'Total net weight (kg)'.

Box I.22: Enter the purpose of import of live animals or intended use for animal products (the available options will vary in accordance with the specific certificate in the Union import requirements).

Box I.21: If applicable, enter the identification number of the container and the seal number.

Box I.23: Complete only in case of transit through the Union.

COUNTRY

II. Health attestation	II.a. Certificate reference No	II.b.						
Box I.24: Complete only in case of importation or temporary admission to the Union. Box I.25: Use the appropriate Harmonised System (HS) code. For animal products: Species, nature of commodity, approval number of establishments (e.g. abattoir, processing plant, cold store), batch number, number of packages, type of packages, net weight (the available options will vary in accordance with the specific certificate in the Union import requirements). Those products may, in accordance with the entry 'Re-exports of imported animal products' of Chapter 27 of Annex V to Decision 97/132/EC, come from establishments from third countries other than New Zealand. For germinal products: Species, breed/category, identification number of the donor, identification number/code of the straw, collection date, approval number of the centre/team, quantity. For live animals: species, breed/category, identification method, identification number, age, sex, quantity/net weight. Titles and entries of the boxes may be aligned to the specific certificate in the Union import requirements. Part II (¹) Only to be completed if special conditions apply. Otherwise delete. (²) Only for animal products derived from animals covered by Regulation (EC) No 1099/2009. Otherwise delete. (³) Only to be completed when the official health certificate is issued after the departure of the consignment. Specify reference to the appropriate Eligibility Document(s) (ED). Otherwise delete. (⁴) Only to be completed when the health certificate has been issued after the departure of the consignment. Insert date. Otherwise delete. (⁵) Delete as appropriate.								
Official veterinarian/inspector (⁵) <table border="0"> <tr> <td>Name (in capital letters):</td> <td>Qualification and title:</td> </tr> <tr> <td>Date:</td> <td>Signature:</td> </tr> <tr> <td>Stamp:</td> <td></td> </tr> </table>			Name (in capital letters):	Qualification and title:	Date:	Signature:	Stamp:	
Name (in capital letters):	Qualification and title:							
Date:	Signature:							
Stamp:								

ANNEX II

List of live animals and of animal products for which equivalence has been determined for animal or public health measures in Annex V to the Agreement

Commodity ⁽¹⁾ , Species ⁽²⁾ /Form ⁽³⁾	Ch. ⁽⁴⁾	Certification ⁽⁵⁾		
		Animal Health	Public Health	Special Certification Conditions
Farmed game meat — Ratite Fresh meat	4.C	Commission Regulation (EC) No 798/2008 ⁽⁶⁾	Equivalence model health attestation	The non-equivalence attestations to be included in the model health certificate set out in Annex I
Wild game meat — Other wild land mammals Fresh meat, excluding offal	4.D	Commission Regulation (EC) No 119/2009 ⁽⁷⁾ Commission Regulation (EC) No 206/2010 ⁽⁸⁾	Equivalence model health attestation	The non-equivalence attestations to be included in the model health certificate set out in Annex I
Meat preparations derived from farmed game meat — Ratites	5.C	Commission Decision 2000/572/EC ⁽⁹⁾ Regulation (EC) No 798/2008	Equivalence model health attestation	The non-equivalence attestations to be included in the model health certificate set out in Annex I
Meat products derived from farmed game — Ratites	6.C	Commission Decision 2007/777/EC ⁽¹⁰⁾ Regulation (EC) No 798/2008	Equivalence model health attestation	The non-equivalence attestations to be included in the model health certificate set out in Annex I

⁽¹⁾ This table shall be read in conjunction with Annex V to the Agreement, with particular regard to the special conditions referred to therein.

⁽²⁾ In the case of live animals.

⁽³⁾ The formation in which the product is introduced (featured).

⁽⁴⁾ A chapter number assigned to a particular commodity or commodity grouping that corresponds to the commodity or commodity grouping of the same number in Annex V to the Agreement and will as such appear on the certificate.

⁽⁵⁾ Reference to legislation includes all subsequent amendments.

⁽⁶⁾ Commission Regulation (EC) No 798/2008 of 8 August 2008 laying down a list of third countries, territories, zones or compartments from which poultry and poultry products may be imported into and transit through the Community and the veterinary certification requirements (OJ L 226, 23.8.2008, p. 1).

⁽⁷⁾ Commission Regulation (EC) No 119/2009 of 9 February 2009 laying down a list of third countries or parts thereof, for imports into, or transit through, the Community of meat of wild leporidae, of certain wild land mammals and of farmed rabbits and the veterinary certification requirements (OJ L 39, 10.2.2009, p. 12).

⁽⁸⁾ Commission Regulation (EU) No 206/2010 of 12 March 2010 laying down lists of third countries, territories or parts thereof authorised for the introduction into the European Union of certain animals and fresh meat and the veterinary certification requirements (OJ L 73, 20.3.2010, p. 1).

⁽⁹⁾ Commission Decision 2000/572/EC of 8 September 2000 laying down the animal and public health and veterinary certification conditions for imports of meat preparations into the Community from third countries (OJ L 240, 23.9.2000, p. 19).

⁽¹⁰⁾ Commission Decision 2007/777/EC of 29 November 2007 laying down the animal and public health conditions and model certificates for imports of certain meat products and treated stomachs, bladders and intestines for human consumption from third countries (OJ L 312, 30.11.2007, p. 49).

III

(Other acts)

EUROPEAN ECONOMIC AREA

EFTA SURVEILLANCE AUTHORITY DECISION

No 244/14/COL

of 26 June 2014

concerning potential aid to the Nasjonal digital læringsarena (NDLA) [2015/1902]

(Norway)

The EFTA Surveillance Authority ('the Authority'),

HAVING REGARD to:

The Agreement on the European Economic Area ('the EEA Agreement'), in particular to Article 61 and Protocol 26,

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

Protocol 3 to the SCA ('Protocol 3'), in particular to Article 7(2) of Part II,

HAVING called on interested parties to submit their comments according to those provisions ⁽¹⁾,

Whereas:

I. FACTS

1. PROCEDURE

- (1) By letter dated 15 April 2010 (Event No 553725), Den Norske Forleggerforening, the Norwegian Publishers Association ('NPA'), sent the Authority a complaint alleging that unlawful state aid has been granted to the Nasjonal digital læringsarena ('NDLA'). By e-mail of 15 July 2011 (Event No 608593) the complainant provided additional information.
- (2) By letter dated 2 July 2010 (Event No 558201), the Authority requested additional information. By letter dated 9 September 2010 (Event No 568942), the Norwegian authorities replied to the information request. In addition, discussions between the Authority and the Norwegian authorities regarding the case took place at a meeting in Norway on 13-14 October 2010. Additional information from the Norwegian authorities was sent to the Authority by letter dated 1 December 2010 (Event No 579405).
- (3) The Authority requested additional information by letter dated 4 February 2011 (Event No 574762). The Norwegian authorities responded by letter dated 7 March 2011 (Event No 589528). The Norwegian authorities provided further clarifications by emails of 2 May 2011 and 12 August 2011 (Event Nos 596402 and 608596).

⁽¹⁾ OJ C 229, 8.8.2013, p. 31, and EEA Supplement No 44, 8.8.2013, p. 19.

- (4) On 12 October 2011 the Authority adopted Decision No 311/11/COL deciding that the measure did not constitute state aid within the meaning of Article 61(1) of the EEA Agreement ('the Decision') ⁽¹⁾. On 9 January 2012 the applicant brought an action against the Decision and, by its judgment in Case E-1/12 *Den norske Forleggerforening v EFTA Surveillance Authority* dated 11 December 2012, the EFTA Court annulled the Decision ('the Judgment') ⁽²⁾.
- (5) Following the Judgment, the Authority adopted Decision No 136/13/COL on 27 March 2013 initiating a formal investigation ⁽³⁾. The Norwegian authorities submitted their comments to the decision on 6 May 2013 (Event No 672024). The NPA submitted its observations on 31 July 2013 (Event No 679681). A number of comments were submitted from third parties between 2 September and 15 September 2013. These third party comments were forwarded to the Norwegian authorities by emails dated 4 October 2013 (Event Nos 685793, 685794, 685795, and 685797) and 7 October 2013 (Event Nos 685884, 685885, 685886, 685887, 685889) and by letter dated 29 October 2013 (Event No 688133).
- (6) Further to a request from the NPA, a meeting was held in Brussels on 16 October 2013 during which the NPA gave a presentation outlining further comments regarding the case. On 27 October 2013, the NPA sent a copy of its presentation material together with additional written comments (Event No 688135), which were forwarded to the Norwegian authorities on 29 October 2013. The Norwegian authorities submitted their comments on 29 November 2013 (Event No 691769).
- (7) The Authority requested further information by a letter dated 17 February 2014 (Event No 694424). The Norwegian authorities answered by letter dated 31 March 2014 (Event Nos 703980 and 703991, Annexes 1-28 in Event No 703987).

2. THE NDLA

- (8) The NDLA is an entity established by Norwegian county authorities on the basis of Section 27 of the Local Government Act ⁽⁴⁾. It does not have legal personality.
- (9) Section 27 of the Local Government Act stipulates that municipalities or county authorities may join forces to undertake common tasks. The cooperation should take place through a board appointed by the relevant municipality or county authority. The board may be empowered to adopt decisions concerning the operation and organisation of the inter-municipal cooperation. Moreover, the provision stipulates that the articles of association of such cooperation should determine the appointment and representation in the board, the area of activities, whether the participating municipalities/county authorities should make financial contributions, whether the board may enter into loan agreements or in other ways make the participating municipalities/county authorities liable for financial obligations and, finally, how such cooperation should be terminated. Only municipalities and county authorities are allowed to participate in an inter-municipal cooperation. Neither the State, other state entities nor private parties can participate in such cooperations. Furthermore, the cooperation must be genuine in the sense that the law prohibits the management of the cooperation to be delegated to one county authority.
- (10) The establishment of the NDLA is described in section I.4.4.
- (11) The objective of the NDLA is to develop and purchase digital learning material with a view to publish the material on the internet free of charge for teachers and students to use. This is done by publishing the material on an open website. It has four main areas of activity: first, the development and supply of digital learning material for the upper secondary school; second, the procurement of digital learning material from third party suppliers; third, the quality control of learning material; and fourth, the operation of the website through which the digital learning material is published (these activities are hereafter also referred to as the 'purchase, development and supply of digital learning materials').

