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⁽¹⁾ Text with EEA relevance

EN

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⁽¹⁾ Text with EEA relevance

II

(Non-legislative acts)

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) 2016/895

of 8 June 2016

amending Regulation (EC) No 1290/2008 as regards the name of the holder of the authorisation of a preparation of *Lactobacillus rhamnosus* (CNCM-I-3698) and *Lactobacillus farciminis* (CNCM-I-3699)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 1831/2003 of the European Parliament and of the Council of 22 September 2003 on additives for use in animal nutrition ⁽¹⁾ and in particular Article 13(3) thereof,

Whereas:

- (1) Danisco (UK) Ltd has submitted an application in accordance with Article 13(3) of Regulation (EC) No 1831/2003 proposing to change the name of the holder of the authorisation as regards Commission Regulation (EC) No 1290/2008 ⁽²⁾ concerning the authorisation of a preparation of *Lactobacillus rhamnosus* (CNCM-I-3698) and *Lactobacillus farciminis* (CNCM-I-3699).
- (2) The applicant claims that, with effect from 12 November 2015, Danisco (UK) Ltd has transferred the marketing rights of the preparation of *Lactobacillus rhamnosus* (CNCM-I-3698) and *Lactobacillus farciminis* (CNCM-I-3699) to STI Biotechnologie.
- (3) The proposed changes of the terms of the authorisation are purely administrative in nature and do not entail a fresh assessment of the additive concerned. The European Food Safety Authority was informed of the application.
- (4) To allow that feed additive to be marketed under the name of STI Biotechnologie it is necessary to change the terms of the authorisation.
- (5) Regulation (EC) No 1290/2008 should therefore be amended accordingly.
- (6) Since safety reasons do not require the immediate application of the amendment made by this Regulation to Regulation (EC) No 1290/2008, it is appropriate to provide for a transitional period during which existing stocks of the additive, premixtures and compound feed containing the additive may be used up.

⁽¹⁾ OJ L 268, 18.10.2003, p. 29.

⁽²⁾ Commission Regulation (EC) No 1290/2008 of 18 December 2008 concerning the authorisation of a preparation of *Lactobacillus rhamnosus* (CNCM-I-3698) and *Lactobacillus farciminis* (CNCM-I-3699) as a feed additive (OJ L 340, 19.12.2008, p. 20).

- (7) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS REGULATION:

Article 1

In the Annex to Regulation (EC) No 1290/2008, in the second column, the words 'Danisco (UK) Ltd' are replaced by 'STI Biotechnologie'.

Article 2

Existing stocks of the additive, premixtures and compound feed containing the additive, which are in conformity with the provisions applying before the date of entry into force of this Regulation may continue to be placed on the market and used until they are exhausted.

Article 3

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

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

Done at Brussels, 8 June 2016.

For the Commission
The President
Jean-Claude JUNCKER

COMMISSION IMPLEMENTING REGULATION (EU) 2016/896
of 8 June 2016
concerning the authorisation of iron sodium tartrates as a feed additive for all animal species
(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

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

Whereas:

- (1) Regulation (EC) No 1831/2003 provides for the authorisation of additives for use in animal nutrition and for the grounds and procedures for granting such authorisation.
- (2) In accordance with Article 7 of Regulation (EC) No 1831/2003 an application was submitted for the authorisation of iron sodium tartrates. That application was accompanied by the particulars and documents required under Article 7(3) of Regulation (EC) No 1831/2003.
- (3) That application concerns the authorisation of iron sodium tartrates as a feed additive for all animal species, to be classified in the additive category 'technological additives'.
- (4) The European Food Safety Authority ('the Authority') concluded in its opinion of 30 April 2015 ⁽²⁾ that, under the proposed conditions of use, the preparation concerned does not have an adverse effect on animal health, human health or the environment. The Authority also concluded that the preparation has the potential to be efficacious as an anti-caking agent in salt. The Authority does not consider that there is a need for specific requirements of post-market monitoring. It also verified the report on the methods of analysis of the feed additive in feed submitted by the Reference Laboratory set up by Regulation (EC) No 1831/2003.
- (5) The assessment of iron sodium tartrates shows that the conditions for authorisation, as provided for in Article 5 of Regulation (EC) No 1831/2003, are satisfied. Accordingly, the use of that preparation should be authorised as specified in the Annex to this Regulation.
- (6) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS REGULATION:

Article 1

The preparation specified in the Annex, belonging to the additive category 'technological additives' and to the functional group 'anti-caking agents' is authorised as an additive in animal nutrition, subject to the conditions laid down in that Annex.

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*.

⁽¹⁾ OJ L 268, 18.10.2003, p. 29.

⁽²⁾ EFSA Journal 2015; 13(5):4114.

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

Done at Brussels, 8 June 2016.

For the Commission

The President

Jean-Claude JUNCKER

ANNEX

Identification number of the additive	Additive	Composition, chemical formula, description, methods of analysis	Species or category of animal	Maximum age	Minimum content	Maximum content	Other provisions	End of period of authorisation
					mg of active substance/kg of NaCl			

Technological additives: anti-caking agents

1i534	Iron sodium tartrates	<p><i>Additive composition</i></p> <p>Preparation of complexation products of sodium tartrates with iron(III) chloride in water solution ≤ 35 % (by weight).</p> <p><i>Characterisation of active substance</i></p> <p>Iron(III) complexation product of D(+)-, L(-) and meso-2,3-dihydroxybutanedioic acids</p> <p>Ratio: iron to meso-tartrate 1:1;</p> <p>Ratio: iron to total tartrate isomers 1:1,5</p> <p>CAS number 1280193-05-9</p> <p>$\text{Fe}(\text{OH})_2\text{C}_4\text{H}_4\text{O}_6\text{Na}$</p> <p>Chloride: ≤ 25 %</p> <p>Oxalates: ≤ 1,5 % expressed as oxalic acid</p> <p>Iron: ≥ 8 % iron(III)</p> <p><i>Analytical method ⁽¹⁾</i></p> <p>Quantification of meso-tartrate and D(-), L(+)-tartrates in the feed additive:</p> <p>— High Performance Liquid Chromatography with Refraction Index detection (HPLC-RI);</p> <p>Quantification of total iron in the feed additive:</p> <p>— Inductively Coupled Plasma Atomic Emission Spectroscopy (ICP-AES) — EN 15510, or</p>	All animals species	—	—	—	<ol style="list-style-type: none"> 1. The additive shall be used only in NaCl (sodium chloride). 2. Minimum recommended dose: 26 mg of iron sodium tartrates/kg NaCl (equivalent to 3 mg iron/kg of NaCl). 3. Maximum recommended dose: 106 mg of iron sodium tartrates/kg NaCl. 	29 June 2026
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Identification number of the additive	Additive	Composition, chemical formula, description, methods of analysis	Species or category of animal	Maximum age	Minimum content	Maximum content	Other provisions	End of period of authorisation
					mg of active substance/kg of NaCl			
		<ul style="list-style-type: none"> — Inductively Coupled Plasma Atomic Emission Spectroscopy after pressure digestion (ICP-AES) — EN 15621, or — Inductively Coupled Plasma Atomic Emission Spectroscopy (ICP-AES) — EN ISO 11885, or — Atomic Absorption Spectrometry (AAS) — EN ISO 6869, or — Atomic Absorption Spectrometry (AAS) — Commission Regulation (EC) No 152/2009 ^(?); and <p>Quantification of total sodium in the feed additive:</p> <ul style="list-style-type: none"> — Inductively Coupled Plasma Atomic Emission Spectroscopy (ICP-AES) — EN 15510; or — Inductively Coupled Plasma Atomic Emission Spectroscopy after pressure digestion (ICP-AES) — EN 15621; or — Inductively Coupled Plasma Atomic Emission Spectroscopy (ICP-AES) — EN ISO 11885; or — Atomic Absorption Spectrometry (AAS) — EN ISO 6869; and <p>Quantification of total chloride in the feed additive:</p> <ul style="list-style-type: none"> — Titrimetry — Regulation (EC) No 152/2009 or ISO 6495. 						

⁽¹⁾ Details of the analytical methods are available at the following address of the Reference Laboratory: <https://ec.europa.eu/jrc/en/eurl/feed-additives/evaluation-reports>

⁽²⁾ Commission Regulation (EC) No 152/2009 of 27 January 2009 laying down the methods of sampling and analysis for the official control of feed (OJ L 54, 26.2.2009, p. 1).

COMMISSION IMPLEMENTING REGULATION (EU) 2016/897**of 8 June 2016****concerning the authorisation of a preparation of *Bacillus subtilis* (C-3102) (DSM 15544) as a feed additive for laying hens and ornamental fish (holder of authorisation Asahi Calpis Wellness Co. Ltd) and amending Regulations (EC) No 1444/2006, (EU) No 333/2010 and (EU) No 184/2011 as regards the holder of the authorisation****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 1831/2003 of the European Parliament and of the Council of 22 September 2003 on additives for use in animal nutrition ⁽¹⁾, and in particular Article 9(2) and Article 13(3) thereof,

Whereas:

- (1) Regulation (EC) No 1831/2003 provides for the authorisation of additives for use in animal nutrition and for the grounds and procedures for granting such authorisation.
- (2) In accordance with Article 7 of Regulation (EC) No 1831/2003 applications were submitted for the authorisation of a preparation of *Bacillus subtilis* (C-3102). Those applications were accompanied by the particulars and documents required under Article 7(3) of Regulation (EC) No 1831/2003.
- (3) Those applications concern the authorisation of a preparation of *Bacillus subtilis* (C-3102) as a feed additive for all laying birds and ornamental fish to be classified in the additive category 'zootechnical additives'.
- (4) That preparation was already authorised as a feed additive for use in chickens for fattening by Commission Regulation (EC) No 1444/2006 ⁽²⁾ in piglets by Commission Regulation (EU) No 333/2010 ⁽³⁾, and in chickens reared for laying and turkeys, minor avian species and other ornamental and game birds by Commission Regulation (EU) No 184/2011 ⁽⁴⁾.
- (5) The European Food Safety Authority ('the Authority') concluded in its opinions of 28 September 2015 ⁽⁵⁾ and of 11 November 2015 ⁽⁶⁾ that, under the proposed conditions of use, the preparation of *Bacillus subtilis* (C-3102) is presumed not to have an adverse effect on animal health, human health or the environment. It concluded that, under the proposed condition of use, the additive has the potential to be efficacious in reducing the amount of feed per unit of mass egg production over the entire laying period. The Authority also concluded that the additive has the potential to improve the grow and feed utilisation in ornamental fish. It does not consider that there is a need for specific requirements of post-market monitoring. It also verified the report on the method of analysis of the feed additive in feed submitted by the Reference Laboratory set up by Regulation (EC) No 1831/2003.
- (6) The assessment of the preparation of *Bacillus subtilis* (C-3102) shows that the conditions for authorisation, as provided for in Article 5 of Regulation (EC) No 1831/2003, are satisfied. Accordingly, the use of that preparation should be authorised as specified in the Annex to this Regulation.

⁽¹⁾ OJ L 268, 18.10.2003, p. 29.

⁽²⁾ Commission Regulation (EC) No 1444/2006 of 29 September 2006 concerning the authorisation of *Bacillus subtilis* C-3102 (Calsporin) as a feed additive (OJ L 271, 30.9.2006, p. 19).

⁽³⁾ Commission Regulation (EU) No 333/2010 of 22 April 2010 concerning the authorisation of a new use of *Bacillus subtilis* C-3102 (DSM 15544) as a feed additive for weaned piglets (holder of authorisation Calpis Co. Ltd Japan, represented in the European Union by Calpis Co. Ltd Europe Representative Office) (OJ L 102, 23.4.2010, p. 19).

⁽⁴⁾ Commission Regulation (EU) No 184/2011 of 25 February 2011 concerning the authorisation of *Bacillus subtilis* C-3102 (DSM 15544) as a feed additive for chickens reared for laying, turkeys, minor avian species and other ornamental and game birds (holder of authorisation Calpis Co. Ltd Japan, represented by Calpis Co. Ltd Europe Representative Office) (OJ L 53, 26.2.2011, p. 33).

⁽⁵⁾ EFSA Journal 2015; 13(9):4231.

⁽⁶⁾ EFSA Journal 2015; 13(11):4274.

- (7) The applicant has also submitted an application in accordance with Article 13(3) of Regulation (EC) No 1831/2003 proposing to change the name of the holder of the authorisation and the name of its representative in the EU in Regulations (EC) No 1444/2006, (EU) No 333/2010 and (EU) No 184/2011. The applicant claims that, with effect from 1 January 2016, it has changed its name from 'Calpis Co. Ltd' to 'Asahi Calpis Wellness Co. Ltd'. The name of its representative in the EU has changed from 'Calpis Co. Ltd Europe Representative Office' to 'Asahi Calpis Wellness Co. Ltd Europe Representative Office'. The applicant has submitted relevant data supporting its request.
- (8) In order to enable Asahi Calpis Wellness Co. Ltd to exploit its marketing rights it is necessary to change the terms of the authorisations.
- (9) Regulations (EC) No 1444/2006, (EU) No 333/2010 and (EU) No 184/2011 should therefore be amended accordingly.
- (10) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

In the Annex to Regulation (EC) No 1444/2006, in the second column, name of the holder of authorisation, the term 'Calpis Co., Ltd represented in the Community by Orffa International Holding BV' is replaced by the term 'Asahi Calpis Wellness Co. Ltd, represented in the European Union by Asahi Calpis Wellness Co. Ltd Europe Representative Office'.

Article 3

Regulation (EU) No 333/2010 is amended as follows:

- (a) in the title, the term 'holder of authorisation Calpis Co. Ltd Japan, represented in the European Union by Calpis Co. Ltd Europe Representative Office' is replaced by the term 'holder of authorisation Asahi Calpis Wellness Co. Ltd, represented in the European Union by Asahi Calpis Wellness Co. Ltd Europe Representative Office';
- (b) in the Annex, in the second column, name of the holder of authorisation, the term 'Calpis Co. Ltd Japan, represented in the European Union by Calpis Co. Ltd Europe Representative Office, France' is replaced by the term 'Asahi Calpis Wellness Co. Ltd, represented in the European Union by Asahi Calpis Wellness Co. Ltd Europe Representative Office'.

Article 4

Regulation (EU) No 184/2011 is amended as follows:

- (a) in the title, the term 'holder of authorisation Calpis Co. Ltd Japan, represented by Calpis Co. Ltd Europe Representative Office' is replaced by the term 'holder of authorisation Asahi Calpis Wellness Co. Ltd, represented in the European Union by Asahi Calpis Wellness Co. Ltd Europe Representative Office';

- (b) in the Annex, in the second column, name of the holder of authorisation, the term 'Calpis Co. Ltd Japan, represented by Calpis Co. Ltd Europe Representative Office, France' is replaced by the term 'Asahi Calpis Wellness Co. Ltd, represented in the European Union by Asahi Calpis Wellness Co. Ltd Europe Representative Office'.

Article 5

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, 8 June 2016.

For the Commission

The President

Jean-Claude JUNCKER

ANNEX

Identification number of the additive	Name of the holder of authorisation	Additive	Composition, chemical formula, description, analytical method	Species or category of animal	Maximum age	Minimum content	Maximum content	Other provisions	End of period of authorisation
						CFU/kg of complete feedingstuff with a moisture content of 12 %			

Category of zootechnical additives. Functional group: gut flora stabilisers

4b1820	Asahi Calpis Wellness Co. Ltd, represented in the European Union by Asahi Calpis Wellness Co. Ltd Europe Representative Office	<i>Bacillus subtilis</i> C-3102 (DSM 15544)	<p><i>Additive composition</i></p> <p><i>Bacillus subtilis</i> C-3102 (DSM 15544) with minimum of $1,0 \times 10^{10}$ CFU/g</p> <p><i>Characterisation of the active substance</i></p> <p>Viable spores (CFU) of <i>Bacillus subtilis</i> C-3102 (DSM 15544)</p> <p><i>Analytical method</i> ⁽¹⁾</p> <p>Enumeration: spread plate method using tryptone soya agar in all target matrices (EN 15784:2009)</p> <p>Identification: pulsed-field gel electrophoresis (PFGE).</p>	Laying hens	—	3×10^8	—	<p>1. In the directions for use of the additive, premixture and compound feedingstuff indicate the storage temperature, storage life and stability to pelleting shall be indicated.</p> <p>2. For users of the additive and premixtures in a feed business, operational procedures and appropriate organisational measures shall be established to address hazards by inhalation, dermal contact or eyes contact. Where the dermal, inhalator or eyes exposure cannot be reduced to an acceptable level by these procedures and measures, the additive and premixtures shall be used with appropriate personal protective equipment.</p>	29 June 2026
				Ornamental fish	—	1×10^{10}	—		

⁽¹⁾ Details of the analytical methods are available at the following address of the Reference Laboratory: www.irmm.jrc.ec.europa.eu/crl-feed-additives

COMMISSION IMPLEMENTING REGULATION (EU) 2016/898**of 8 June 2016****concerning the authorisation of a preparation of *Bacillus licheniformis* (ATCC 53757) and its protease (EC 3.4.21.19) as a feed additive for chickens for fattening, chickens reared for laying and minor poultry species for fattening and reared for laying and ornamental birds (holder of authorisation Novus Europe SA/NV)****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

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

Whereas:

- (1) Regulation (EC) No 1831/2003 provides for the authorisation of additives for use in animal nutrition and for the grounds and procedures for granting such authorisation.
- (2) In accordance with Article 7 of Regulation (EC) No 1831/2003 an application was submitted for the authorisation of a preparation of *Bacillus licheniformis* (ATCC 53757) and its protease (EC 3.4.21.19). That application was accompanied by the particulars and documents required under Article 7(3) of Regulation (EC) No 1831/2003.
- (3) That application concerns the authorisation of a preparation of *Bacillus licheniformis* (ATCC 53757) and its protease (EC 3.4.21.19) as a feed additive for chickens for fattening, chickens reared for laying and minor avian species for fattening and to point of lay and ornamental birds, to be classified in the additive category 'zootechnical additives'.
- (4) The European Food Safety Authority ('the Authority') concluded in its opinion of 11 March 2015 ⁽²⁾ that, under the proposed conditions of use, the preparation of *Bacillus licheniformis* (ATCC 53757) and its protease (EC 3.4.21.19) does not have an adverse effect on animal health, human health or the environment, and that it has a potential to be efficacious in feed to gain ratio in chickens for fattening at the recommended dose but only when a reduced-protein diet was provided. It is also considered that this conclusion can be extended to chickens reared for laying, to minor avian species for fattening and those reared for laying and ornamental birds. The Authority does not consider that there is a need for specific requirements of post-market monitoring. It also verified the report on the method of analysis of the feed additive in feed submitted by the Reference Laboratory set up by Regulation (EC) No 1831/2003.
- (5) The assessment of the preparation of *Bacillus licheniformis* (ATCC 53757) and its protease (EC 3.4.21.19) shows that the conditions for authorisation, as provided for in Article 5 of Regulation (EC) No 1831/2003, are satisfied. Accordingly, the use of that preparation should be authorised as specified in the Annex to this Regulation.
- (6) 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 268, 18.10.2003, p. 29.⁽²⁾ EFSA Journal 2015;13(3):4055.

HAS ADOPTED THIS REGULATION:

Article 1

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

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, 8 June 2016.

For the Commission
The President
Jean-Claude JUNCKER

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Identification number of the additive	Name of the holder of authorisation	Additive	Composition, chemical formula, description, analytical method	Species or category of animal	Maximum age	Minimum content	Maximum content	Other provisions	End of period of authorisation
						CFU/Units of active substance/kg of complete feedingstuff with a moisture content of 12 %			

Category of zootechnical additives. Functional group: other zootechnical additives (improvement of zootechnical performance)

4d12	Novus Europe SA/NV	<i>Bacillus licheniformis</i> ATCC 53757 and its protease EC 3.4.21.19	<p><i>Additive composition</i></p> <p>Preparation of <i>Bacillus licheniformis</i> (ATCC 53757) and its protease EC 3.4.21.19 and containing a minimum of:</p> <ul style="list-style-type: none"> — <i>Bacillus licheniformis</i> (ATCC 53757): 1 × 10⁹ CFU/g of additive — protease 6 × 10⁵ U/g of additive ⁽¹⁾ <p>Solid form</p> <p><i>Characterisation of the active substance</i></p> <p>Viable spores of <i>Bacillus licheniformis</i> (ATCC 53757) and its protease EC 3.4.21.19</p> <p><i>Analytical method</i> ⁽²⁾</p> <p>Identification and enumeration of <i>Bacillus licheniformis</i> ATCC 53757 in the feed additive, premixtures and feedingstuffs:</p> <ul style="list-style-type: none"> — Identification: Pulsed field gel electrophoresis (PFGE) 	<p>Chickens for fattening and reared for laying</p> <p>Minor poultry species for fattening and reared for laying</p> <p>Ornamental birds</p>	—	<p>5 × 10⁸ CFU</p> <p><i>Bacillus licheniformis</i></p> <p>3 × 10⁵ U protease</p>	—	<ol style="list-style-type: none"> 1. In the directions for use of the additive and premixture, indicate the storage temperature, storage life and stability to pelleting. 2. Recommended minimum dose 500 mg of additive/kg of complete feed. 3. For users of the additive and premixtures in a feed business, operational procedures and appropriate organisational measures shall be established to address hazards by inhalation, dermal contact or eye contact. Where the dermal, inhalator or eye exposure cannot be reduced to an acceptable level by these procedures and measures, the additive and premixtures shall be used with appropriate personal protective equipment 	29 June 2026
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Identification number of the additive	Name of the holder of authorisation	Additive	Composition, chemical formula, description, analytical method	Species or category of animal	Maximum age	Minimum content	Maximum content	Other provisions	End of period of authorisation
						CFU/Units of active substance/kg of complete feedingstuff with a moisture content of 12 %			
			<p>— Enumeration: Spread plate method using tryptone soya agar — EN 15784</p> <p>Quantification of protease in the feed additive, premixtures and feedingstuffs:</p> <p>— Colorimetric method measuring para-nitroaniline (pNA) released by the enzymatic reaction of protease on Suc-Ala-Ala-Pro-Phe-pNA substrate at 37 °C</p>					<p>4. The use is permitted in feed containing the following authorised coccidiostats: diclazuril, nicarbazin, decoquinate, semduramycin sodium, lasalocid sodium, monensin sodium robenidine hydrochloride, maduramicin ammonium, narasin or salinomycin sodium</p> <p>5. Recommended use in protein-reduced rations.</p>	

(1) 1 U is the amount of protease that liberates 1 micromole of para-nitroaniline (pNA) from the Succinyl-Ala-Ala-Pro-Phe-pNA (C₃₀H₃₆N₆O₉) substrate per minute at pH 8,0 and 37 °C.

(2) Details of the analytical methods are available at the following address of the Reference Laboratory: <https://ec.europa.eu/jrc/en/eurl/feed-additives/evaluation-reports>

COMMISSION IMPLEMENTING REGULATION (EU) 2016/899**of 8 June 2016****concerning the authorisation of a 6-phytase produced by *Trichoderma reesei* (ATCC SD-6528) as a feed additive for all poultry species and all porcine species (other than suckling piglets) (holder of authorisation Danisco (UK) Ltd)****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

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

Whereas:

- (1) Regulation (EC) No 1831/2003 provides for the authorisation of additives for use in animal nutrition and for the grounds and procedures for granting such authorisation.
- (2) In accordance with Article 7 of Regulation (EC) No 1831/2003 an application was submitted for the authorisation of a 6-phytase produced by *Trichoderma reesei* (ATCC SD-6528). That application was accompanied by the particulars and documents required under Article 7(3) of Regulation (EC) No 1831/2003.
- (3) That application concerns the authorisation of a 6-phytase produced by *Trichoderma reesei* (ATCC SD-6528) as a feed additive for poultry and porcine species to be classified in the additive category 'zootechnical additives'.
- (4) The European Food Safety Authority ('the Authority') concluded in its opinion of 22 October 2015 ⁽²⁾ that, under the proposed conditions of use, a 6-phytase produced by *Trichoderma reesei* (ATCC SD-6528) does not have an adverse effect on animal health, human health or the environment, and that it is efficacious in improving the retention of phosphorus in chickens and turkeys for fattening, laying hens, weaned piglets, pigs for fattening and sows, at the recommended dose. The Authority has also concluded that this conclusion can be extrapolated to minor poultry species and minor porcine species. The Authority does not consider that there is a need for specific requirements of post-market monitoring. It also verified the report on the method of analysis of the feed additive in feed submitted by the Reference Laboratory set up by Regulation (EC) No 1831/2003.
- (5) The assessment of a 6-phytase produced by *Trichoderma reesei* (ATCC SD-6528) shows that the conditions for authorisation, as provided for in Article 5 of Regulation (EC) No 1831/2003, are satisfied. Accordingly, the use of that preparation should be authorised as specified in the Annex to this Regulation.
- (6) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS REGULATION:

Article 1

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

⁽¹⁾ OJ L 268, 18.10.2003, p. 29.