3. THE COMPLAINANT — THE NORWEGIAN PUBLISHERS ASSOCIATION ('THE NPA')

- (12) The NPA represents companies which are or could be active in the development and distribution of digital learning material.

⁽¹⁾ OJ C 92, 29.3.2012, p. 3, and EEA Supplement No 18, 29.3.2012, p. 3.

⁽²⁾ Case E-1/12 *Den norske Forleggerforening v EFTA Surveillance Authority* EFTA Ct. Rep [2012], p. 1040.

⁽³⁾ OJ C 229, 8.8.2013, p. 31, and EEA Supplement No 44, 8.8.2013, p. 19.

⁽⁴⁾ LOV-1992-09-25-107 (Lov om kommuner og fylkeskommuner (kommuneloven)).

- (13) The complainant submits that the granting of funds to the NDLA for the purchase, development and supply of digital learning material constitutes unlawful state aid to the NDLA. In that regard the complainant emphasises that — in its view — the NDLA is not an integrated part of the public administration, but rather an undertaking within the meaning of the state aid rules. The complainant recalls that, according to established case law, an undertaking is an entity which is engaged in economic activity. The complainant suggests that according to the case law of the Court of Justice of the European Union ('Court of Justice'), an economic activity is an activity, which could, at least in principle, be carried out by a private undertaking in order to make a profit. As such, any entity carrying out an activity which could be carried out for profit, is engaged in an economic activity.
- (14) The complainant further submits that there was a market for digital learning material prior to the activities of the NDLA and that the NDLA now competes with established private undertakings offering digital learning resources. The complainant claims that on this basis the development and supply of digital learning resources constitutes an economic activity. The complainant further suggests that the other activities of the NDLA are closely linked to the development and supply of digital learning resources and are therefore also to be considered as economic in nature.
- (15) The complainant also argues that Article 59(2) of the EEA Agreement is not applicable and concludes that — in the absence of a notification — the Norwegian State has granted state aid contrary to the state aid rules.

4. BACKGROUND

4.1. THE EDUCATIONAL SYSTEM IN NORWAY

- (16) Education in Norway is provided through a system of free public schools. This system is divided into a compulsory elementary school (age 6 to 13), a compulsory lower secondary school (age 13 to 16), and a non-compulsory upper secondary school (age 16 to 19).
- (17) In 2006 the Norwegian authorities decided, in the course of the 'Knowledge Promotion Initiative' ⁽¹⁾, that all Norwegian schools were to emphasise certain basic skills in all subjects. One of these skills is the ability to learn a given subject by using digital information and communication technology. This requirement was introduced in the national curriculum for pupils in the 10-year compulsory school (i.e. school for grades 1 to 10) and for pupils in the first year of upper secondary education (i.e. school for grades 11 to 13) and apprenticeships. Under the Norwegian Education Act ⁽²⁾, the county authorities are responsible for meeting these requirements.
- (18) Furthermore, in 2007, the Norwegian authorities amended the Education Act and obliged the county authorities to provide pupils with the necessary printed and digital learning materials free of charge. It should be noted that until that time, pupils in Norwegian upper secondary school (grades 11 to 13) had to purchase their learning material based on the choice of learning material designated by the schools in compliance with the national curriculum. The change was implemented after the Norwegian government examined possible modes for, and the economic consequence of, implementing free learning material in the upper secondary schooling system ⁽³⁾.
- (19) According to a white paper ⁽⁴⁾, the principle of providing free teaching material is not novel as it was already implicitly provided for in the prohibition on charging tuition fees, which could be interpreted as meaning that teaching material should also be free. However, the white paper recognised that the principle of free teaching material was not expressly regulated, by stating that:

'[T]he rule is new but is not intended to change the current law. The principle of free education is derived from Section 35 of the Secondary School Act ⁽⁵⁾ on education, third paragraph, which prohibits tuition fees being charged. The current system whereby students and apprentices have to buy their own learning materials and tools is not regulated by law.' ⁽⁶⁾ (unofficial translation)

⁽¹⁾ In Norwegian: 'Kunnskapsløftet'.

⁽²⁾ LOV-2008-07-17-61 (Lov om grunnskolen og den vidaregåande opplæringa (Opplæringslova)).

⁽³⁾ St. prp. No 1 Addition No 1 to the parliament (2005-2006) regarding amendments to the proposed State budget 2006 (In Norwegian: 'For budsjettåret 2006 Om endring av St. prp. nr. 1 om statsbudsjettet 2006').

⁽⁴⁾ Proposition No 36 to the Odelsting (1996-1997), see p. 171.

⁽⁵⁾ Now repealed LOV-1974-06-21-55 (Lov om vidaregåande opplæring), see Section 35, sub-section 3.

⁽⁶⁾ See Proposition No 36 to the Odelsting (1996-1997) p. 171 (In Norwegian: 'Regelen er ny, men tek ikkje sikte på å endre gjeldande rett. Prinsippet om gratis opplæring går fram av lvgo. §35 tredje leddet om forbod mot å ta skolepengar. Ordninga med å påleggje elevar eller lærlingar å halde seg med undervisningsmateriell og utstyr til eige bruk er i dag ikkje særleg lovregulert.') and also the Norwegian government's letter 19 June 2006 which sets out the conditions and reasons behind the grant of NOK 50 million to digital learning equipment: http://www.regjeringen.no/nb/dep/kd/dok/andre/brev/-utvalgte_brev/2006/digitale-laremidler-i-videregaende-oppla.html?id=91754.

- (20) Indeed, the new sub-section 9 of the Education Act, Section 3-1, now explicitly states that:

'Education and training provided at publicly-maintained upper secondary schools or training establishments are free of charge. The county authority is responsible for providing the pupils with the necessary printed and digital teaching tool and digital equipment. The pupils cannot be required to pay any of the costs for such materials and equipment in excess of that which is decided in the regulation. (...) ⁽¹⁾ (unofficial translation)

4.2. PROVISIONS IN THE REVISED STATE BUDGET

- (21) The obligation to provide free digital and physical learning material constitutes a considerable financial burden on the Norwegian county authorities. In view of these additional costs, the Norwegian government decided in 2006 to provide additional funds. The provision of these funds was included in a revised State budget which was adopted on 12 May 2006:

'The government's goal is to introduce learning materials in secondary schools free of charge. At the same time the government wants to stimulate the use of digital learning materials in secondary schools. As an element in the work for reduced costs for the single pupil through extended access to and use of digital learning materials, the Government suggests that NOK 50 000 000,- should be used for the development and use of digital learning material.

The applications from counties can include one, several or all secondary schools in the county and it can include one or several topics. The goal with this contribution is to stimulate the development and use of digital learning material and to contribute to the reduction of the pupils costs related to learning materials.

The funds may be used for the procuring of or the local development of digital learning material. The funds shall not be used for developing digital infrastructure. The plan is to give (sic.) [priority] to applications based on cooperation between counties.' ⁽²⁾ (unofficial translation by the Norwegian authorities)

4.2.1. *Invitation to Submit an Application*

- (22) In a letter dated 19 June 2006 the Ministry of Education and Research submitted an invitation to the county authorities to apply separately or jointly for the NOK 50 million that had been made available by 15 August 2006. The letter describes the objectives and the concept of the initiative as follows:

- 'To increase access to digital learning material in upper secondary education, as well as implementing widespread use of it.
- To enhance competence within upper secondary education and amongst school owners in purchasing and/or developing digital learning materials.
- Increase the volume and diversity of digital teaching material intended for upper secondary education.
- A reduction of student expenditure related to the acquisition of teaching material.' (unofficial translation by the Norwegian authorities)

(...) In the [revised State budget] for 2006 the government states the following:

'The funds can be used to purchase digital learning resources and to develop locally digital learning resources.' ⁽³⁾ (unofficial translation)

4.2.2. *Creation of the NDLA*

- (23) In August 2006, the heads of education of the 19 Norwegian county authorities met to discuss the possibility of a joint application for the funds. While the county authority of Oslo decided not to participate in a cooperative

⁽¹⁾ LOV-1998-07-17-61 (Lov om grunnskolen og den vidaregåande opplæringa (opplæringslova)), the Norwegian authorities' unofficial translation provided in its letter of 2.5.2013 (Event No 691771) of the Education Act, Section 3-1, sub-section 9 which in Norwegian states 'Opplæringa i offentleg vidaregåande skole eller i lærebedrift er gratis. Fylkeskommunen har ansvaret for å halde elevane med nødvendige trykte og digitale læremiddel og digitalt utstyr. Elevane kan ikkje påleggjast å dekkje nokon del av utgiftene til dette utover det som følgjer av forskrift. (...)'.
⁽²⁾ See Annex 2 to the Complaint, Addition to the State budget (St. prp. No 66 (2005-2006)), p. 21, chapter 225, item 62 (Event No 553728).
⁽³⁾ See Annex 3 (Event No 553729): Letter from the Ministry of Education and Research dated 19 June 2006, with a deadline for the grant application on 15 August 2006.

project, the other 18 county authorities decided to enter into an inter-municipal cooperation and to set up the NDLA to manage the process for an indefinite period. Each of these county authorities subsequently adopted the following resolution:

'The County Council passes a resolution for the following counties, Akershus, Aust-Agder, Buskerud, Finnmark, Hedmark, Hordaland, Nordland, Nord-Trøndelag, Møre og Romsdal, Oppland, Rogaland, Sogn og Fjordane, Sør-Trøndelag, Telemark, Troms, Vest-Agder, Vestfold and Østfold, to establish an inter-municipal cooperation, the NDLA, with its own Board in accordance with §27 of the Local Government Act. The purpose of this collaboration is to facilitate the purchase, development, deployment and organisation of digital learning resources for all subjects in upper secondary education. The result shall be free digital learning material that facilitates active learning and sharing (...)' ⁽¹⁾ (unofficial translation by the Norwegian authorities)

- (24) On 1 December 2012, Akershus decided to leave the NDLA, but then decided to rejoin the NDLA as of 1 January 2014. According to the preface to the 2012 NDLA annual report 'Akershus county authority resigned its membership due to low visitor numbers from their own schools (...)' ⁽²⁾ (unofficial translation). According to the information on the NDLA website, Akershus' reason for rejoining was that '[s]ince its withdrawal from the NDLA, the use of the subjects at ndla.no has increased enormously.' (unofficial translation), meaning that the NDLA, as of today, consists of 18 county authorities.

4.3. FUNDS FOR THE COUNTY AUTHORITIES

- (25) The application for the State funds was submitted jointly by the 18 county authorities to the Ministry of Education and Research on 15 October 2006, which gave its preliminary approval with a grant of NOK 2 million for the project planning and another NOK 15 million for the development and purchasing of content (i.e. a total of NOK 17 million). The grant for NOK 15 million was not to be awarded before the project plan was approved ⁽³⁾. The project plan, which was received on 16 February 2007, was approved on 20 April 2007 and the additional NOK 15 million was granted subject to a number of conditions:

'The funds shall be used for the purchasing, development and/or adaptation of digital learning tools in the subjects Norwegian, and natural sciences, for VGI ⁽⁴⁾, from fall 2007

(...)

The Ministry requests further that the county authorities jointly identify a responsible legal entity that will take care of the county authorities' responsibility for digital learning resources under this initiative. Such an entity can be e.g. a corporation, an inter-municipal cooperation or a host county authority but it cannot itself engage in economic activity.

(...)

The Ministry expects that the purchase of digital learning materials and development services are performed in accordance with the regulations for public procurement. The development of digital learning resources by county authority employees is to be regarded as an activity for its own account, provided that the county authorities do not gain any profits from this activity. The development by people who are not county authority employees must be regarded as the purchase of services and should be evaluated based on the rules and regulations for public procurement in the usual way.' ⁽⁵⁾ (unofficial translation)

⁽¹⁾ See Annex 15 (Event No 553808) to the complaint: Memo from the administrative head in the Department of Education and Training in Sogn og Fjordane county authority, see link [http://www.sjf.no/sff/K2PUB.nsf/viewAttachments/C1256B3B0048DA1DC12576320029B7D6/\\$FILE/09039906.pdf](http://www.sjf.no/sff/K2PUB.nsf/viewAttachments/C1256B3B0048DA1DC12576320029B7D6/$FILE/09039906.pdf)

⁽²⁾ See annual report of NDLA 2012 (Event No 672038), p. 5, attached to the submission of the Norwegian authorities 6 May 2013. Original text in Norwegian 'Akershus fylkeskommune meldte seg ut med bakgrunn i lave besøkstall fra egne skoler, (...)'.

⁽³⁾ See Annex 11 to the Complaint: NDLA Project plan dated 16 February 2007 (Event No 553952), p. 3.

⁽⁴⁾ VGI stands for 'Videregående No 1' and relates to the first of the three secondary education school years according to the new 'Kunnskapsløftet' reform of 2006, see information on the website of the Norwegian Directorate for Education and Training http://www.udir.no/Vurdering/Vitnemal-og-kompetansebevis/Artikler_vitnemal/Foring-av-vitnemal-og-kompetansebevis-for-videregaende-opplaring-i-Kunnskapsloftet-2014/12-Dispensasjoner-og-forsok-innvilget-av-Utdanningsdirektoratet-1/.

⁽⁵⁾ See Annex 4 to the Complaint, letter to the county authorities from the Ministry of Education and Research dated 20 April 2007 (Event No 553730), see third paragraph on p. 1 and fourth paragraph on p. 2.

- (26) Following the approval of the funds the Ministry of Education and Research transferred NOK 30,5 million over a period of three years (NOK 2 million and 15 million in 2006-2007, NOK 9 million in 2008 for the development of (digital) learning material and NOK 4,5 million in 2009 for infrastructure and technical support) to the NDLA project (see summary in table below in paragraph 27) ⁽¹⁾.
- (27) In addition to this, following the amendment of the Education Act in 2007, the county authorities were compensated for the obligations to provide (physical and digital) learning material through an increase in the county authority grant scheme from the Ministry of Local Governments and Regional Development, which was renamed the Ministry of Local Governments and Modernisation as of 1 January 2014 ⁽²⁾. This compensation was based on the estimated costs of providing learning materials in all subjects. The compensation amounts are summarised below ⁽³⁾:

Year	2006-2007	2008	2009	2010
State grant to the county authorities in order for them to provide free learning material (general)	NOK 287 million	NOK 211 million	NOK 347 million	NOK 308 million
Grant from Ministry of Education and Research to NDLA (specific)	NOK 17 million	NOK 9 million	NOK 4,5 million ⁽¹⁾	—

⁽¹⁾ See paragraph 31 below.

4.3.1. *Funding of the NDLA by the County Authorities*

- (28) The participating county authorities decided to use part of the funds from the general grant scheme, referred to in paragraph 27 above, for the NDLA project. The county authorities' budget allocation is summarised below ⁽⁴⁾:

Year	2008	2009	2010	2011	2012
Grant from the county authorities ⁽¹⁾ to the NDLA	NOK 21,1 million	NOK 34,7 million	NOK 58,8 million ⁽²⁾	NOK 57,7 million ⁽³⁾	NOK 64,9 million ⁽⁴⁾
Percentage/amount of the county authorities budget for free learning materials to the NDLA	10 %	10 %	20 %	NOK 355 per student	NOK 400 per student

⁽¹⁾ Numbers are provided by the Norwegian government 9.9.2010 (Event No 568942), p. 8.

⁽²⁾ See Annual report 2011, item 5.4.1 (Event No 672037).

⁽³⁾ Ibid.

⁽⁴⁾ See Annual report 2012, item 6.1 (Event No 672038).

- (29) Whilst the manner in which the funds were funnelled to the NDLA changed over time, the ultimate source of the funding remained the same, namely grants from the State, through the Ministry of Education and Research and the Ministry of Local Governments and Modernisation.
- (30) Indeed, in its first year of operation, the NDLA was granted funds directly from the Ministry of Education and Research (NOK 17 million in 2007). Then in its second and third year, the NDLA was financed both directly from the State, as well as from the county authorities, which allocated part of their grants from the State to the NDLA.

⁽¹⁾ See submission from the Norwegian authorities dated 9 September 2010 (Event No 568942), p. 6-8, see especially table provided on p. 6.

⁽²⁾ See the division of the budget St. prp. No 1 (2006-2007) 'yellow book' at link: <http://www.regjeringen.no/nb/dep/fin/dok/regpubl/stprp/20062007/stprp-nr-1-2006-2007-/10/4.html?id=298021>

⁽³⁾ See submission from the Norwegian authorities dated 9.9.2010 (Event No 568942), p. 6-8, see especially the table provided on p. 6.

⁽⁴⁾ The Authority understands that the allocation method has remained unchanged with regard to the years 2013 and 2014.

- (31) The Ministry of Education and Research only covered the cost of the technical support and infrastructure to the NDLA, i.e. up-scaling and moving of the content management system, of NOK 4.5 million in 2009, as the financial responsibility for free teaching materials was transferred to the county authorities as of 1 July 2009 ⁽¹⁾.
- (32) From 2010 until now, the NDLA has been financed solely from the county authorities' budgets, which in turn use the funds they receive from the general grant scheme administered by the Ministry of Local Governments and Modernisation.

4.3.2. *Legal Basis for the Funding*

- (33) The legal basis for the funds paid by the Ministry of Education and Research to the NDLA is the State budget resolution of the Parliament in combination with the delegation of competence to the Ministry of Education and Research to approve applications for grants.
- (34) The legal basis for the grants from the county authorities to the NDLA is to be found in the budget resolutions of the participating county authorities ⁽²⁾.

4.4. ESTABLISHMENT OF THE NDLA ⁽³⁾

4.4.1. *Ad hoc Cooperation: 15 October 2006 — 1 July 2009*

- (35) From 15 October 2006 ⁽⁴⁾ until 1 July 2009, the NDLA was active as an *ad hoc* cooperation, before it was formally established as an inter-municipal cooperation pursuant Article 27 of the Local Government Act.
- (36) From 15 October until 15 February 2007, the county authorities participating in the NDLA focused on putting together a project plan to submit to the Ministry of Education and Research with a view to obtaining approval and funding for the NDLA. The project plan was received by the Ministry on 16 February 2007 and was approved in April 2007 ⁽⁵⁾. At that time, the strategic decisions related to the project were taken by the 'forum for the county authorities Heads of Education' (FFU) ⁽⁶⁾. The day-to-day management of the project was led by a board of directors, appointed by the FFU, composed of five members; these five members were also directors of education at county authority level. According to the information provided by the Norwegian authorities the board consisted of at least one representative from the three training regions (i.e. Northern Region, South Western Region and Eastern Region) and the leader of the FFU ⁽⁷⁾.
- (37) In addition to these five board members, four employees from different county authorities worked on the project ⁽⁸⁾. The NDLA's board of directors followed an agreed mandate established by the participating county authorities, which included two specific goals ⁽⁹⁾:
- (i) Establishing an organisation that could offer free accessible digital learning material with the long term goal of covering the need of every topic and topic-area in upper secondary schools; and
 - (ii) Offering digital learning material covering two specific topics, namely Norwegian language and science (second grade), in upper secondary schools before the autumn of 2007.