⁽²⁾ EFSA Journal 2015;13(11):4275.

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, 8 June 2016.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX

Identification number of the additive	Name of the holder of authorisation	Additive	Composition, chemical formula, description, analytical method	Species or category of animal	Maximum age	Minimum content	Maximum content	Other provisions	End of period of authorisation
						Units of active substance/kg of complete feedingstuff with a moisture content of 12 %			

Category: Zootechnical additives. Functional group: digestibility enhancers.

4a24	Danisco (UK) Ltd	6-phytase EC 3.1.3.26	<p><i>Additive composition</i></p> <p>Preparation of 6-phytase produced by <i>Trichoderma reesei</i> (ATCC SD-6528) having a minimum activity of 15 000 U ⁽¹⁾/g.</p> <p>Liquid form</p> <p><i>Characterisation of the active substance</i></p> <p>6-phytase (EC 3.1.3.26) produced by <i>Trichoderma reesei</i> (ATCC SD-6528)</p> <p><i>Analytical method</i> ⁽²⁾</p> <p>For the quantification of 6-phytase activity in the feed additive:</p> <ul style="list-style-type: none"> — colorimetric method based on the enzymatic reaction of phytase on the phytate. <p>For the quantification of 6-phytase activity in premixtures and feedingstuffs:</p> <ul style="list-style-type: none"> — colorimetric method based on the enzymatic reaction of phytase on the phytate EN ISO 30024. 	All poultry species All porcine species (other than suckling piglets)	—	250 U	—	<ol style="list-style-type: none"> 1. In the directions for use of the additive and premixture the storage conditions and stability to pelleting shall be indicated. 2. Maximum recommended dose: 2 000 U/kg feed. 3. For users of the additive and premixtures in a feed business, operational procedures and appropriate organisational measures shall be established to address hazards by inhalation, dermal contact or eye contact. Where the dermal, inhalator or eye exposure cannot be reduced to an acceptable level by these procedures and measures, the additive and premixtures shall be used with appropriate personal protective equipment. 	29 June 2026
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⁽¹⁾ 1 U is the amount of enzyme which liberates 1 micromole of inorganic phosphate per minute from a sodium phytate substrate at pH 5,5 and 37 °C.

⁽²⁾ Details of the analytical methods are available at the following address of the Reference Laboratory: <https://ec.europa.eu/jrc/en/eurl/feed-additives/evaluation-reports>

COMMISSION IMPLEMENTING REGULATION (EU) 2016/900**of 8 June 2016****concerning the authorisation of benzoic acid as a feed additive for sows (holder of authorisation DSM Nutritional Product Sp. z o. o.)****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

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

Whereas:

- (1) Regulation (EC) No 1831/2003 provides for the authorisation of additives for use in animal nutrition and for the grounds and procedures for granting such authorisation.
- (2) In accordance with Article 7 of Regulation (EC) No 1831/2003 an application was submitted for the authorisation of benzoic acid. That application was accompanied by the particulars and documents required under Article 7(3) of Regulation (EC) No 1831/2003.
- (3) That application concerns the authorisation of the benzoic acid as a feed additive for sows, to be classified in the additive category 'zootechnical additives'.
- (4) That additive was already authorised as a feed additive for use in weaned piglets by Commission Regulation (EC) No 1730/2006 ⁽²⁾ and in pigs for fattening by Commission Regulation (EC) No 1138/2007 ⁽³⁾.
- (5) The European Food Safety Authority ('the Authority') concluded in its opinions of 14 June 2012 ⁽⁴⁾ and 16 June 2015 ⁽⁵⁾ that, under the proposed conditions of use, the benzoic acid does not have an adverse effect on animal health, human health or the environment, and that it has a potential to introduce a small reduction in urine pH in sows. The Authority does not consider that there is a need for specific requirements of post-market monitoring. It also verified the report on the method of analysis of the feed additive in feed submitted by the Reference Laboratory set up by Regulation (EC) No 1831/2003.
- (6) The assessment of the benzoic acid shows that the conditions for authorisation, as provided for in Article 5 of Regulation (EC) No 1831/2003, are satisfied. Accordingly, the use of that preparation should be authorised as specified in the Annex to this Regulation.
- (7) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS REGULATION:

Article 1

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

⁽¹⁾ OJ L 268, 18.10.2003, p. 29.

⁽²⁾ Commission Regulation (EC) No 1730/2006 of 23 November 2006 concerning the authorisation of benzoic acid (VevoVital) as a feed additive (OJ L 325, 24.11.2006, p. 9).

⁽³⁾ Commission Regulation (EC) No 1138/2007 of 1 October 2007 concerning the authorisation of a new use of benzoic acid (VevoVital) as a feed additive (OJ L 256, 2.10.2007, p. 8).

⁽⁴⁾ EFSA Journal 2012;10(7):2775.

⁽⁵⁾ EFSA Journal 2015;13(7):4157.

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, 8 June 2016.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX

Identification number of the additive	Name of the holder of authorisation	Additive	Composition, chemical formula, description, analytical method	Species or category of animal	Maximum age	Minimum content	Maximum content	Other provisions	End of period of authorisation
						mg/kg of complete feedingstuff with a moisture content of 12 %			

Category of zootechnical additives. Functional group: other zootechnical additives (urinary pH decrease)

4d210	DSM Nutritional Products Sp. z o. o.	Benzoic acid	<p><i>Additive composition</i></p> <p>Benzoic acid (≥ 99,9 %)</p> <p><i>Characterisation of the active substance</i></p> <p>Benzenecarboxylic acid, phenylcarboxylic acid, C₇H₆O₂ CAS number 65-85-0</p> <p>Maximum level of the impurities:</p> <p>Phthalic acid: ≤ 100 mg/kg Biphenyl: ≤ 100 mg/kg</p> <p><i>Analytical method ⁽¹⁾</i></p> <p>For the quantification of benzoic acid in the feed additive:</p> <p>— titration with sodium hydroxide (European Pharmacopoeia monograph 0066).</p> <p>For the quantification of the benzoic acid in the premixtures and feedingstuffs:</p> <p>— reversed phase liquid chromatography with UV detection (RP-HPLC/UV) — method based on ISO9231:2008.</p>	Sows	—	5 000	10 000	<p>1. The directions of use shall be indicated the following in complementary feed:</p> <p>‘Complementary feedingstuffs containing benzoic acid shall not be fed to sows as such. Complementary feedingstuffs for sows shall be thoroughly mixed with other feed materials of the daily ration’.</p> <p>2. For users of the additive and premixtures in a feed business, operational procedures and appropriate organisational measures shall be established to address hazards by inhalation, dermal contact or eyes contact. Where the dermal, inhalator or eyes exposure cannot be reduced to an acceptable level by these procedures and measures, the additive and premixtures shall be used with appropriate personal protective equipment.</p>	29 June 2026
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⁽¹⁾ Details of the analytical methods are available at the following address of the Reference Laboratory: <https://ec.europa.eu/jrc/en/eurl/feed-additives/evaluation-reports>.

COMMISSION IMPLEMENTING REGULATION (EU) 2016/901**of 8 June 2016****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, 8 June 2016.

*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	IL	259,4
	MA	121,6
	ZZ	190,5
0709 93 10	TR	144,6
	ZZ	144,6
0805 50 10	AR	167,7
	IL	134,0
	MA	106,8
	TR	134,1
0808 10 80	ZA	170,5
	ZZ	142,6
	AR	117,7
	BR	110,1
	CL	121,3
	CN	110,9
	NZ	153,2
	PE	111,0
	US	146,5
	UY	107,2
0809 10 00	ZA	122,1
	ZZ	122,2
0809 29 00	TR	279,0
	ZZ	279,0
	TR	529,8
	US	721,3
	ZZ	625,6

⁽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

COMMISSION IMPLEMENTING DECISION (EU) 2016/902

of 30 May 2016

establishing best available techniques (BAT) conclusions, under Directive 2010/75/EU of the European Parliament and of the Council, for common waste water and waste gas treatment/management systems in the chemical sector

(notified under document C(2016) 3127)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) ⁽¹⁾, and in particular Article 13(5) thereof,

Whereas:

- (1) Best available techniques (BAT) conclusions are the reference for setting permit conditions for installations covered by Chapter II of Directive 2010/75/EU. The competent authorities should set emission limit values which ensure that, under normal operating conditions, emissions do not exceed the emission levels associated with the best available techniques as laid down in the BAT conclusions.
- (2) The forum composed of representatives of Member States, the industries concerned and non-governmental organisations promoting environmental protection, established by Commission Decision of 16 May 2011 ⁽²⁾, provided the Commission with its opinion on the proposed content of the BAT reference document on 24 September 2014. That opinion is publicly available.
- (3) The BAT conclusions set out in the Annex to this Decision are the key element of that BAT reference document.
- (4) The measures provided for in this Decision are in accordance with the opinion of the Committee established by Article 75(1) of Directive 2010/75/EU,

HAS ADOPTED THIS DECISION:

Article 1

The best available techniques (BAT) conclusions for common waste water and waste gas treatment/management systems in the chemical sector, as set out in the Annex, are adopted.

⁽¹⁾ OJ L 334, 17.12.2010, p. 17.

⁽²⁾ OJ C 146, 17.5.2011, p. 3.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 30 May 2016.

For the Commission
Karmenu VELLA
Member of the Commission

ANNEX

BEST AVAILABLE TECHNIQUES (BAT) CONCLUSIONS FOR COMMON WASTE WATER/WASTE GAS TREATMENT/MANAGEMENT SYSTEMS IN THE CHEMICAL SECTOR

SCOPE

These BAT conclusions concern the activities specified in Sections 4 and 6.11 of Annex I to Directive 2010/75/EU, namely:

- Section 4: Chemical industry;
- Section 6.11: Independently operated treatment of waste water not covered by Council Directive 91/271/EEC and discharged by an installation undertaking activities covered under Section 4 of Annex I to Directive 2010/75/EU.

These BAT conclusions also cover the combined treatment of waste water from different origins if the main pollutant load originates from the activities covered under Section 4 of Annex I to Directive 2010/75/EU.

In particular, these BAT conclusions cover the following issues:

- environmental management systems;
- water saving;
- waste water management, collection and treatment;
- waste management;
- treatment of waste water sludge with the exception of incineration;
- waste gas management, collection and treatment;
- flaring;
- diffuse emissions of volatile organic compounds (VOC) to air;
- odour emissions;
- noise emissions.

Other BAT conclusions and reference documents which could be relevant for the activities covered by these BAT conclusions are the following:

- Production of Chlor-alkali (CAK);
- Manufacture of Large Volume Inorganic Chemicals — Ammonia, Acids and Fertilisers (LVIC-AAF);
- Manufacture of Large Volume Inorganic Chemicals — Solids and Others Industry (LVIC-S);
- Production of Speciality Inorganic Chemicals (SIC);
- Large Volume Organic Chemical Industry (LVOC);
- Manufacture of Organic Fine Chemicals (OFC);
- Production of Polymers (POL);
- Emissions from Storage (EFS);
- Energy Efficiency (ENE);
- Monitoring of Emissions to Air and Water from IED installations (ROM);
- Industrial Cooling Systems (ICS);

- Large Combustion Plants (LCP);
- Waste Incineration (WI);
- Waste Treatments Industries (WT);
- Economics and Cross-media Effects (ECM).

GENERAL CONSIDERATIONS

Best Available Techniques

The techniques listed and described in these BAT conclusions are neither prescriptive nor exhaustive. Other techniques may be used that ensure at least an equivalent level of environmental protection.

Unless otherwise stated, the BAT conclusions are generally applicable.

Emission levels associated with BAT

Emission levels associated with the best available techniques (BAT-AELs) for emissions to water given in these BAT conclusions refer to values of concentrations (mass of emitted substances per volume of water), expressed in µg/l or mg/l.

Unless otherwise stated, the BAT-AELs refer to flow-weighted yearly averages of 24-hour flow-proportional composite samples, taken with the minimum frequency set for the relevant parameter and under normal operating conditions. Time-proportional sampling can be used provided that sufficient flow stability is demonstrated.

The flow-weighted yearly average concentration of the parameter (c_w) is calculated using the following equation:

$$c_w = \frac{\sum_{i=1}^n c_i q_i}{\sum_{i=1}^n q_i}$$

Where

- n = number of measurements;
- c_i = average concentration of the parameter during i^{th} measurement;
- q_i = average flow rate during i^{th} measurement.