⁽¹⁾ See Annex 15 to the Complaint (Event No 553808); memo from the administrative head in the Department of Education and Training in Sogn og Fjordane county authority, see under heading Financing and expansion on p. 7.

⁽²⁾ See the response from the Norwegian authorities dated 31 March 2014 (Event No 703980 and 703991) and the attachments 5-22 (Event No 703987).

⁽³⁾ The EFTA Court noted that, in the Articles of Association of the NDLA, the entry into force of the formalised cooperation was set for 1 July 2009 (Case E-1/12 *Den norske Forleggerforening*, paragraph 115 (cited above)). At the same time, the EFTA Court noted that a letter from the Norwegian authorities referred to 1 January 2010 as the entry into force of the inter-municipal cooperation (The EFTA Court refers to the submission from Norway dated 9 September 2010, p. 3). In view of the above, and taking into account that the NDLA was already active as an *ad hoc* cooperation before it was formally established, the EFTA Court found that the Authority should have investigated the effects of the organisational changes and legal status of the NDLA on its decision-making process and sources of funding. Further, the EFTA Court found that the Authority should have investigated how the organisational and legal status of NDLA had changed over time (Case E-1/12 *Den norske Forleggerforening*, paragraph 117 (cited above)).

⁽⁴⁾ The date of the application for the grant by the 18 county authorities.

⁽⁵⁾ See Annex 11 to the Complaint, NDLA Project plan dated 16 February 2007 (Event No 553952) p. 14.

⁽⁶⁾ The Norwegian wording is: 'Forum for fylkesutdanningsjefer'.

⁽⁷⁾ See letter from the Norwegian authorities dated 31.3.2014 (Event No 703991), p. 7.

⁽⁸⁾ Submission by Norwegian authorities dated 6.5.2013 (Event No 672024).

⁽⁹⁾ NDLA Project plan, bullet points one and two under sub heading 2.2.

- (38) In order to benefit from state funding, the Ministry of Education and Research required that a legal entity be responsible for the project. As a result of this request, the county authority of Hordaland was appointed as the responsible legal entity. This was confirmed by way of a decision by the Hordaland county authority on 16 October 2007 ⁽¹⁾ and consented to by the other participating county authorities through their own boards.
- (39) During the course of 2008 and 2009, the participating county authorities discussed how the NDLA should be organised for the future. The objective was to formalise the arrangement whilst minimising the changes needed to the existing cooperation ⁽²⁾. Eventually, the boards of all the county authorities passed identical resolutions authorising the county authorities to participate in an inter-municipal cooperation in accordance with Section 27 of the Local Government Act. The resolutions stated that the goal of the NDLA was to buy, develop and distribute digital learning material in all subjects that are taught in upper secondary schools in Norway. The county authorities decided that the collaboration should not be a separate legal entity and this was reflected in the NDLA Articles of Association ⁽³⁾. The NDLA was formally established as an inter-municipal cooperation on 1 July 2009, which is the date stated in the Articles of Association. This date has been confirmed by the Norwegian authorities as the correct date of establishment ⁽⁴⁾. According to the information provided by the Norwegian authorities, the Articles of Association were slightly amended in 2012 ⁽⁵⁾. This amendment did not change the NDLA's competence, as set out below in paragraph 52.

4.4.2. *Inter-municipal cooperation — Supervisory Board and Management Board*

- (40) According to the Articles of Association, the FFU assumes the role of Supervisory Board ⁽⁶⁾ and thus remains responsible for the overall management, as was the case under the ad hoc cooperation phase. In the amended text of the 2012 Articles of Association, the reference to the FFU was removed, but the composition and function of the Supervisory Board remains unchanged. This reflects the purpose and structure of an inter-municipal cooperation where all the participating county authorities must be represented in the upper most decision-making body ⁽⁷⁾.
- (41) According to the Articles of Association, the Management Board is composed of at least five members including at least one representative for each of the training regions (i.e. Northern Region, South Western Region and Eastern Region), i.e. the same set-up as in the ad hoc cooperation phase ⁽⁸⁾.
- (42) According to the Articles of Association ⁽⁹⁾, the task of the Management Board is to ensure that the NDLA is able to perform its duties under the Articles of Association, namely to ensure (1) that digital educational materials are available to users free of charge, (2) that upper secondary school is characterised by collaboration and sharing, (3) that students and teacher actively participate in teaching and learning, (4) that academic institutions and networks across the country are a driving force in the development of excellent digital learning material and (5) that suitable content and services are available for student and teacher needs.
- (43) Although the Management Board has the authority to incur financial obligations on behalf of the participants, the Articles of Association explicitly state that the Management Board only exercises its authority on the basis of delegation decisions of the Supervisory Board which may also instruct the Management Board and overrule its decisions. In the amended text of the 2012 Articles of Association, the power to incur financial obligations on the NDLA's participating members is implicit, but the functioning of the Management Board remains unchanged. In any case, any such financial obligations are limited by the budget that the participating county authorities have agreed upon for the NDLA. In that respect, it should be noted that all financial dealings of the NDLA are carried out by Hordaland county authority and the county purchasing unit BTV (see paragraph 54 below for further details). In addition, the Articles of Association states that neither the Management Board, nor the Supervisory Board, may enter into a credit arrangement or issue guarantees on behalf of the inter-municipal cooperation. In this regard the Norwegian authorities have explained that, in practice, neither the Supervisory Board, the Management Board nor the administration impose new financial obligations on the county authorities.

⁽¹⁾ The adopted decision stated the following: *'The county authority of Hordaland is legally responsible for NDLA, on behalf of the other county authorities that take part in the project'* (unofficial translation).

⁽²⁾ Letter from the Norwegian authorities dated 6.5.2013 (Event No 672024), p. 6, second to last para.

⁽³⁾ Articles of Association, see Annex 10 to the complaint (Event No 553953), which confirm that entry into force was 1.7.2009

⁽⁴⁾ See letter from the Norwegian authorities dated 31.3.2014 (Event No 703991).

⁽⁵⁾ Amended Articles of Association from 2012 (see Event Nos 703991 and 709565). Hordaland was the first county authority to adopt the amended Articles of Association on 16.1.2012 and Østfold the last having adopted the amendments on 25.10.2012; see e-mail from the Norwegian authorities 2.6.2014 (Event No 709742).

⁽⁶⁾ In Norwegian 'representantskapet' (or 'Styret' in the 2012 version of the Articles of Association).

⁽⁷⁾ See note 327 of the legal commentary to the Local Government Act Section 27, Gyldendals rettsdata, by Jan Fridthjof Bern, written 8.3.2012.

⁽⁸⁾ In Norwegian: 'Driftsstyret' (or 'Arbeidsutvalg' in the 2012 version of the Articles of Association).

⁽⁹⁾ See paragraph 51 below for further details regarding the NDLA's financial and budgetary matters.

4.4.3. *County Authority Decisions Accepting the inter-municipal cooperation*

- (44) During the course of 2009, the 18 different county authorities adopted decisions to accept the agreement and the statutes establishing the NDLA as an inter-municipal cooperation. These decisions were taken at different times by the county authorities, but the vast majority did so before 1 July 2009, the date on which the county authorities had decided that the cooperation should take effect ⁽¹⁾.
- (45) The Norwegian authorities have stated that all of the 18 county authorities have been part of the NDLA cooperation since the ad hoc cooperation phase (with the exception of Akershus, which left and rejoined, see paragraph 24 above) and, further, that the formal cooperation began on 1 July 2009.
- (46) The first board meeting of the NDLA took place on 11 August 2009 ⁽²⁾.

4.5. *NDLA BUDGET AND PURCHASING*

- (47) The NDLA's level of funding in any given year is ultimately decided by the participating county authorities. The decision is based on a recommendation from the Management Board of the NDLA setting out the board's view on the level of funding, but the county authorities are not legally bound by such recommendation. The primary purpose of the funding ⁽³⁾ is to enable the NDLA to meet its stated goals, namely to buy, develop and distribute digital learning material for all topics that are taught in secondary schools covered by the legal obligation in the Education Act in Norway.
- (48) It should also be noted that the NDLA has no discretion in charging the county authorities, the State or any private customers for its services. In particular, the contributions to the NDLA are unilaterally fixed by the county authorities and the NDLA does not have any bargaining power as regards the amount of those contributions. If the Management Board wants to develop the activities of the NDLA, and therefore wants to increase the budget, the matter has to be presented to the Supervisory Board for approval. If the Supervisory Board decides to support an increase in the budget, the matter is then transferred to the county councils ⁽⁴⁾ for final approval.
- (49) In order to ensure that the NDLA carries out its public tenders in full compliance with the Public Procurement Act ⁽⁵⁾, the NDLA has set out a public tender strategy ⁽⁶⁾. According to the information received from the Norwegian authorities, one of the NDLA's main tasks is to manage the development of new digital learning material through public procurement. The decision to use public procurement is limited by the general objectives of the NDLA and its budget. Within these limitations, the NDLA has the freedom to decide on the content of the tenders ⁽⁷⁾.
- (50) Since 2007, the NDLA has carried out nine major public tenders, with the assistance of Hordaland county authority ⁽⁸⁾. These are related to digital learning materials, and range from the purchase of final products and elements, to access to images, videos and related support services.
- (51) As mentioned above, the management of the NDLA has the competence to impose financial obligations on the participating county authorities. According to the Norwegian authorities, the intention behind this provision was to make it clear that the board of the NDLA was competent to enter into agreements with other parties. To do so, the Management Board had to be able to impose obligations on the county authorities participating in the cooperation, since it would oblige the county authorities to use the funds made available for the NDLA according to the objectives of the NDLA ⁽⁹⁾.