Abatement efficiencies

In the case of total organic carbon (TOC), chemical oxygen demand (COD), total nitrogen (TN) and total inorganic nitrogen (N_{inorg}), the calculation of the average abatement efficiency referred to in these BAT conclusions (see Table 1 and Table 2) is based on loads and includes both pretreatment (BAT 10 c) and final treatment (BAT 10 d) of waste water.

DEFINITIONS

For the purposes of these BAT conclusions, the following definitions apply:

Term used	Definition
New plant	A plant first permitted at the site of the installation following the publication of these BAT conclusions or a complete replacement of a plant following the publication of these BAT conclusions.
Existing plant	A plant that is not a new plant.

Term used	Definition
Biochemical oxygen demand (BOD ₅)	Amount of oxygen needed for the biochemical oxidation of the organic matter to carbon dioxide in 5 days. BOD is an indicator for the mass concentration of biodegradable organic compounds.
Chemical oxygen demand (COD)	Amount of oxygen needed for the total oxidation of the organic matter to carbon dioxide. COD is an indicator for the mass concentration of organic compounds.
Total organic carbon (TOC)	Total organic carbon, expressed as C, includes all organic compounds.
Total suspended solids (TSS)	Mass concentration of all suspended solids, measured via filtration through glass fibre filters and gravimetry.
Total nitrogen (TN)	Total nitrogen, expressed as N, includes free ammonia and ammonium (NH ₄ -N), nitrites (NO ₂ -N), nitrates (NO ₃ -N) and organic nitrogen compounds.
Total inorganic nitrogen (N _{inorg})	Total inorganic nitrogen, expressed as N, includes free ammonia and ammonium (NH ₄ -N), nitrites (NO ₂ -N) and nitrates (NO ₃ -N).
Total phosphorus (TP)	Total phosphorus, expressed as P, includes all inorganic and organic phosphorus compounds, dissolved or bound to particles.
Adsorbable organically bound halogens (AOX)	Adsorbable organically bound halogens, expressed as Cl, include adsorbable organically bound chlorine, bromine and iodine.
Chromium (Cr)	Chromium, expressed as Cr, includes all inorganic and organic chromium compounds, dissolved or bound to particles.
Copper (Cu)	Copper, expressed as Cu, includes all inorganic and organic copper compounds, dissolved or bound to particles.
Nickel (Ni)	Nickel, expressed as Ni, includes all inorganic and organic nickel compounds, dissolved or bound to particles.
Zinc (Zn)	Zinc, expressed as Zn, includes all inorganic and organic zinc compounds, dissolved or bound to particles.
VOC	Volatile organic compounds as defined in Article 3(45) of Directive 2010/75/EU.
Diffuse VOC emissions	Non-channelled VOC emissions which can result from 'area' sources (e.g. tanks) or 'point' sources (e.g. pipe flanges).
Fugitive VOC emissions	Diffuse VOC emissions from 'point' sources.
Flaring	High-temperature oxidation to burn combustible compounds of waste gases from industrial operations with an open flame. Flaring is primarily used for burning off flammable gas for safety reasons or during non-routine operational conditions.

1. Environmental management systems

BAT 1. In order to improve the overall environmental performance, BAT is to implement and adhere to an environmental management system (EMS) that incorporates all of the following features:

- (i) commitment of the management, including senior management;

- (ii) an environmental policy that includes the continuous improvement of the installation by the management;
- (iii) planning and establishing the necessary procedures, objectives and targets, in conjunction with financial planning and investment;
- (iv) implementation of procedures paying particular attention to:
 - (a) structure and responsibility;
 - (b) recruitment, training, awareness and competence;
 - (c) communication;
 - (d) employee involvement;
 - (e) documentation;
 - (f) effective process control;
 - (g) maintenance programmes;
 - (h) emergency preparedness and response;
 - (i) safeguarding compliance with environmental legislation;
- (v) checking performance and taking corrective action, paying particular attention to:
 - (a) monitoring and measurement (see also the Reference Report on Monitoring of emissions to Air and Water from IED installations — ROM);
 - (b) corrective and preventive action;
 - (c) maintenance of records;
 - (d) independent (where practicable) internal or external auditing in order to determine whether or not the EMS conforms to planned arrangements and has been properly implemented and maintained;
- (vi) review of the EMS and its continuing suitability, adequacy and effectiveness by senior management;
- (vii) following the development of cleaner technologies;
- (viii) consideration for the environmental impacts from the eventual decommissioning of the plant at the design stage of a new plant, and throughout its operating life;
- (ix) application of sectoral benchmarking on a regular basis;
- (x) waste management plan (see BAT 13).

Specifically for chemical sector activities, BAT is to incorporate the following features in the EMS:

- (xi) on multi-operator installations/sites, establishment of a convention that sets out the roles, responsibilities and coordination of operating procedures of each plant operator in order to enhance the cooperation between the various operators;
- (xii) establishment of inventories of waste water and waste gas streams (see BAT 2).

In some cases, the following features are part of the EMS:

- (xiii) odour management plan (see BAT 20);
- (xiv) noise management plan (see BAT 22).

Applicability

The scope (e.g. level of detail) and nature of the EMS (e.g. standardised or non-standardised) will generally be related to the nature, scale and complexity of the installation, and the range of environmental impacts it may have.

BAT 2. In order to facilitate the reduction of emissions to water and air and the reduction of water usage, BAT is to establish and to maintain an inventory of waste water and waste gas streams, as part of the environmental management system (see BAT 1), that incorporates all of the following features:

- (i) information about the chemical production processes, including:
 - (a) chemical reaction equations, also showing side products;
 - (b) simplified process flow sheets that show the origin of the emissions;
 - (c) descriptions of process-integrated techniques and waste water/waste gas treatment at source including their performances;
- (ii) information, as comprehensive as is reasonably possible, about the characteristics of the waste water streams, such as:
 - (a) average values and variability of flow, pH, temperature, and conductivity;
 - (b) average concentration and load values of relevant pollutants/parameters and their variability (e.g. COD/TOC, nitrogen species, phosphorus, metals, salts, specific organic compounds);
 - (c) data on bioeliminability (e.g. BOD, BOD/COD ratio, Zahn-Wellens test, biological inhibition potential (e.g. nitrification));
- (iii) information, as comprehensive as is reasonably possible, about the characteristics of the waste gas streams, such as:
 - (a) average values and variability of flow and temperature;
 - (b) average concentration and load values of relevant pollutants/parameters and their variability (e.g. VOC, CO, NO_x, SO_x, chlorine, hydrogen chloride);
 - (c) flammability, lower and higher explosive limits, reactivity;
 - (d) presence of other substances that may affect the waste gas treatment system or plant safety (e.g. oxygen, nitrogen, water vapour, dust).

2. Monitoring

BAT 3. For relevant emissions to water as identified by the inventory of waste water streams (see BAT 2), BAT is to monitor key process parameters (including continuous monitoring of waste water flow, pH and temperature) at key locations (e.g. influent to pretreatment and influent to final treatment).

BAT 4. BAT is to monitor emissions to water in accordance with EN standards with at least the minimum frequency given below. If EN standards are not available, BAT is to use ISO, national or other international standards that ensure the provision of data of an equivalent scientific quality.

Substance/parameter	Standard(s)	Minimum monitoring frequency ⁽¹⁾ ⁽²⁾
Total organic carbon (TOC) ⁽³⁾	EN 1484	Daily
Chemical oxygen demand (COD) ⁽³⁾	No EN standard available	
Total suspended solids (TSS)	EN 872	
Total nitrogen (TN) ⁽⁴⁾	EN 12260	
Total inorganic nitrogen (N _{inorg}) ⁽⁴⁾	Various EN standards available	
Total phosphorus (TP)	Various EN standards available	

Substance/parameter		Standard(s)	Minimum monitoring frequency ⁽¹⁾ ⁽²⁾
Adsorbable organically bound halogens (AOX)		EN ISO 9562	Monthly
Metals	Cr	Various EN standards available	
	Cu		
	Ni		
	Pb		
	Zn		
	Other metals, if relevant		
Toxicity ⁽⁵⁾	Fish eggs (<i>Danio rerio</i>)	EN ISO 15088	To be decided based on a risk assessment, after an initial characterisation
	Daphnia (<i>Daphnia magna</i> Straus)	EN ISO 6341	
	Luminescent bacteria (<i>Vibrio fischeri</i>)	EN ISO 11348-1, EN ISO 11348-2 or EN ISO 11348-3	
	Duckweed (<i>Lemna minor</i>)	EN ISO 20079	
	Algae	EN ISO 8692, EN ISO 10253 or EN ISO 10710	

⁽¹⁾ Monitoring frequencies may be adapted if the data series clearly demonstrate a sufficient stability.

⁽²⁾ The sampling point is located where the emission leaves the installation.

⁽³⁾ TOC monitoring and COD monitoring are alternatives. TOC monitoring is the preferred option because it does not rely on the use of very toxic compounds.

⁽⁴⁾ TN and N_{inorg} monitoring are alternatives.

⁽⁵⁾ An appropriate combination of these methods can be used.

BAT 5. BAT is to periodically monitor diffuse VOC emissions to air from relevant sources by using an appropriate combination of the techniques I-III or, where large amounts of VOC are handled, all of the techniques I-III.

- I. sniffing methods (e.g. with portable instruments according to EN 15446) associated with correlation curves for key equipment;
- II. optical gas imaging methods;
- III. calculation of emissions based on emissions factors, periodically validated (e.g. once every two years) by measurements.

Where large amounts of VOCs are handled, the screening and quantification of emissions from the installation by periodic campaigns with optical absorption-based techniques, such as Differential absorption light detection and ranging (DIAL) or Solar occultation flux (SOF), is a useful complementary technique to the techniques I to III.

Description

See Section 6.2.

BAT 6. BAT is to periodically monitor odour emissions from relevant sources in accordance with EN standards.

Description

Emissions can be monitored by dynamic olfactometry according to EN 13725. Emission monitoring may be complemented by measurement/estimation of odour exposure or estimation of odour impact.

Applicability

The applicability is restricted to cases where odour nuisance can be expected or has been substantiated.

3. Emissions to water

3.1. Water usage and waste water generation

BAT 7. In order to reduce the usage of water and the generation of waste water, BAT is to reduce the volume and/or pollutant load of waste water streams, to enhance the reuse of waste water within the production process and to recover and reuse raw materials.

3.2. Waste water collection and segregation

BAT 8. In order to prevent the contamination of uncontaminated water and to reduce emissions to water, BAT is to segregate uncontaminated waste water streams from waste water streams that require treatment.

Applicability

The segregation of uncontaminated rainwater may not be applicable in the case of existing waste water collection systems.

BAT 9. In order to prevent uncontrolled emissions to water, BAT is to provide an appropriate buffer storage capacity for waste water incurred during other than normal operating conditions based on a risk assessment (taking into account e.g. the nature of the pollutant, the effects on further treatment, and the receiving environment), and to take appropriate further measures (e.g. control, treat, reuse).

Applicability

The interim storage of contaminated rainwater requires segregation, which may not be applicable in the case of existing waste water collection systems.

3.3. Waste water treatment

BAT 10. In order to reduce emissions to water, BAT is to use an integrated waste water management and treatment strategy that includes an appropriate combination of the techniques in the priority order given below.

	Technique	Description
(a)	Process-integrated techniques ⁽¹⁾	Techniques to prevent or reduce the generation of water pollutants.
(b)	Recovery of pollutants at source ⁽¹⁾	Techniques to recover pollutants prior to their discharge to the waste water collection system.

	Technique	Description
(c)	Waste water pretreatment ⁽¹⁾ ⁽²⁾	Techniques to abate pollutants before the final waste water treatment. Pretreatment can be carried out at the source or in combined streams.
(d)	Final waste water treatment ⁽³⁾	Final waste water treatment by, for example, preliminary and primary treatment, biological treatment, nitrogen removal, phosphorus removal and/or final solids removal techniques before discharge to a receiving water body.

⁽¹⁾ These techniques are further described and defined in other BAT conclusions for the chemical industry.

⁽²⁾ See BAT 11.

⁽³⁾ See BAT 12.

Description

The integrated waste water management and treatment strategy is based on the inventory of waste water streams (see BAT 2).

BAT-associated emission levels (BAT-AELs): see Section 3.4.

BAT 11. In order to reduce emissions to water, BAT is to pretreat waste water that contains pollutants that cannot be dealt with adequately during final waste water treatment by using appropriate techniques.

Description

Waste water pretreatment is carried out as part of an integrated waste water management and treatment strategy (see BAT 10) and is generally necessary to:

- protect the final waste water treatment plant (e.g. protection of a biological treatment plant against inhibitory or toxic compounds);
- remove compounds that are insufficiently abated during final treatment (e.g. toxic compounds, poorly/non-biodegradable organic compounds, organic compounds that are present in high concentrations, or metals during biological treatment);
- remove compounds that are otherwise stripped to air from the collection system or during final treatment (e.g. volatile halogenated organic compounds, benzene);
- remove compounds that have other negative effects (e.g. corrosion of equipment; unwanted reaction with other substances; contamination of waste water sludge).

In general, pretreatment is carried out as close as possible to the source in order to avoid dilution, in particular for metals. Sometimes, waste water streams with appropriate characteristics can be segregated and collected in order to undergo a dedicated combined pretreatment.

BAT 12. In order to reduce emissions to water, BAT is to use an appropriate combination of final waste water treatment techniques.

Description

Final waste water treatment is carried out as part of an integrated waste water management and treatment strategy (see BAT 10).

Appropriate final waste water treatment techniques, depending on the pollutant, include:

	Technique ⁽¹⁾	Typical pollutants abated	Applicability
Preliminary and primary treatment			
(a)	Equalisation	All pollutants	Generally applicable.
(b)	Neutralisation	Acids, alkalis	
(c)	Physical separation, e.g. screens, sieves, grit separators, grease separators or primary settlement tanks	Suspended solids, oil/grease	
Biological treatment (secondary treatment), e.g.			
(d)	Activated sludge process	Biodegradable organic compounds	Generally applicable.
(e)	Membrane bioreactor		
Nitrogen removal			
(f)	Nitrification/denitrification	Total nitrogen, ammonia	Nitrification may not be applicable in case of high chloride concentrations (i.e. around 10 g/l) and provided that the reduction of the chloride concentration prior to nitrification would not be justified by the environmental benefits. Not applicable when the final treatment does not include a biological treatment.
Phosphorus removal			
(g)	Chemical precipitation	Phosphorus	Generally applicable.
Final solids removal			
(h)	Coagulation and flocculation	Suspended solids	Generally applicable.
(i)	Sedimentation		
(j)	Filtration (e.g. sand filtration, microfiltration, ultrafiltration)		
(k)	Flotation		

⁽¹⁾ The descriptions of the techniques are given in Section 6.1.

3.4. BAT-associated emission levels for emissions to water

The BAT-associated emission levels (BAT-AELs), for emissions to water given in Table 1, Table 2 and Table 3 apply to direct emissions to a receiving water body from:

- (i) the activities specified in Section 4 of Annex I to Directive 2010/75/EU;
- (ii) independently operated waste water treatment plants specified in Section 6.11 of Annex I to Directive 2010/75/EU provided that the main pollutant load originates from activities specified in Section 4 of Annex I to Directive 2010/75/EU;
- (iii) the combined treatment of waste water from different origins provided that the main pollutant load originates from activities specified in Section 4 of Annex I to Directive 2010/75/EU.

The BAT-AELs apply at the point where the emission leaves the installation.

Table 1

BAT-AELs for direct emissions of TOC, COD and TSS to a receiving water body

Parameter	BAT-AEL (yearly average)	Conditions
Total organic carbon (TOC) ⁽¹⁾ ⁽²⁾	10-33 mg/l ⁽³⁾ ⁽⁴⁾ ⁽⁵⁾ ⁽⁶⁾	The BAT-AEL applies if the emission exceeds 3,3 t/yr.
Chemical oxygen demand (COD) ⁽¹⁾ ⁽²⁾	30-100 mg/l ⁽³⁾ ⁽⁴⁾ ⁽⁵⁾ ⁽⁶⁾	The BAT-AEL applies if the emission exceeds 10 t/yr.
Total suspended solids (TSS)	5,0-35 mg/l ⁽⁷⁾ ⁽⁸⁾	The BAT-AEL applies if the emission exceeds 3,5 t/yr.

⁽¹⁾ No BAT-AEL applies for Biochemical oxygen demand (BOD). As an indication, the yearly average BOD₅ level in the effluent from a biological waste water treatment plant will generally be ≤ 20 mg/l.

⁽²⁾ Either the BAT-AEL for TOC or the BAT-AEL for COD applies. TOC is the preferred option because its monitoring does not rely on the use of very toxic compounds.

⁽³⁾ The lower end of the range is typically achieved when few tributary waste water streams contain organic compounds and/or the waste water mostly contains easily biodegradable organic compounds.

⁽⁴⁾ The upper end of the range may be up to 100 mg/l for TOC or up to 300 mg/l for COD, both as yearly averages, if both of the following conditions are fulfilled:

— Condition A: Abatement efficiency ≥ 90 % as a yearly average (including both pretreatment and final treatment).

— Condition B: If a biological treatment is used, at least one of the following criteria is met:

— A low-loaded biological treatment step is used (i.e. ≤ 0,25 kg COD/kg of organic dry matter of sludge). This implies that the BOD₅ level in the effluent is ≤ 20 mg/l.

— Nitrification is used.

⁽⁵⁾ The upper end of the range may not apply if all of the following conditions are fulfilled:

— Condition A: Abatement efficiency ≥ 95 % as a yearly average (including both pretreatment and final treatment).

— Condition B: same as Condition B in footnote ⁽⁴⁾.

— Condition C: The influent to the final waste water treatment shows the following characteristics: TOC > 2 g/l (or COD > 6 g/l) as a yearly average and a high proportion of refractory organic compounds.

⁽⁶⁾ The upper end of the range may not apply when the main pollutant load originates from the production of methylcellulose.

⁽⁷⁾ The lower end of the range is typically achieved when using filtration (e.g. sand filtration, microfiltration, ultrafiltration, membrane bioreactor), while the upper end of the range is typically achieved when using sedimentation only.

⁽⁸⁾ This BAT-AEL may not apply when the main pollutant load originates from the production of soda ash via the Solvay process or from the production of titanium dioxide.

Table 2

BAT-AELs for direct emissions of nutrients to a receiving water body

Parameter	BAT-AEL (yearly average)	Conditions
Total nitrogen (TN) ⁽¹⁾	5,0-25 mg/l ⁽²⁾ ⁽³⁾	The BAT-AEL applies if the emission exceeds 2,5 t/yr.
Total inorganic nitrogen (N _{inorg}) ⁽¹⁾	5,0-20 mg/l ⁽²⁾ ⁽³⁾	The BAT-AEL applies if the emission exceeds 2,0 t/yr.
Total phosphorus (TP)	0,50-3,0 mg/l ⁽⁴⁾	The BAT-AEL applies if the emission exceeds 300 kg/yr.

⁽¹⁾ Either the BAT-AEL for total nitrogen or the BAT-AEL for total inorganic nitrogen applies.

⁽²⁾ The BAT-AELs for TN and N_{inorg} do not apply to installations without biological waste water treatment. The lower end of the range is typically achieved when the influent to the biological waste water treatment plant contains low levels of nitrogen and/or when nitrification/denitrification can be operated under optimum conditions.

⁽³⁾ The upper end of the range may be higher and up to 40 mg/l for TN or 35 mg/l for N_{inorg}, both as yearly averages, if the abatement efficiency is ≥ 70 % as a yearly average (including both pretreatment and final treatment).

⁽⁴⁾ The lower end of the range is typically achieved when phosphorus is added for the proper operation of the biological waste water treatment plant or when phosphorus mainly originates from heating or cooling systems. The upper end of the range is typically achieved when phosphorus-containing compounds are produced by the installation.

Table 3

BAT-AELs for direct emission of AOX and metals to a receiving water body

Parameter	BAT-AEL (yearly average)	Conditions
Adsorbable organically bound halogens (AOX)	0,20-1,0 mg/l ⁽¹⁾ ⁽²⁾	The BAT-AEL applies if the emission exceeds 100 kg/yr.
Chromium (expressed as Cr)	5,0-25 µg/l ⁽³⁾ ⁽⁴⁾ ⁽⁵⁾ ⁽⁶⁾	The BAT-AEL applies if the emission exceeds 2,5 kg/yr.
Copper (expressed as Cu)	5,0-50 µg/l ⁽³⁾ ⁽⁴⁾ ⁽⁵⁾ ⁽⁷⁾	The BAT-AEL applies if the emission exceeds 5,0 kg/yr.
Nickel (expressed as Ni)	5,0-50 µg/l ⁽³⁾ ⁽⁴⁾ ⁽⁵⁾	The BAT-AEL applies if the emission exceeds 5,0 kg/yr.
Zinc (expressed as Zn)	20-300 µg/l ⁽³⁾ ⁽⁴⁾ ⁽⁵⁾ ⁽⁸⁾	The BAT-AEL applies if the emission exceeds 30 kg/yr.

⁽¹⁾ The lower end of the range is typically achieved when few halogenated organic compounds are used or produced by the installation.

⁽²⁾ This BAT-AEL may not apply when the main pollutant load originates from the production of iodinated X-ray contrast agents due to the high refractory loads. This BAT-AEL may also not apply when the main pollutant load originates from the production of propylene oxide or epichlorohydrin via the chlorohydrin process due to the high loads.

⁽³⁾ The lower end of the range is typically achieved when few of the corresponding metal (compounds) are used or produced by the installation.

⁽⁴⁾ This BAT-AEL may not apply to inorganic effluents when the main pollutant load originates from the production of inorganic heavy metal compounds.

⁽⁵⁾ This BAT-AEL may not apply when the main pollutant load originates from the processing of large volumes of solid inorganic raw materials that are contaminated with metals (e.g. soda ash from the Solvay process, titanium dioxide).

⁽⁶⁾ This BAT-AEL may not apply when the main pollutant load originates from the production of chromium-organic compounds.

⁽⁷⁾ This BAT-AEL may not apply when the main pollutant load originates from the production of copper-organic compounds or the production of vinyl chloride monomer/ethylene dichloride via the oxychlorination process.

⁽⁸⁾ This BAT-AEL may not apply when the main pollutant load originates from the production of viscose fibres.

The associated monitoring is in BAT 4.

4. Waste

BAT 13. In order to prevent or, where this is not practicable, to reduce the quantity of waste being sent for disposal, BAT is to set up and implement a waste management plan as part of the environmental management system (see BAT 1) that, in order of priority, ensures that waste is prevented, prepared for reuse, recycled or otherwise recovered.

BAT 14. In order to reduce the volume of waste water sludge requiring further treatment or disposal, and to reduce its potential environmental impact, BAT is to use one or a combination of the techniques given below.

	Technique	Description	Applicability
(a)	Conditioning	Chemical conditioning (i.e. adding coagulants and/or flocculants) or thermal conditioning (i.e. heating) to improve the conditions during sludge thickening/dewatering.	Not applicable to inorganic sludges. The necessity for conditioning depends on the sludge properties and on the thickening/dewatering equipment used.
(b)	Thickening/dewatering	Thickening can be carried out by sedimentation, centrifugation, flotation, gravity belts, or rotary drums. Dewatering can be carried out by belt filter presses or plate filter presses.	Generally applicable.
(c)	Stabilisation	Sludge stabilisation includes chemical treatment, thermal treatment, aerobic digestion, or anaerobic digestion.	Not applicable to inorganic sludges. Not applicable for short-term handling before final treatment.
(d)	Drying	Sludge is dried by direct or indirect contact with a heat source.	Not applicable to cases where waste heat is not available or cannot be used.

5. Emissions to air

5.1. Waste gas collection

BAT 15. In order to facilitate the recovery of compounds and the reduction of emissions to air, BAT is to enclose the emission sources and to treat the emissions, where possible.

Applicability

The applicability may be restricted by concerns on operability (access to equipment), safety (avoiding concentrations close to the lower explosive limit) and health (where operator access is required inside the enclosure).

5.2. Waste gas treatment

BAT 16. In order to reduce emissions to air, BAT is to use an integrated waste gas management and treatment strategy that includes process-integrated and waste gas treatment techniques.

Description

The integrated waste gas management and treatment strategy is based on the inventory of waste gas streams (see BAT 2) giving priority to process-integrated techniques.

5.3. Flaring

BAT 17. In order to prevent emissions to air from flares, BAT is to use flaring only for safety reasons or non-routine operational conditions (e.g. start-ups, shutdowns) by using one or both of the techniques given below.

	Technique	Description	Applicability
(a)	Correct plant design	This includes the provision of a gas recovery system with sufficient capacity and the use of high-integrity relief valves.	Generally applicable to new plants. Gas recovery systems may be retrofitted in existing plants.
(b)	Plant management	This includes balancing the fuel gas system and using advanced process control.	Generally applicable.

BAT 18. In order to reduce emissions to air from flares when flaring is unavoidable, BAT is to use one or both of the techniques given below.