⁽¹⁾ See reply from the Norwegian authorities dated 31.3.2014 (Event No 703980 and 703991) and the attachments 5-22 (Event No 703987). In the reply from Norway dated 31.3.2014 (Event No 703991), it is specified that the two county authorities Sogn og Fjordane and Telemark mistakenly refer to the date 1.1.2010 in their respective resolutions. The Norwegian authorities also state that even though Troms county authority, for practical reasons, states in its decision that the entry into force of the cooperation was 1.1.2010, the correct date should have been 1.7.2009.

⁽²⁾ Submission by Norwegian authorities dated 6.5.2013 (Event No 672024).

⁽³⁾ The source of the NDLA's funding has been set out in detail in section 4.3 above.

⁽⁴⁾ In Norwegian: 'fylkestinget'.

⁽⁵⁾ LOV-1999-07-16-69 (Lov om offentlige anskaffelser (anskaffelsesloven)).

⁽⁶⁾ See submission of the Norwegian authorities 7 March 2011 (Event No 589528), p. 54.

⁽⁷⁾ This limited autonomy related to day-to-day activities of the NDLA is analysed in more detail in the assessment section below.

⁽⁸⁾ Hordaland county authority acts, on behalf of all participating county authorities, as the legal entity responsible for contract signings.

⁽⁹⁾ See the response from Norway dated 31.3.2014 (Event No 703991).

- (52) As mentioned above in paragraph 39, the Articles of Association were amended in 2012. However, the only significant change relates to the role of the CEO, which has been more clearly defined, in particular the restrictions which apply to his/her mandate. Overall though, the amendments to the Articles of Association do not change the Authority's assessment with regard to the NDLA's autonomy as the amendments have not changed the NDLA's mandate in any significant way. The Norwegian authorities have further expressed that the amendments made to the Articles of Association give a more accurate description of the NDLA's competence ⁽¹⁾.

4.6. NDLA PERSONNEL AND ADMINISTRATION

- (53) The NDLA does not have any employees. In most cases, the personnel doing work for the NDLA are in a contractual employment relationship with one of the participating county authorities. In other cases, work is performed by external consultants, who, according to the information submitted by the Norwegian authorities, are employed by the companies who have won public tenders. Editorial staff members are either hired from the county authorities or are employed by contractors providing services to the NDLA. Editorial staff members from the county authorities are hired for a number of years on a part-time basis. This means they are still employed by the county authority, but the payment for the time they work for the NDLA comes from the NDLA's budget. The cost of the other editorial staff members is included in the fees that are paid to the contractors providing services that have been tendered out by the NDLA. The management team is hired from the county authorities for an indefinite period of time and thus do not have contractual employment relationship with the NDLA.
- (54) In practice, the county authorities are reimbursed three times per year by the NDLA for the use of their resources (i.e. to cover salaries, travel expenses etc.). Reimbursements are organised by Hordaland county authority. Furthermore, the NDLA has since the project phase used the county purchasing unit BTV ⁽²⁾ to carry out all its public procurement activities in respect of services to be bought on the market. In terms of services that the NDLA has procured, these include all technical administration, application management, service desk and development services of the NDLA Digital Learning Website ⁽³⁾. There is no evidence that the NDLA's purchasing has exceeded its budget nor that the NDLA has procured any services or goods outside of the remit of its mandate.

5. COMMENTS TO THE OPENING DECISION

5.1. THE COMPLAINANT

- (55) The NPA's comments can be summarised as follows:
- First, the scope of NDLA's service obligations are not properly defined.
 - Second, the financing system and structure of the NDLA is vague, which in turn leads to cross subsidisation from the county authorities that are not reflected in the accounts of the NDLA.
 - Third, the NDLA has already caused severe and irreparable harm to publishers operating in Norway, mainly due to the earmarking of public state resources from the county authorities to the NDLA, which allegedly limits the schools' ability to buy high quality learning materials from publishers.
 - Fourth, it is stated that county authorities not participating in the NDLA (Oslo and Akershus) ⁽⁴⁾ are at risk of getting poorer quality learning materials from the publishing houses due to the weakening of the publishing houses' ability to compete. The NPA refers to research on Open Educational Resources (OER) which has found that 'government-funded OER programmes can restrict choice for teachers and learners, because they undermine the ability of private sector providers to compete and thus to have the confidence to invest, so that these providers progressively withdraw from the market' (see third party observation from the International Publisher Association)
- (56) The NPA objects to the preliminary assessment and findings in the Authority's Decision 136/13/COL in which the Authority indicated that the NDLA did not qualify as an undertaking and would thus not be subject to the state aid rules.

⁽¹⁾ According to the information provided by Norwegian authorities the Articles of Association were slightly amended in 2012 (Event Nos 703991 and 709565).

⁽²⁾ In Norwegian: 'Buskerud, Telemark, og Vestfold'-innkjøp.

⁽³⁾ See the submission from Norwegian authorities dated 4.3.2011 (Event No 672032) which was attached to the comment to the opening decision.

⁽⁴⁾ At the time of the submission, Akershus had not rejoined the NDLA yet.

- (57) The NPA alleges that the reduction in the county authorities' procurement budgets for learning materials is directly linked to the creation of the NDLA. In the NPA's view, this reduction accounts for the reduction in the market size as evidenced by the drop of gross turnover relating to books sold to upper secondary schools (NOK 392 million in 2008, and NOK 255 to 264 million in the years 2010 to 2012). NPA alleges that these numbers prove that there was a market at least prior to the creation of the NDLA. The NPA also refers to paragraph 13 of the Authority's guidelines on the application of the state aid rules to compensation granted for the provision of services of general economic interest ('SGEI') ⁽¹⁾ in order to argue that despite 'the market closure [in-house production] an economic activity can exist where other operators would be willing and able to provide the service' and that the non-profit nature of the NDLA does not alter the assessment of it as an undertaking, as long as that 'offer exists in competition with that of other operators which do seek to make profit' ⁽²⁾.
- (58) With regard to the assessment of the *Altmark* ⁽³⁾ criteria, the NPA alleges that they are not met as the NDLA is alleged to be highly inefficient.
- (59) It is also alleged that the NDLA does not produce a product only in the case of market failure, but also where such product is already available on the market. The NPA refers to the Authority's guidelines on SGEI paragraph 13 where it is stated that the 'EFTA States cannot attach specific public service obligations to services that are already provided [...] by undertakings operating under normal market conditions.'
- (60) Finally, with regard to the assessment of the NDLA as an SGEI provider, the lack of transparency is criticised. In that respect, the NPA refers to the conditions in the Transparency Directive 2006/111/EC ⁽⁴⁾ which is stated not to have been met by NDLA.

5.2. OTHER THIRD PARTIES

- (61) The Authority has received comments from 11 interested third parties, namely: Associacao Portuguesa de Editores e Livrarios (APEL), the Federation of European Publishers (FEP), the Polish Chamber of Books, the French Publisher Association, the Chamber of Commerce and Industry of Slovenia, the Danish Publisher Association, the Publisher Association (UK), the International Publisher Association (IPA), the Association of the Belgian Publishers (ADEB), the Publisher and Booksellers Association of Serbia and the Swedish Association of Educational Publishers.
- (62) The third parties all submit that the production and provision of free digital resources by a state-run entity such as the NDLA is unfair state-subsidised competition and should be found to be unlawful aid.
- (63) The FEP and the IPA submitted more extensive comments, which are summarised below:
- Unfair competition arising from the aid granted to the NDLA will substantially undermine the ability of private sector publishers to continue to provide high-quality resources for this market. Such unfair competition will negatively affect education in Norway and have a harmful effect on both teacher and student performance; and
 - The most effective strategy for allocating state funding is to focus on the demand (school budget) side and not to implement a supply-side subsidy of free material that is not subject to competition (as is the case for the NDLA). In the former case, teachers have the funds to choose freely from a range of high-quality resources including OER and professionally published material.

⁽¹⁾ OJ L 161, 13.6.2013, p. 12, and EEA Supplement No 34, 13.6.2013, p. 1.

⁽²⁾ Case C-49/07 *MOTOE* [2008] ECR I-4863, paragraph 27.

⁽³⁾ Case C-280/00 *Altmark Trans and Regierungspräsidium Magdeburg* [2003] ECR I-7747.

⁽⁴⁾ Transparency Directive (Commission Directive 2006/111/EC of 16 November 2006 on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings (OJ L 318, 17.11.2006, p. 17), incorporated in the EEA Agreement Annex XV, point 1a (OJ L 266, 11.10.2007, p. 15); and EEA Supplement No 48, 11.10.2007, p. 12, e.i.f. 9.6.2007).

6. COMMENTS OF THE NORWEGIAN AUTHORITIES

- (64) The Norwegian authorities' position is that the financing of the provision of free public upper secondary school may not be considered as state aid within the meaning of Article 61 of the EEA Agreement. The Norwegian authorities underline the fact that the NDLA primarily purchases learning materials via public procurement procedures in the market. It is only when the NDLA is unable to procure material of sufficient quality that it develops these materials in collaboration with teachers and the county authorities.

II. ASSESSMENT

1. THE PRESENCE OF STATE AID

- (65) According to Article 61(1) EEA '[s]ave 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.'