	Technique	Description	Applicability
(a)	Correct design of flaring devices	Optimisation of height, pressure, assistance by steam, air or gas, type of flare tips (either enclosed or shielded), etc., aimed to enable smokeless and reliable operation and to ensure the efficient combustion of excess gases.	Applicable to new flares. In existing plants, applicability may be restricted due to e.g. maintenance time availability during the turnaround of the plant.
(b)	Monitoring and recording as part of flare management	Continuous monitoring of the gas sent to flaring, measurements of gas flow and estimations of other parameters (e.g. composition, heat content, ratio of assistance, velocity, purge gas flow rate, pollutant emissions (e.g. NO _x , CO, hydrocarbons, noise)). The recording of flaring events usually includes the estimated/measured flare gas composition, the estimated/measured flare gas quantity and the duration of operation. The recording allows for the quantification of emissions and the potential prevention of future flaring events.	Generally applicable.

5.4. Diffuse VOC emissions

BAT 19. In order to prevent or, where that is not practicable, to reduce diffuse VOC emissions to air, BAT is to use a combination of the techniques given below.

	Technique	Applicability
Techniques related to plant design		
(a)	Limit the number of potential emission sources	Applicability may be restricted in the case of existing plants due to operability requirements.
(b)	Maximise process-inherent containment features	
(c)	Select high-integrity equipment (see the description in Section 6.2)	
(d)	Facilitate maintenance activities by ensuring access to potentially leaky equipment	

	Technique	Applicability
Techniques related to plant/equipment construction, assembly and commissioning		
(e)	Ensure well-defined and comprehensive procedures for plant/equipment construction and assembly. This includes using the designed gasket stress for flanged joint assembly (see the description in Section 6.2)	Generally applicable.
(f)	Ensure robust plant/equipment commissioning and handover procedures in line with the design requirements	
Techniques related to plant operation		
(g)	Ensure good maintenance and timely replacement of equipment	Generally applicable.
(h)	Use a risk-based leak detection and repair (LDAR) programme (see the description in Section 6.2)	
(i)	As far as it is reasonable, prevent diffuse VOC emissions, collect them at source, and treat them	

The associated monitoring is in BAT 5.

5.5. Odour emissions

BAT 20. In order to prevent or, where that is not practicable, to reduce odour emissions, BAT is to set up, implement and regularly review an odour management plan, as part of the environmental management system (see BAT 1), that includes all of the following elements:

- (i) a protocol containing appropriate actions and timelines;
- (ii) a protocol for conducting odour monitoring;
- (iii) a protocol for response to identified odour incidents;
- (iv) an odour prevention and reduction programme designed to identify the source(s); to measure/estimate odour exposure; to characterise the contributions of the sources; and to implement prevention and/or reduction measures.

The associated monitoring is in BAT 6.

Applicability

The applicability is restricted to cases where odour nuisance can be expected or has been substantiated.

BAT 21. In order to prevent or, where that is not practicable, to reduce odour emissions from waste water collection and treatment and from sludge treatment, BAT is to use one or a combination of the techniques given below.

	Technique	Description	Applicability
(a)	Minimise residence times	Minimise the residence time of waste water and sludge in collection and storage systems, in particular under anaerobic conditions.	Applicability may be restricted in the case of existing collection and storage systems.
(b)	Chemical treatment	Use chemicals to destroy or to reduce the formation of odorous compounds (e.g. oxidation or precipitation of hydrogen sulphide).	Generally applicable.
(c)	Optimise aerobic treatment	This can include: (i) controlling the oxygen content; (ii) frequent maintenance of the aeration system; (iii) use of pure oxygen; (iv) removal of scum in tanks.	Generally applicable.
(d)	Enclosure	Cover or enclose facilities for collecting and treating waste water and sludge to collect the odorous waste gas for further treatment.	Generally applicable.
(e)	End-of-pipe treatment	This can include: (i) biological treatment; (ii) thermal oxidation.	Biological treatment is only applicable to compounds that are easily soluble in water and readily bioeliminable.

5.6. Noise emissions

BAT 22. In order to prevent or, where that is not practicable, to reduce noise emissions, BAT is to set up and implement a noise management plan, as part of the environmental management system (see BAT 1), that includes all of the following elements:

- (i) a protocol containing appropriate actions and timelines;
- (ii) a protocol for conducting noise monitoring;
- (iii) a protocol for response to identified noise incidents;
- (iv) a noise prevention and reduction programme designed to identify the source(s), to measure/estimate noise exposure, to characterise the contributions of the sources and to implement prevention and/or reduction measures.

Applicability

The applicability is restricted to cases where noise nuisance can be expected or has been substantiated.

BAT 23. In order to prevent or, where that is not practicable, to reduce noise emissions, BAT is to use one or a combination of the techniques given below.

	Technique	Description	Applicability
(a)	Appropriate location of equipment and buildings	Increasing the distance between the emitter and the receiver and using buildings as noise screens.	For existing plants, the relocation of equipment may be restricted by a lack of space or excessive costs.
(b)	Operational measures	This includes: (i) improved inspection and maintenance of equipment; (ii) closing of doors and windows of enclosed areas, if possible; (iii) equipment operation by experienced staff; (iv) avoidance of noisy activities at night, if possible; (v) provisions for noise control during maintenance activities.	Generally applicable.
(c)	Low-noise equipment	This includes low-noise compressors, pumps and flares.	Applicable only when the equipment is new or replaced.
(d)	Noise-control equipment	This includes: (i) noise-reducers; (ii) equipment insulation; (iii) enclosure of noisy equipment; (iv) soundproofing of buildings.	Applicability may be restricted due to space requirements (for existing plants), health, and safety issues.
(e)	Noise abatement	Inserting obstacles between emitters and receivers (e.g. protection walls, embankments and buildings).	Applicable only to existing plants; since the design of new plants should make this technique unnecessary. For existing plants, the insertion of obstacles may be restricted by a lack of space.

6. Descriptions of techniques

6.1. Waste water treatment

Technique	Description
Activated sludge process	The biological oxidation of dissolved organic substances with oxygen using the metabolism of microorganisms. In the presence of dissolved oxygen (injected as air or pure oxygen) the organic components are mineralised into carbon dioxide and water or are transformed into other metabolites and biomass (i.e. the activated sludge). The microorganisms are maintained in suspension in the waste water and the whole mixture is mechanically aerated. The activated sludge mixture is sent to a separation facility from which the sludge is recycled to the aeration tank.
Nitrification/denitrification	A two-step process that is typically incorporated into biological waste water treatment plants. The first step is the aerobic nitrification where microorganisms oxidise ammonium (NH_4^+) to the intermediate nitrite (NO_2^-), which is then further oxidised to nitrate (NO_3^-). In the subsequent anoxic denitrification step, microorganisms chemically reduce nitrate to nitrogen gas.

Technique	Description
Chemical precipitation	The conversion of dissolved pollutants into an insoluble compound by adding chemical precipitants. The solid precipitates formed are subsequently separated by sedimentation, air flotation or filtration. If necessary, this may be followed by microfiltration or ultrafiltration. Multivalent metal ions (e.g. calcium, aluminium, iron) are used for phosphorus precipitation.
Coagulation and flocculation	Coagulation and flocculation are used to separate suspended solids from waste water and are often carried out in successive steps. Coagulation is carried out by adding coagulants with charges opposite to those of the suspended solids. Flocculation is carried out by adding polymers, so that collisions of microfloc particles cause them to bond to produce larger flocs.
Equalisation	Balancing of flows and pollutant loads at the inlet of the final waste water treatment by using central tanks. Equalisation may be decentralised or carried out using other management techniques.
Filtration	The separation of solids from waste water by passing them through a porous medium e.g. sand filtration, microfiltration and ultrafiltration.
Flotation	The separation of solid or liquid particles from waste water by attaching them to fine gas bubbles, usually air. The buoyant particles accumulate at the water surface and are collected with skimmers.
Membrane bioreactor	A combination of activated sludge treatment and membrane filtration. Two variants are used: a) an external recirculation loop between the activated sludge tank and the membrane module; and b) immersion of the membrane module into the aerated activated sludge tank, where the effluent is filtered through a hollow fibre membrane, the biomass remaining in the tank (this variant is less energy-consuming and results in more compact plants).
Neutralisation	The adjustment of the pH of waste water to a neutral level (approximately 7) by the addition of chemicals. Sodium hydroxide (NaOH) or calcium hydroxide (Ca(OH) ₂) is generally used to increase the pH; whereas, sulphuric acid (H ₂ SO ₄), hydrochloric acid (HCl) or carbon dioxide (CO ₂) is generally used to decrease the pH. The precipitation of some substances may occur during neutralisation.
Sedimentation	The separation of suspended particles and suspended material by gravitational settling.

6.2. Diffuse VOC emissions

Technique	Description
High-integrity equipment	High-integrity equipment includes: <ul style="list-style-type: none"> — valves with double packing seals; — magnetically driven pumps/compressors/agitators; — pumps/compressors/agitators fitted with mechanical seals instead of packing; — high-integrity gaskets (such as spiral wound, ring joints) for critical applications; — corrosion-resistant equipment.

Technique	Description
Leak detection and repair (LDAR) programme	<p>A structured approach to reduce fugitive VOC emissions by detection and subsequent repair or replacement of leaking components. Currently, sniffing (described by EN 15446) and optical gas imaging methods are available for the identification of leaks.</p> <p>Sniffing method: The first step is the detection using hand-held VOC analysers measuring the concentration adjacent to the equipment (e.g. by using flame ionisation or photo-ionisation). The second step consists of bagging the component to carry out a direct measurement at the source of emission. This second step is sometimes replaced by mathematical correlation curves derived from statistical results obtained from a large number of previous measurements made on similar components.</p> <p>Optical gas imaging methods: Optical imaging uses small lightweight hand-held cameras which enable the visualisation of gas leaks in real time, so that they appear as 'smoke' on a video recorder together with the normal image of the component concerned, to easily and rapidly locate significant VOC leaks. Active systems produce an image with a back-scattered infrared laser light reflected on the component and its surroundings. Passive systems are based on the natural infrared radiation of the equipment and its surroundings</p>
Thermal oxidation	<p>The oxidation of combustible gases and odorants in a waste gas stream by heating the mixture of contaminants with air or oxygen to above its auto-ignition point in a combustion chamber and maintaining it at a high temperature long enough to complete its combustion to carbon dioxide and water. Thermal oxidation is also referred to as 'incineration', 'thermal incineration' or 'oxidative combustion'.</p>
Using the designed gasket stress for flanged joint assembly	<p>This includes:</p> <ul style="list-style-type: none"> (i) obtaining a certified high quality gasket, e.g. according to EN 13555; (ii) calculating the highest possible bolt load, e.g. according to EN 1591-1; (iii) obtaining a qualified flange-assembling equipment; (iv) supervision of the bolt tightening by a qualified fitter.
VOC diffuse emissions monitoring	<p>Sniffing and optical gas imaging methods are described under leak detection and repair programme.</p> <p>Full screening and quantification of emissions from the installation can be undertaken with an appropriate combination of complementary methods, e.g. Solar occultation flux (SOF) or Differential absorption LIDAR (DIAL) campaigns. These results can be used for trend evaluation in time, cross-checking and updating/validation of the ongoing LDAR programme.</p> <p>Solar occultation flux (SOF): The technique is based on the recording and spectrometric Fourier Transform analysis of a broadband infra-red or ultraviolet/visible sunlight spectra along a given geographical itinerary, crossing the wind direction and cutting through VOC plumes.</p> <p>Differential absorption LIDAR (DIAL): This is a laser-based technique using differential absorption LIDAR (light detection and ranging), which is the optical analogue of radio wave-based RADAR. The technique relies on the back-scattering of laser beam pulses by atmospheric aerosols, and the analysis of spectral properties of the returned light collected with a telescope.</p>

COMMISSION IMPLEMENTING DECISION (EU) 2016/903**of 8 June 2016****pursuant to Article 3(3) of Regulation (EU) No 528/2012 of the European Parliament and of the Council on a horse rug impregnated with permethrin used for the purpose of controlling nuisance insects in the environment of the horse****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 528/2012 of the European Parliament and of the Council of 22 May 2012 concerning the making available on the market and use of biocidal products ⁽¹⁾, and in particular Article 3(3) thereof,

Whereas:

- (1) On 21 September 2015, Ireland requested the Commission to decide, pursuant to Article 3(3) of Regulation (EU) No 528/2012, whether a horse rug placed on the market to be used for the protection of horses and their environment from insects (horse and stable flies) is a biocidal product or a treated article or neither.
- (2) According to the information provided by Ireland, the horse rug consists of two separate layers of fabric, of which the outer layer is impregnated with permethrin and separated from the horses' skin by a non-impregnated inner layer. The treatment with permethrin is claimed to further enhance the physical protection function of the rug against nuisance insects in the environment of the horse, as insects will be killed when landing on the outer layer of the rug.
- (3) The horse rug is intended to control insects, which meet the definition of harmful organism as provided under Article 3(1)(g) of Regulation (EU) No 528/2012 since they may have a detrimental effect on animals or humans.
- (4) In accordance with Article 3(1)(a) of that Regulation, destroying, deterring, rendering harmless, preventing the action of, or otherwise exerting a controlling effect on any harmful organism is a biocidal function.
- (5) The horse rug meets the definition of an article as provided under Article 3(2)(c) of Regulation (EU) No 528/2012, since it has a special shape, surface or design which determines its function to a greater degree than does its chemical composition.
- (6) The rug meets the definition of a treated article as provided under Article 3(1)(l) of Regulation (EU) No 528/2012, as permethrin is intentionally incorporated into it with the aim to control insects in the environment of the horse.
- (7) It is therefore essential to establish whether or not the horse rug has a primary biocidal function according to agreed Union guidance ⁽²⁾, in order to define whether it is a treated article or a biocidal product.
- (8) Since: (i) nuisance insects in the environment of the horse are not harmful to the rug itself; (ii) the concentration of permethrin in the rug is comparable to that in biocidal products and higher than the concentration used to control keratin feeding textile pests ⁽³⁾; (iii) the mode of action of permethrin in the rug is identical to that of a biocidal product; and (iv) greater prominence and first importance is given in the product's information to the biocidal function of controlling insects than to other functions of the horse rug (in particular to mitigate cold weather conditions or UV-protection), the horse rug can be considered to have a primary biocidal function and to meet the definition of a biocidal product provided under Article 3(1)(a) of Regulation (EU) No 528/2012.

⁽¹⁾ OJ L 167, 27.6.2012, p. 1.

⁽²⁾ Note for guidance on Frequently asked questions on treated articles (Question 11), available at <https://circabc.europa.eu/w/browse/d7363efd-d8fb-43e6-8036-5bcc5e87bf22>

⁽³⁾ Assessment report of the evaluation of the active substance permethrin for product-type 18 (Section 2.1.2.1. Field of use envisaged/ Function and organism(s) to be controlled), available at http://dissemination.echa.europa.eu/Biocides/ActiveSubstances/1342-18/1342-18_Assessment_Report.pdf

- (9) In accordance with Article 2(2) of Regulation (EU) No 528/2012 it is also important to consider whether the horse rug may fall within the scope of Directive 2001/82/EC of the European Parliament and of the Council ⁽¹⁾ if it meets the definition of a veterinary medicinal product as provided under Article 1(2) of that Directive.
- (10) When the horse rug is not designed to be applied as a topical insecticide and is not used with a view to restoring, correcting or modifying physiological functions by exerting a pharmacological, immunological or metabolic action, or to making a medical diagnosis in horses, and when the horse rug is not presented either as having properties for treating or preventing any horse diseases but to control insects that may be present in the environment of the horse and may disturb the animal, the horse rug does not meet the definition of a veterinary medicinal product as provided under Article 1(2) of Directive 2001/82/EC and therefore falls under the scope of Regulation (EU) No 528/2012.
- (11) Since product-type 18, as defined in Annex V to Regulation (EU) No 528/2012, covers products used for the control of arthropods (e.g. insects, arachnids and crustaceans), by means other than repulsion or attraction, the horse rug should be deemed to belong to product-type 18. Furthermore, as permethrin is not under assessment nor approved ⁽²⁾ for use in biocidal products of product-type 19, the horse rug should not be claimed to have any repellent function.
- (12) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Biocidal Products,

HAS ADOPTED THIS DECISION:

Article 1

A horse rug impregnated with permethrin for the purpose of controlling nuisance insects in the environment of the horse, by means other than repulsion or attraction, shall be considered as a biocidal product in accordance with Article 3(1)(a) of Regulation (EU) No 528/2012 and shall fall within product-type 18 as defined in Annex V to that Regulation.

Article 2

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

Done at Brussels, 8 June 2016.

For the Commission
The President
Jean-Claude JUNCKER

⁽¹⁾ Directive 2001/82/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to veterinary medicinal products (OJ L 311, 28.11.2001, p. 1).

⁽²⁾ Commission Implementing Regulation (EU) No 1090/2014 of 16 October 2014 approving permethrin as an existing active substance for use in biocidal products for product-types 8 and 18 (OJ L 299, 17.10.2014, p. 10).

COMMISSION IMPLEMENTING DECISION (EU) 2016/904**of 8 June 2016****pursuant to Article 3(3) of Regulation (EU) No 528/2012 of the European Parliament and of the Council on propan-2-ol containing products used for hand disinfection****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 528/2012 of the European Parliament and of the Council of 22 May 2012 concerning the making available on the market and use of biocidal products ⁽¹⁾, and in particular Article 3(3) thereof,

Whereas:

- (1) In the context of an application under the Union authorisation procedure referred to in Article 41 of Regulation (EU) No 528/2012, on 3 December 2015 Germany requested the Commission to decide, pursuant to Article 3(3) of that Regulation, whether a group of ready to use propan-2-ol containing products ('the products') placed on the market to be used for hand disinfection, including in this instance surgical hand disinfection, and to be authorised as a biocidal product family as defined in Article 3(1)(s) of that Regulation, are biocidal products.
- (2) Germany considered that the products are medicinal products in accordance with Directive 2001/83/EC of the European Parliament and of the Council ⁽²⁾, arguing that the intended uses of the products show that they aim at preventing diseases in humans, as they can be used in areas and situations where disinfection is medically recommended. According to Germany, this is particularly the case when the products are used by health professionals as a preoperative treatment procedure to prevent the risk of transmission of microorganisms into the surgical wound.
- (3) The products are intended to control a number of bacteria, viruses and fungi, which meet the definition of 'harmful organism' provided under Article 3(1)(g) of Regulation (EU) No 528/2012 since they may have a detrimental effect on humans.
- (4) Since destroying, deterring, rendering harmless, preventing the action of, or otherwise exerting a controlling effect on any harmful organism is a biocidal function, the products meet the definition of a biocidal product provided under Article 3(1)(a) of that Regulation.
- (5) In accordance with Article 2(2) of Regulation (EU) No 528/2012 it is important to consider whether the products may fall within the scope of Directive 2001/83/EC if they meet the definition of a medicinal product as provided under Article 1(2) of that Directive.
- (6) Where the products are solely intended to reduce the micro-organism load on hands and the associated risk of transmitting micro-organisms from potentially contaminated hands and neither used to restore, correct or modify physiological functions by exerting a pharmacological, immunological or metabolic action, nor to make a medical diagnosis in humans, nor presented either as having properties to treat or to prevent any human diseases, the products do not meet the definition of a medicinal product as provided under Article 1(2) of Directive 2001/83/EC and therefore fall under the scope of Regulation (EU) No 528/2012.
- (7) Since product-type 1, as defined in Annex V to Regulation (EU) No 528/2012, covers products used for human hygiene purposes, applied on or in contact with human skin or scalps for the primary purpose of disinfecting the skin or scalp, the products belong to product-type 1.

⁽¹⁾ OJ L 167, 27.6.2012, p. 1.⁽²⁾ Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ L 311, 28.11.2001, p. 67).

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

HAS ADOPTED THIS DECISION:

Article 1

Propan-2-ol containing products to be used in hand disinfection, including in this instance surgical hand disinfection, for the purpose of reducing the risk of transmission of microorganisms shall be considered as biocidal products in accordance with Article 3(1)(a) of Regulation (EU) No 528/2012 and shall fall within product-type 1 as defined in Annex V to that Regulation.

Article 2

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

Done at Brussels, 8 June 2016.

For the Commission
The President
Jean-Claude JUNCKER

III

(Other acts)

EUROPEAN ECONOMIC AREA

EFTA SURVEILLANCE AUTHORITY DECISION

No 110/15/COL

of 8 April 2015

declaring incompatible the NOK 16 million additional aid from Innovation Norway to Finnjord AS (Norway) [2016/905]

[non-confidential version] (*)

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,

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

Having regard to Protocol 3 to the Surveillance and Court Agreement ('Protocol 3'), in particular to Article 7(5) of Part II,

Whereas:

I. FACTS

1. Procedure

- (1) In 2011, the company Finnjord AS ('Finnjord'), was granted NOK 175 million in State aid from the Energy Fund Scheme (see below) for the construction of an energy recovery system at its ferrosilicon production plant. That award of aid was approved by the Authority by Decision No 39/11/COL ⁽¹⁾.
- (2) Following pre-notification discussions that were initiated in November 2012, the Norwegian authorities, by letter of 26 June 2013, notified the additional aid from Innovation Norway ('IN') to Finnjord, pursuant to Article 1(3) of Part I of Protocol 3 ⁽²⁾. It is this measure that is the subject of the current decision.

(*) In this non-confidential version of the decision, information covered by the obligation of professional secrecy has been taken out. Where information has been taken out, this is marked with [...]. Where figures have been excluded, a range within which the figure exists, has, where appropriate, been indicated.

⁽¹⁾ OJ C 278, 22.9.2011, p. 6 and EEA Supplement No 51, 22.9.2011, p. 1.

⁽²⁾ Events Nos 676810, 676812, 676814-676816, 676819, 676822, 676823, 676825-676827, 676829 and 676832-676834.

- (3) By letter dated 5 July 2013 ⁽¹⁾, the Authority requested additional information from the Norwegian authorities. By letter dated 19 August 2013 ⁽²⁾, the Norwegian authorities responded. By letter dated 28 August 2013 ⁽³⁾, the Authority made a further request for information. By letter dated 18 September 2013 ⁽⁴⁾, the Norwegian authorities responded. By letter dated 13 November 2013 ⁽⁵⁾, the Authority informed the Norwegian authorities that it had adopted Decision No 445/13/COL initiating a formal investigation into the notified measure.
- (4) By e-mail dated 21 February 2014 ⁽⁶⁾, the Norwegian authorities provided their comments to the decision. On 10 April 2014, following prolonged discussions with the Norwegian authorities and Finnjord concerning confidential information, the decision was published in the *Official Journal of the European Union* and the EEA Supplement ⁽⁷⁾. Finnjord was the only third party to submit comments ⁽⁸⁾. By letter dated 13 May 2014 ⁽⁹⁾, these comments were forwarded to the Norwegian authorities. By letter dated 6 June 2014 ⁽¹⁰⁾, the Norwegian authorities provided comments to the third party comments. By e-mail of 25 September 2014 ⁽¹¹⁾, Finnjord provided further comments. By e-mail of 8 October 2014 ⁽¹²⁾, the Authority requested further information from Finnjord. By emails of 24 and 27 October 2014 ⁽¹³⁾, Finnjord responded. By letter dated 27 October 2014 ⁽¹⁴⁾, the additional comments and information were forwarded to the Norwegian authorities. By letter dated 12 November 2014 ⁽¹⁵⁾, the Norwegian authorities responded. Between November 2014 and January 2015, the Authority had informal contacts by e-mail and telephone with the Norwegian authorities and Finnjord.

2. The notified measure — the NOK 16 million grant

- (5) The notified proposed measure is a direct grant of NOK 16 million from IN to Finnjord. It is intended to partly cover the increase in the project's costs from NOK [680-720] million to NOK [approximately 800] million.
- (6) IN informed Finnjord of its decision to grant the notified measure by letter dated 10 December 2012.

3. Loans from IN and SNN

- (7) IN has explained that Finnjord needed an additional NOK [80-95] million to complete the energy recovery project. The NOK 16 million therefore only covered part of the cost increases.
- (8) At the same time as it provided the NOK 16 million direct grant to Finnjord, IN also provided Finnjord with a loan of NOK 18 million. At the time, Finnjord had already borrowed NOK 100 million from IN in connection with the same project. None of the loans have been notified to the Authority. IN holds that they have been granted on market terms and therefore do not involve State aid within the meaning of Article 61(1) of the EEA Agreement.
- (9) In parallel with the NOK 18 million loan from IN, Finnjord secured a loan of NOK [45-60] million from the financial institution SpareBank 1 Nord-Norge ('SNN'). Finnjord's existing loans from SNN in connection with the project totalled NOK [300-325] million.
- (10) In sum the NOK 16 million direct grant, and the two loans of NOK 18 million and NOK [45-60] million covered the NOK [80-95] million cost increase.

⁽¹⁾ Event No 677212.

⁽²⁾ Events Nos 680603-680605 and 680866-680868.

⁽³⁾ Event No 681073.