1.1. ECONOMIC ACTIVITY

- (66) It follows from the above that state aid rules only apply to advantages granted to undertakings. Prior to examining whether the conditions for state aid are met in this case, it is necessary first to examine whether the NDLA qualifies as an undertaking within the meaning of Article 61(1) EEA. If this is not the case, then the support to the NDLA does not fall within the scope of Article 61(1) EEA.
- (67) It is established case law that the concept of an undertaking comprises '(...) any entity engaged in an economic activity, irrespective of its legal status and the way in which it is financed' ⁽¹⁾.
- (68) The Authority notes that the NDLA is essentially a cooperation between different county authorities. Thus the recipient of the state funds is not the NDLA itself but rather the individual county authorities cooperating in the NDLA project. However, as indicated above, any entity can be an undertaking within the meaning of the state aid rules irrespective of its legal status and the way it is financed. The decisive question is therefore whether the activity in question, can be considered to be of an economic nature. As detailed below in section II.1.1.2, the Authority has considered whether the NDLA's change in status, going from an ad hoc cooperation at its inception to a formal inter-municipal cooperation starting on 1 July 2009, had any impact on the classification of the NDLA's activities. The Authority has concluded that the change in status had no impact, since there were no material differences in the decision-making, the financing or the autonomy of the NDLA when it changed its status.
- (69) The NDLA purchases, develops and publishes digital learning material. The complainant submits that these activities are of an economic nature. In that regard the complainant emphasises that, until now, private suppliers have developed and published digital learning material. The complainant argues that by developing and publishing digital learning material of its own, the NDLA has entered into direct competition with these private suppliers.
- (70) The Authority observes that an economic activity is any activity consisting in offering goods and services on a market ⁽²⁾. Whether a market exists or not may be dependent upon the way it is organised in the State concerned ⁽³⁾ and the classification of a particular activity as economic or not may thus change over time. The Authority recognises that a number of companies offer digital learning material as part of their economic activities.
- (71) However, it follows from the judgment of the EFTA Court in *Private Barnehaegers Landsforbund* ⁽⁴⁾, that the fact that an activity can be offered by private operators as an economic activity does not exclude the fact that it can also be offered by the State as a non-economic activity. In the *Private Barnehaegers Landsforbund* case, the EFTA Court had to assess whether the operation of municipal kindergartens in Norway constituted an economic activity. The

⁽¹⁾ Case C-41/90 *Höfner and Elser* [1991] ECR I-1979, paragraph 21.

⁽²⁾ Case C-35/96 *Commission v Italy (CNSD)* [1998] ECR I-3851, paragraph 36.

⁽³⁾ Joined cases C-159/91 and C-160/91 *Poucet and Pistre* [1993] ECR I-637.

⁽⁴⁾ Case E-5/07 *Private Barnehaegers Landsforbund* [2008] EFTA Ct.Rep. 64.

complainant in this case had argued that the only relevant question in that regard was ‘(...) whether the municipalities are providing services on a given market which could, at least in principle, be carried out by private actors in order to make a profit’.

- (72) However, in its judgment the EFTA Court pointed out that ‘[w]hen the nature of an activity carried out by a public entity is assessed with regard to the State aid rules, it cannot matter whether the activity might, in principle, be pursued by a private operator. Such an interpretation would basically bring any activity of the State not consisting in an exercise of public authority under the notion of economic activity’⁽¹⁾. Indeed, such an interpretation would unduly limit the discretion of states to provide certain services to their population. There are a number of cases in which it has been recognised that similar activities can be carried out both as non-economic as well as economic activities and where only the latter are subject to state aid rules. This has been accepted by the European courts in cases concerning health systems (e.g. private and public sickness insurances⁽²⁾), pension fund systems (e.g. private and public pension funds⁽³⁾) and the education sector (e.g. private and public kindergartens⁽⁴⁾).
- (73) In *Private Barnehegers Landsforbund* ⁽¹⁾, the EFTA Court further explained that, in order to establish whether a given activity is economic or not, the reasoning of the Court of Justice in its *Humbel* judgment ⁽²⁾, which concerned the notion of ‘service’ within the meaning of the fundamental freedoms, could be applied to state aid cases.
- (74) In the field of education and research specifically, the European courts have held that the provision of certain services by establishments forming part of a system of public education and financed by the public purse did not qualify as the provision of services under Article 50 EC (now Article 57 TFEU). The Court of Justice held in *Commission v Germany* ⁽⁶⁾, relying on the *Humbel* judgment in particular, that ‘by establishing and maintaining such a system of public education, normally financed from the public purse [...], the State does not intend to become involved in activities for remuneration, but carries out its task towards its population in the social, cultural and educational areas’ ⁽⁷⁾.
- (75) Further to the amendment of the Education Act (see paragraph 20 above), the Norwegian State has decided that the provision of learning materials, including digital learning materials, will be provided free of charge to students. This new provision forms an integral part of the system of public education. The question then to be answered relates to the implementation of this provision in practice, thus the qualification of the activity in question as economic or non-economic will depend on (i) its objective and (ii) the way it is carried out.

1.1.1. **Objective**

- (76) The State, in establishing and maintaining the entity in question, must not seek to engage in gainful activity, but must rather exercise its power in order to fulfil its duties towards its population ⁽⁸⁾. It is established case law, which is also reflected in the European Commission’s decisional practice, that in setting up and maintaining the national education system the State fulfils its duties towards its own population in the social, cultural and educational fields ⁽⁹⁾. In that regard, the Norwegian government decided in the course of the 2006 educational reform that the State would provide learning material free of charge and all the county authorities except Oslo decided to comply with this obligation by pooling their resources through the setting up of the NDLA. As stated by the Norwegian authorities, the NDLA’s objective is to provide digital learning materials. In order to fulfil this duty, the NDLA primarily seeks to purchase the learning materials through public procurement procedures in the market. When the NDLA is unable to procure suitable material, it will develop this in close collaboration with the teachers and the participating county authorities ⁽¹⁰⁾.

⁽¹⁾ Ibid., paragraph 80.

⁽²⁾ Case C-160/91 *Poucet* [1993] ECR I-637.

⁽³⁾ Case C-180/98 *Pavlov* [2000] ECR I-6497.

⁽⁴⁾ Case E-5/07 *Private Barnehegers Landsforbund* (cited above).

⁽⁵⁾ Case 263/86 *Humbel* [1988] ECR 5383, paragraphs 14-21.

⁽⁶⁾ Case C-318/05 *Commission v Germany* [2007] ECR I-6957.

⁽⁷⁾ Ibid., para. 68.

⁽⁸⁾ Case 263/86 *Humbel* (cited above), para. 18.

⁽⁹⁾ Ibid., para. 18; Case E-5/07 *Private Barnehegers Landsforbund* [2008] EFTA Ct. Rep. 64, para. 82; Commission decision N 118/2000 *France — Aide aux clubs sportifs professionnels* (OJ C 333, 28.11.2001, p. 6).

⁽¹⁰⁾ See the Norwegian authorities’ letter of 29 November 2013 (Event No 691769).

- (77) According to the complainant, it follows from the judgments in *Humbel* and *Private Barnehagers Landsforbund*, that, while the activities dealt with in these judgments (i.e. giving courses and offering places in kindergartens) fall within the scope of the public education system, other activities (such as the purchase, development and supply of digital learning material) do not fall within the scope of the public education system, in particular, if a market for such activities was already in existence prior to the State's activities.
- (78) The Authority, however, does not see any indications that the Court of Justice or the EFTA Court intended to limit the scope of activities falling within the scope of public education in such a manner as suggested by the complainant (i.e. to actual teaching and the provision of kindergarten services). On the contrary, the Authority notes that EFTA States generally have a wide margin of discretion when choosing the activities they intend to offer to their population in matters of social, cultural and educational policy ⁽¹⁾.
- (79) The Authority observes that the purchase, development and supply of learning material is linked to the provision of teaching content and is thus closely linked to the actual teaching itself. The Authority finds that the activities that are being carried out by the NDLA in order for the county authorities to fulfil their educational functions are intertwined with social obligations, which are not comparable to an offer of a commercial character, and that subsidies are only granted in order to fulfil a very specific educational function. Indeed, the material being bought and produced by the NDLA is specifically tailored to meet the needs of the national curriculum of secondary school students and teachers. The complainant has, however, argued that it is important to distinguish between activities that are necessary for the provision of public education and those that are not — the complainant illustrates this point by stating that the NDLA could start producing furniture for schools, which the complainant submits would not be part of the public education remit. In that respect, the complainant states that the production of digital teaching material is not an inherent part of the public service obligation and thus should be considered as an economic activity ⁽²⁾.
- (80) The Authority finds, contrary to the view of the complainant, that the production of furniture cannot be compared to the production of teaching materials designed to support a national curriculum. Indeed, the production of teaching materials is closely linked to the teaching activities of the public educational system, whilst that is unlikely to be the case with the production of furniture.

1.1.2. *Open nature of the website*

- (81) With regard to the open nature of the website the complainant and third parties have argued that this is a problematic element by stating that: '[i]ronically, government-funded OER programmes can restrict choice for teachers and learners, because they undermine the ability of private sector providers to compete and thus to have the confidence to invest, so that these providers progressively withdraw from the market' ⁽³⁾. As detailed below, the open nature does not change the Authority's assessment of the website material as non-economic.
- (82) The Authority notes that within the field of education, the Contracting Parties do not only have a considerable degree of discretion in deciding on the objective of their tasks, but also in determining how to fulfil that objective. The Norwegian authorities have opted to keep the NDLA website open. The effect of that decision is that the distribution of the digital learning materials is not limited to the pupils enrolled at the relevant schools in the relevant counties. However, the spread of knowledge beyond the immediate circle of indented addressees is a common practice in European teaching traditions. Indeed, lectures at European public universities are commonly open to the general public and universities regularly provide audio and audiovisual representations of lectures online. These practices can be seen as an extension of the education mission that do not automatically entail that the activities are economic in nature. In fact, in this particular case, the learning material forms the basis and the framework for teaching. This is also underlined by the fact that the development of learning material is dependent upon the curriculum which is determined by the public authorities. This point is also reflected in the scope of the NDLA's activities in the Articles of Association which refer to the objective of providing digital learning material tailored to the needs of pupils and teachers. This assessment is not altered by the fact that the activities were left to the market prior to the State's activities, since it cannot matter whether the activity might be (or indeed was) pursued by a private operator ⁽⁴⁾.
- (83) The Authority therefore concludes that the open nature of the website does not entail that the activities of NDLA are economic in nature.

⁽¹⁾ C-218/00 *Cisal die Battistello Venanzi* [2002] ECR I-691, para. 31.

⁽²⁾ See complainant's observation to the opening decision, paragraph 46 (Event No 679680).

⁽³⁾ See complainant's observation to the opening decision, paragraph 8 (Event No 679680).

⁽⁴⁾ See paragraph 70 above.

1.1.3. The legal status from ad hoc- to inter-municipal cooperation had no effect on the decision making process and cannot have an impact on the classification of the activities as non-economic

- (84) In its judgment annulling the Decision the EFTA Court addressed several aspects relating not to the nature of the activity as such but rather to the organisational aspects of the NDLA, its financing and its autonomy. These aspects relate to the practical implementation of the requirement to provide free learning materials and are addressed below.
- (85) The change of legal status from ad hoc cooperation to a formal inter-municipal cooperation according to the Local Government Act Section 27 had no effect on the decision making process (nor did the change in the funding have any implications on the organisation of the NDLA).
- (86) The complainant has not alleged that the scope of the NDLA's activities changed from its ad hoc cooperation phase to its formal establishment as an inter-municipal cooperation. Nevertheless, the EFTA Court points out that the lack of information about how the county authorities organised their cooperation to comply with their obligations to provide learning material in the NDLA ad hoc cooperation phase may have an impact on the classification of the activities as non-economic. For that reason the Court emphasised that the Authority should have carried out an investigation on the effects of the change in legal status on the decision making process within the NDLA ⁽¹⁾.
- (87) The management structure of the NDLA entity did not change when it was converted into an inter-municipal cooperation under the Local Government Act ⁽²⁾. Furthermore, the scope of the NDLA's powers and the decision making processes did not change. As such, the scope of the NDLA's decisional making powers did not change.
- (88) The Authority has compared the structure of the NDLA in its ad hoc cooperation phase ⁽³⁾ with the structure in the inter-municipal cooperation phase ⁽⁴⁾ and found that there are no material differences. The goal of the NDLA in both phases has been to develop and offer free digital learning material that covers all subjects in the upper secondary school ⁽⁵⁾. Furthermore, in both phases, the NDLA consisted of a similar trio of decision making bodies. The FFU became the Supervisory Board of the cooperation under the Local Government Act and its Management Board, composed of five members, was appointed by the Supervisory Board as it had been in the ad hoc cooperation phase, when the management board was appointed by the FFU. Also the composition of the management group/board has consisted of the same members in both phases, i.e. the leader of the FFU, and at least one representative for each of the training regions (i.e. Northern Region, South Western Region and Eastern Region) ⁽⁶⁾. Finally, the NDLA has had a team responsible for the day-to-day management in both phases ⁽⁷⁾.
- (89) As confirmed by the Norwegian authorities, the change of legal status from the ad hoc cooperation phase to an inter-municipal cooperation phase according to the Local Government Act section 27 had no effect on the decision making process, which is also illustrated and confirmed by the information summarized above ⁽⁸⁾.
- (90) The ultimate source of the NDLA funding has not changed over time (i.e. funds from the State); rather the manner in which the funds were channelled to the NDLA changed. Indeed, in the early stages of the NDLA, funds were received directly from the Ministry of Education and Research, whilst later on, the NDLA was funded from the participating county authorities' budgets (those budgets being funded by the general grant scheme). The fact remains that the NDLA has been and is fully funded by public authorities and distributes the learning material free of charge. Neither the schools nor the pupils pay any contribution to the NDLA. The Authority further notes, that there are no indications that the NDLA engages in any other form of activity, which could be considered as being economic in nature. There is no connection between the actual costs of the service provided and the fee paid by those benefiting from the activity. Further, the NDLA's activities are funded entirely by the public purse and not through remuneration ⁽⁹⁾.

⁽¹⁾ Case E-1/12 *Den norske Forleggerforening* (cited above), paragraph 117.

⁽²⁾ This is confirmed in the Norwegian authorities' submission of 2.5.2013 (Event No 672024) at p. 6.

⁽³⁾ See the NDLA Project Plan; Annex 11 to the Complaint (Event No 553952), p. 2.

⁽⁴⁾ Articles of Association, see Annex 10 to the Complaint (Event No 553953).

⁽⁵⁾ See Project Plan; Annex 11 to the Complaint (Event No 553952), item 2.2 'result goal' bullet No 1, p. 4.

⁽⁶⁾ Letter by the Norwegian authorities dated 31.3.2014 (Event No 703991), p. 7-8; this has been confirmed.

⁽⁷⁾ See Project Plan Annex 11 to the Complaint (Event No 553952), item 3.1 'task related to the project management', p. 5 and the Articles of Association.

⁽⁸⁾ Norwegian authorities' letter dated 31.3.2014 (Event No 703991), p. 11.

⁽⁹⁾ Case E-05/07 *Private Barnehagers Landsforbund* (cited above), paragraphs 80-83.

1.1.4. *The county authorities pooling of State resources in order to fulfil their obligation to provide digital learning materials into an inter-municipal cooperation is non-economic in nature*

- (91) The Authority has concluded that the activities of the NDLA relating to the provision of digital learning materials is closely linked to the broader teaching mission of the county authorities and that it is non-economic in nature. In the following, the Authority assesses an issue raised by the EFTA Court.
- (92) The EFTA Court found that it was unclear from the Decision whether the obligation to provide digital learning material free of charge falls upon the county authorities or upon the NDLA ⁽¹⁾. The EFTA Court noted that in the Decision, the Authority *'refers to the Norwegian legislation and states that it obliged the counties to provide the pupils with the necessary printed and digital learning materials free of charge'* ⁽²⁾. The EFTA Court further noted that in the assessment on the autonomy of the NDLA, the Decision states that the NDLA cannot decide on charging fees to the end consumer *'(...) since the legal framework obliges the NDLA to provide its services free of charge'* ⁽³⁾. The judgment also refers to the Authority's statement at the oral hearing that it is the county authorities which bear the statutory obligation to offer this service free of charge and that they had decided to offer this service jointly through the NDLA ⁽⁴⁾.
- (93) In light of this, the EFTA Court considered the above mentioned statements in the Decision to represent an implicit contradiction as it was not clear who the NDLA's client was.
- (94) The legal framework in which the NDLA operates consists of a number of different elements. First, there are statutory obligations under national law (such as the Education Act), which are imposed upon the county authorities. The 2007 amendment to the Education Act, for instance, (see paragraph 20 above) imposed an obligation on the county authorities to provide school children with digital material free of charge. Second, there were various administrative acts which were adopted in order for the county authorities to discharge this statutory obligation. These included resolutions (such as the resolutions passed by the county authorities), as well as other administrative acts such as the April 2007 award of funding by the Ministry of Education and Research. Finally, the Articles of Association of the NDLA, and the mandate before that, implemented the county authorities' statutory obligation into a legal obligation on NDLA to provide digital materials free of charge.
- (95) This framework was also described in the Norwegian authorities' submission of 2 May 2013 in which they confirmed (i) the county authorities' statutory obligation (see Section 1 of the submission), (ii) the obligation imposed on the NDLA's board of directors, in the ad hoc cooperation phase, to work towards offering free digital learning materials (see first bullet point under result goals of the Mandate ⁽⁵⁾), and (iii) that the resolutions adopted by the county authorities establishing the NDLA stated that the ultimate goal of the NDLA was to offer free digital material (see p. 6 of the submission).
- (96) As such, the participating county authorities have chosen to address their statutory obligation to provide free digital material to the pupils by setting up the NDLA inter-municipal cooperation, which in turn operates within a legal framework (including the county authority resolutions and the Articles of Association) that has been established to enable the county authorities to discharge their statutory obligation.
- (97) In summary, the NDLA can be described as a cooperation between the participating county authorities that has been created to enable the county authorities to pool their resources. So rather than purchasing and developing digital materials on a county authority-by-county authority basis, the vast majority of the county authorities have decided to combine their resources in order to address their statutory obligation (this type of cooperation between the county authorities was envisaged by the Ministry of Education and Research itself when it invited the county authorities to apply for funding in 2006) ⁽⁶⁾. The county authorities are therefore, though this cooperation, 'exercising their powers in order to fulfil their duties towards their population' ⁽⁷⁾.

⁽¹⁾ Case E-1/12 *Den norske Forleggerforening* (cited above), paragraphs 121-123.

⁽²⁾ The EFTA Court seems to refer to para. 12 and footnote 4 of the annulled decision according to which 'Section 3-1 and 4A-3 of the Education Act states that the county authority is responsible for providing pupils with the necessary printed and digital teaching material as well as digital equipment free of charge.'

⁽³⁾ The EFTA Court refers to para. 45 of the annulled decision in paragraph 121 of the Judgment.

⁽⁴⁾ Case E-1/12 *Den norske Forleggerforening* (cited above), paragraph 123.

⁽⁵⁾ Attachment 24 (Event No 703987), p. 93.

⁽⁶⁾ See Annex 3 (Event No 553729); letter from the Ministry of Education and Research dated 19 June 2006.

⁽⁷⁾ Case E-05/07 *Private Barnehagers Landsforbund* (cited above), paragraph 80.

- (98) This has been confirmed by the Norwegian authorities in their submission of 31 March 2014 where it is reiterated that the collaboration between the county authorities is an integral part of the county authorities' efforts to provide free public upper secondary education in Norway.
- (99) As regards budget issues, the NDLA has no decisional power. Although its Management Board recommends a level of funding for the following budget, it is only a recommendation which the participating county authorities take into account when determining the NDLA's budget. In terms of procurement and purchasing, the NDLA follows a public tender strategy which was adopted in order to ensure that the NDLA's public tenders are in full compliance with the Public Procurement Act ⁽¹⁾.
- (100) For purchasing more generally, the NDLA's powers are set out in the Articles of Association, which limit the scope of the NDLA's purchasing activities to the objectives that have been set for the NDLA, namely the purchasing and development of digital learning material ⁽²⁾. Clearly, the NDLA needs to be able to carry out its tasks in an effective manner and it would make little sense for the participating county authorities or the Supervisory Board to get involved with every single purchase of digital learning material for instance. Hence, the Articles of Association provide for some autonomy for the NDLA's day-to-day activities, specifically in terms of purchasing, but this autonomy is limited by the NDLA's stated tasks and its budget (i.e. it goes no further than what is necessary ultimately to fulfil the statutory requirements imposed by the State on the county authorities) ⁽³⁾.
- (101) Finally, it is worth noting that the case law of the Court of Justice makes clear that there is no need to dissociate the purchasing activities 'from the subsequent use to which they are put in order to determine the nature of that purchasing activity' ⁽⁴⁾. Thus, to the extent that the NDLA's activities in terms of providing free digital learning material is considered to be non-economic in nature, it follows that any related purchasing activities will also be considered non-economic. Since the Articles of Association makes clear that the NDLA may only purchase goods or services that are necessary for the fulfilment of its goal (i.e. the provision of free digital learning material), such purchasing activities will necessarily be related to the non-economic activity.
- (102) From the facts set out in Section I.4.6 above, it is apparent that the NDLA does not have any employees nor does it have its own premises or infrastructure. Most of its workforce consists of county authority employees who are seconded (either part-time or full-time) to the NDLA for a certain period of time. The NDLA then simply reimburses the relevant county authority for the time its employee has spent working on NDLA projects. The rest of the workforce consists of external consultants which have won bids in public procurement procedures that the NDLA finances through its budget. On the one hand therefore, the NDLA has no control over the costs of the bulk of its staff and, on the other, the NDLA has limited decisional-making power in respect of the services it puts out for tender, as it is bound by its public tender strategy and its decisions are ultimately subject to the county authorities' control through the Supervisory Board. Consequently, in matters of infrastructure and personnel, the NDLA has very little autonomy.
- (103) In cases in which the activity in question is carried out by entities other than the State itself, one of the issues to be determined is whether the recipient of the funds (public or private) is subject to the control of the State and in particular whether the recipient merely applies the law and cannot influence the statutory conditions of the service (i.e. the amount of the contributions, the use of assets and the fixing of the level of benefits) ⁽⁵⁾. If, on the contrary, the recipient has significant discretion vis-a-vis the State as regards the commercial parameters of its activities (e.g. prices, costs, assets and employees), it would be more likely to constitute an undertaking.

⁽¹⁾ LOV-1999-07-16-69 (Lov om offentlig anskaffelse (anskaffelsesloven)).

⁽²⁾ The NDLA's purchasing is also limited by the availability of funds within the budget, since the Articles of Association prevent the NDLA from entering into loan or financing arrangements.

⁽³⁾ Norwegian authorities' letter dated 31.3.2014 (Event No 703991), p. 13. Furthermore, these limitations are also partially reflected in the Local Government Act. In the white paper Ot. prp. No 42 (1991-92), p. 112, it is stated that 'the board may only be delegated functions that are related to the actual activity that the cooperation has been tasked to carry out'. It is also clear that the limitation in the delegation power is prescribed by the Local Government Act for certain decisions, as for example decisions concerning an economic plan (Section 44 No 6) and the annual budget (Section 45 No 2); these provisions are also applicable to inter county authority relations.

⁽⁴⁾ Case C-205/03P *FENIN v Commission*, ECR [2006] II-6295, paragraph 26.

⁽⁵⁾ Case C-160/91 *Poucet* (cited above), paras. 15 and 18; Joined Cases C-264/01, C-306/01 and C-355/01 *AOK Bundesverband and Others* [2004] ECR I-2493, paragraphs 46-57; Case C-218/00 *Cisal die Battistello Venanzi* [2002] ECR I-691, paragraphs 31-46. These cases concern health and social insurances. However, the fact that the Commission explicitly refers to these cases in the context of professional services indicates that the assessment can be generally applied (see Commission Communication 'Report on Competition in Professional Services' of 9.2.2004 (COM(2004) 83 final, footnote 22)).

- (104) The complainant indicated that NDLA should be considered as an undertaking distinct from the State or the county authorities from which it received the funds in question. However, based on the information provided to the Authority, it is clear that NDLA is an integrated part of the public administration and is — in any case — subject to strict State control. According to existing case law, an entity is subject to the control of the public authorities (and thus not independent from the State) if it was given its task by statute and if the public authorities determine both the costs and the revenues of its activities ⁽¹⁾. In that regard the Authority notes that the participating county authorities have — in view of a requirement laid down in the revised State budget for 2006 — established the NDLA as an inter-municipal cooperation and have given it its task by each adopting identical resolutions.
- (105) Furthermore, the county authorities control the cost parameters of the activities since these costs are limited to the contributions unilaterally fixed by the county authorities through the ordinary budget processes. Moreover, the NDLA cannot take decisions regarding the costs of its employees or its assets since it is the county authorities that (i) decide on the secondment of the necessary staff and (ii) provide the premises as well as technical equipment. Finally, the NDLA does not have any powers to set fees to the end customers (i.e. pupils or schools) since the legal framework obliges the NDLA to provide its services free of charge.
- (106) Thus, the NDLA — in carrying out its activity — merely complies with the law and cannot influence the amount of the contributions, the use of assets or the fixing of the level of benefits in the way a commercial operator could do. On the contrary, the NDLA is an integrated part of the public administration of the county authorities and thus can be said to be subject to state control.
- (107) As illustrated above, the NDLA cannot expand the scope of its activities on its own. The county authorities are ultimately responsible for this and they decide what the NDLA does either through resolutions or through the Supervisory Board ⁽²⁾. The budget is determined by the county authorities (following a recommendation from the Management Board) and the NDLA can only incur costs by following the public procurement procedure for services or goods which are necessary for the carrying out of its activities. Finally, the county authorities may always overrule the Management Board, i.e. the NDLA has no discretion to expand the scope of its activities and no possibility financially to bind the county authorities beyond the agreed scope of its activities.

2. CONCLUSION

- (108) On the basis of the above the Authority has concluded that the NDLA does not engage in economic activities and that the financing of it therefore does not involve state aid within the meaning of Article 61(1) of the EEA Agreement.

HAS ADOPTED THIS DECISION:

Article 1

The financing of the NDLA does not involve state aid within the meaning of Article 61(1) of the EEA Agreement. The formal investigation into this matter is hereby closed.

Article 2

This Decision is addressed to the Kingdom of Norway.

⁽¹⁾ Joined Cases C-264/01, C-306/01 and C-355/01 *AOK Bundesverband and Others* [2004] ECR I-2493, para. 52; Case C-160/91 *Poucet* (cited above), paragraphs 11 and 12.

⁽²⁾ See Norwegian authorities' letter dated 31.3.2014 (Event No 703991), p. 10, where it is stated the following: '[a]s a consequence the management board will have no authority to expand NDLAs scope [o]f (*sic*) activities without the support of the supervisory board.'

Article 3

Only the English language version of this Decision is authentic.

Done at Brussels, 26 June 2014.

For the EFTA Surveillance Authority

Oda Helen SLETNES

President

Frank BÜCHEL

College Member

CORRIGENDA**Corrigendum to Commission Implementing Regulation (EU) No 140/2014 of 13 February 2014 approving the active substance spinetoram, in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending the Annex to Commission Implementing Regulation (EU) No 540/2011**

(Official Journal of the European Union L 44 of 14 February 2014)

On page 39, in Annex II concerning the amendment to be made to Part B of the Annex to Implementing Regulation (EU) No 540/2011, in the seventh column headed 'Specific provisions', in the fifth paragraph:

for: 'by 31 December 2014',

read: 'within 6 months after the adoption of pertinent guidance on the assessment of isomers'.

Corrigendum to Commission Implementing Regulation (EU) No 447/2014 of 2 May 2014 on the specific rules for implementing Regulation (EU) No 231/2014 of the European Parliament and of the Council establishing an Instrument for Pre-accession assistance (IPA II)

(Official Journal of the European Union L 132 of 3 May 2014)

On page 47, point (a) of Article 43(1):

for: 'if it has been incurred by a beneficiary from a Member State and paid between 1 January 2014 and 31 December 2022; or',

read: 'if it has been incurred by a beneficiary from a Member State and paid between 1 January 2014 and 31 December 2023; or'.

Corrigendum to Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste

(Official Journal of the European Union L 190 of 12 July 2006)

On page 59, Annex V, Part 1, code A4110, second indent:

for: '— any congener of polychlorinated dibenzo-dioxin',
read: '— any congener of polychlorinated dibenzo-p-dioxin';

on page 60, Annex V, Part 1, code B1080:

for: 'B1080 Zinc ash and residues including zinc alloys residues in dispersible form unless containing Annex I constituents in concentration such as to exhibit Annex III characteristics or exhibiting hazard characteristic H4.3 (2)',
read: 'B1080 Zinc ash and residues including zinc alloys residues in dispersible form unless containing Annex I constituents in concentration such as to exhibit Annex III characteristics (2)';

on page 61, Annex V, Part 1, code B1120, second indent, second column:

for: 'Neodym',
read: 'Neodymium';

on page 63, Annex V, Part 1, code B2060:

for: '...not containing any Annex I constituents to an extent they exhibit...',
read: '...not containing any Annex I constituents to the extent that they exhibit...';

on page 66, Annex V, Part 1, code B3060, third indent:

for: '— Degras: residues resulting ...',
read: '— Degras; residues resulting ...';

on page 66, Annex V, Part 1, code B4020:

for: '... e.g. water based, or glues based on casein starch, dextrin, cellulose ethers, ...',
read: '... e.g. water-based, or glues based on casein, starch, dextrin, cellulose ethers, ...'.