⁽⁴⁾ Events Nos 683806, 683807, 683809, 683810, 683813, 683814, 683817 and 683819.

⁽⁵⁾ Event No 686086.

⁽⁶⁾ Event No 700230.

⁽⁷⁾ OJ C 108, 10.4.2014, p. 2 and EEA Supplement No 22, 10.4.2014, p. 19.

⁽⁸⁾ Letter from Finnjord, undated, registered by the Authority on 16 April 2014 (Event No 705906).

⁽⁹⁾ Event No 708022.

⁽¹⁰⁾ Event No 710453.

⁽¹¹⁾ Events Nos 723413-723421 and 723424.

⁽¹²⁾ Event No 725001.

⁽¹³⁾ Events Nos 726975-726980 and 726985.

⁽¹⁴⁾ Event No 726981.

⁽¹⁵⁾ Event No 729928.

4. Innovation Norway ('IN')

- (11) IN is a public entity established by the Act on Innovation Norway⁽¹⁾. It is owned by the Norwegian State through the Ministry of Local Government and Regional Development (51 %) and by all of the 19 Norwegian County Authorities (49 %). IN is financed by public resources.

5. Enova SF ('Enova')

- (12) Enova SF ('Enova') is a state enterprise⁽²⁾ wholly owned by the Norwegian State through the Ministry of Petroleum and Energy. It is responsible for managing the Energy Fund Scheme, a State aid scheme for the promotion of environmental protection approved by the Authority by Decisions No 125/06/COL⁽³⁾ and No 248/11/COL⁽⁴⁾. Enova is financed by public resources.
- (13) Under the Energy Fund Scheme, Enova arranges competitions for aid where the winning projects are the ones with the best energy result per NOK of aid⁽⁵⁾.

6. Finalisation of the energy recovery project and disbursement of the last tranche of aid from Enova

- (14) Enova only disperses the last 20 % of an individual aid measure when it has approved a final project report⁽⁶⁾. According to a Finnjord press release⁽⁷⁾, the energy recovery system was up and running on 30 October 2012. On 22 November 2012, the final report from Finnjord was approved by Enova. On 23 November 2012, Enova disbursed the last NOK 35 million of aid (20 % of the total aid amount of NOK 175 million).

7. The recipient — Finnjord AS ('Finnjord')

- (15) Finnjord is a family-owned limited liability company. The plant supported by the proposed aid is located in Finnsnes in the County of Troms, the second northernmost county in Norway.

8. Cost increases

- (16) In the notification leading to the Authority's Decision No 39/11/COL of 9 February 2011 approving NOK 175 million in aid from Enova to Finnjord, the budget for Finnjord's energy recovery project was estimated at NOK 511,66 million. The aid was awarded for the replacement of the existing cooling system with an energy recovery unit. The intention was to annually generate 224 GWh of electrical power and recover 125 GWh of process steam. The estimated annual energy production thus amounted to 349 GWh.
- (17) According to the current notification, by February 2011, the estimated budget had already increased by NOK 190 million from NOK 511,66 million to NOK 700 million. Despite this substantial increase, on 7 February 2011 Finnjord's board decided to go ahead with the project. Finnjord did not at that time apply for more aid. The notified aid is not intended to cover the cost increases that led to the NOK 700 million estimate.
- (18) The cost increase stemmed largely from Finnjord's decision to exclusively focus the project on electricity production from steam (and not recover the process steam) by acquiring a more powerful steam turbine. The turbine was ordered on 7 January 2011. A legally binding contract for the turbine was concluded on 23 February 2011. By letter dated 16 February 2011, Finnjord informed Enova that it had ordered the more powerful turbine which would yield an annual production of 344,5 GWh of electrical energy. This higher electrical energy production was thus close to the estimated total production of 349 GWh of electricity and steam. On that basis, Finnjord requested the exclusion of the steam production from the aided project. By letter dated 17 February 2011, Enova approved the change to the project.

⁽¹⁾ LOV 2003-12-19-130 *Lov om Innovasjon Norge*.

⁽²⁾ In Norwegian: *Statsforetak*. Enova is organised in accordance with Act No 71 of 30.8.1991 on state enterprises.

⁽³⁾ EFTA Surveillance Authority Decision No 125/06/COL of 3 May 2006 regarding the Norwegian Energy Fund (Norway) (OJ L 189, 17.7.2008, p. 36) and EEA Supplement No 43, 17.7.2008, p. 1.

⁽⁴⁾ OJ C 314, 27.10.2011, p. 4 and EEA Supplement No 58, 27.10.2011, p. 2.

⁽⁵⁾ The competition for aid under the Energy Fund Scheme is described in the Authority's Decision No 248/11/COL (cited above), paragraphs 27-36.

⁽⁶⁾ See the Authority's Decision No 248/11/COL (cited above), paragraph 37.

⁽⁷⁾ Available on Finnjord's website: http://www.finnjord.no/weve_got_the_power

- (19) Throughout the project phase, Finnjord supplied Enova with progress reports. In its report dated 30 April 2012, Finnjord referred to further cost increases related to the turbine building, steam and condensation pipes, and ditches. The additional costs amounted to approximately NOK 5 million. Finnjord still aimed at keeping the total project costs below the NOK 700 million estimate.
- (20) In its progress report dated 29 June 2012, the total cost estimate remained at NOK 700 million. However, by that time, it was estimated that the project would incur an additional NOK [5-10] million in increased costs. This cost increase was discussed by Finnjord's board in a meeting on 19 June 2012. The Norwegian authorities have not explained why the total cost increase of NOK [10-15] million (...) did not lead to an adjustment of the total cost estimate of NOK 700 million in the progress report of 29 June 2012.
- (21) The Norwegian authorities have explained that Finnjord, at one point during the spring of 2012 entered into informal discussions with Enova about obtaining additional aid to cover the increased project costs. On 5 July 2012, following the informal contacts, Finnjord formally applied for additional aid from Enova. At that time, Finnjord had revised its total cost estimate to NOK [730-760] million.
- (22) The information provided to the Authority indicates that Finnjord, on the basis of a budget review finalised on 31 July 2012, had concluded that the project would incur additional costs and the total cost estimate was increased to between NOK [740] million and NOK [approximately 800] million. The cost increases related to: adaptations of existing machinery, adaptations of three existing furnaces, adaptations of smoke ducts, installations in the turbine building and other buildings, longer production shortfalls than expected, and finalisation of the work and the installations. Finnjord requested additional aid from Enova to ensure that the project would meet its internal requirements of profitability. Finnjord elaborated on the reasons for the cost increases in its progress report dated 12 September 2012.
- (23) In early August 2012, Finnjord informally discussed with Enova the potential postponement of the works on the third furnace and classifying it as a separate project in order to apply for more aid from Enova on the basis of it being a new project.
- (24) By letter dated 20 August 2012, Enova rejected the application for aid.
- (25) When Finnjord's board met on 25 September 2012 the total cost estimate had been set to NOK [approximately 800] million. In that meeting Finnjord's board considered three alternative courses of action:
- (i) Completing the project by financing the cost increases by way of the company's general cash flow.
 - (ii) Postponing the works on the third furnace, classifying it as a separate project and applying for more aid from Enova.
 - (iii) Obtaining NOK [80-95] million of additional financing from Enova (aid), SNN (loan) and IN (loan and aid) in order to complete the project.
- (26) The board decided to proceed according the third alternative.
- (27) IN has provided the Authority with an extract of the board meeting protocol regarding the third alternative. Concerning the applications to Enova and IN for more aid the extract provides the following:

'Potential grants/loans from Enova and [IN] will be used directly to reduce the liquidity loan applied for [from SNN].'⁽¹⁾.

⁽¹⁾ Letter from the Norwegian authorities dated 18 September 2013 (Event No 683806). Translation by the Authority: 'Eventuelle tilskudd/lån fra Enova og Innovasjon Norge, vil gå til direkte reduksjon av omsøkte likviditetslån.'

- (28) According to IN, the board concluded that the first course of action would essentially mean that the project would be financed at the expense of Finnjord's creditors, which would be legally unadvisable and not a tenable solution in the long term. Also, according to IN, the board did not consider the second alternative a viable course of action as it concluded that the postponement of the works on the third furnace would be prohibitively expensive.
- (29) In their comments to the Authority's decision to open the formal investigation, the Norwegian authorities have clarified that the final total cost amounted to NOK [approximately 800] million. The Norwegian authorities have not clarified when this was finally settled.

9. Overview of the cost increases

Date, event	Estimated budget in NOK million
Initial budget as described in Decision No 39/11/COL of 9 February 2011	511,66
7 February 2011, Finnjord board meeting	[680-720]
5 July 2012, Finnjord applies to Enova for more aid	[730-760]
31 July 2012, Finnjord budget review	[740-790]
25 September 2012, Finnjord board meeting	[740-790]
Final total cost	[approximately 800]

10. IN's award of aid and the NOK [80-95] million package

- (30) On 28 August 2012, Finnjord initiated an informal dialogue with IN and SNN in order to obtain the NOK [80-95] million necessary to finance the completion of the project.
- (31) By letter dated 1 October 2012, Finnjord formally applied for additional loans from SNN. Finnjord applied for additional loans and grants from IN on 11 October 2012, without specifying an aid amount.
- (32) It appears that SNN prior to mid-October 2012 had offered Finnjord a loan of NOK [80-95] million. However, SNN made the offer conditional on collateralisation to the detriment of the collateralisation of a pre-existing loan from IN ⁽¹⁾. IN did not accept this solution. Finnjord, SNN and IN instead negotiated the following NOK [80-95] million financing package:
- (i) The aid grant from IN of NOK 16 million.
 - (ii) A short-term loan of NOK 18 million from IN with a rate of [5-9] % (adjustable in accordance with IN risk loan policy) collateralised *pari passu* with a pre-existing loan of NOK 100 million from IN.
 - (iii) A short-term loan of NOK [45-60] million from SNN with an interest rate of [...] months NIBOR ⁽²⁾ + [300-600] bps collateralised *pari passu* with a pre-existing loan of NOK [300-325] million from SNN.

⁽¹⁾ According to IN: 'When Finnjord [...] applied for financing of [80-95] million NOK, [SNN] had already approved a loan of the same amount, but with terms on security that was unacceptable for [IN]' IN letter to the Authority dated 18 September 2013, p. 12.

⁽²⁾ Norwegian Inter Bank Offered Rate.

- (33) The NOK [80-95] million financing package was formalised and accepted by Finnjord by way of a supplementing coordination agreement signed by SNN, IN and Finnjord on 12 December 2012. Such agreement, aimed at regulating the relationship between the three parties, covered the loan agreement between Finnjord and SNN dated 12 December 2012, the loan agreement between Finnjord and IN dated 10 December 2012.
- (34) Whilst the loans from IN and SNN have been disbursed, the NOK 16 million of aid to Finnjord will only be disbursed with the Authority's approval.

11. Comments

11.1. *Comments submitted by the Norwegian authorities in response to the opening of the formal investigation*

- (35) IN stresses that it, at the time when it decided to conditionally grant the NOK 16 million, did not consider lending the money to Finnjord, as the company did not have sufficient collateral to cover new loans up to NOK [80-95] million.
- (36) As to why Finnjord did not apply for more aid from Enova in February 2011, IN clarifies that Enova unilaterally reduced the amount from NOK 200 million and stressed that the NOK 175 million award represented an exceptionally high aid intensity and that no other project could expect to receive similar support. Finnjord therefore considered that an application for further aid would be unsuccessful. However, the company changed its approach when it became aware of Enova's decision to award NOK 350 million in aid to an almost identical project carried out by Elkem AS ⁽¹⁾.
- (37) IN has submitted a revised spreadsheet taking into account comments made by the Authority in the decision to open the formal investigation. Based on the final project cost of NOK [approximately 800] million, a project lifetime of 15 years and a verified gradual increase in electricity production over the first three years to a maximum annual capacity of 344,5 GWh, using the Enova model, the rate of return without the NOK 16 million of aid is calculated to [approximately 9] %. With the aid, the rate of return would be [approximately 11] %. IN submits that the project therefore is not profitable, given Finnjord's general investment policy of requiring a rate of return in the range of [10-20] % for such investments outside the company's core business activities.
- (38) IN stresses that Finnjord based the decision to go ahead with the project on its own internal calculations, which differ from the calculations presented above (based on the Enova model). IN notes that it has not been provided with Finnjord's internal calculations. IN notes that the seemingly conflicting views between IN and Enova most likely stem from the difference between Enova's and IN's internal rules and practices.

11.2. *Third party comments from Finnjord in response to the publication of the decision to open the formal investigation*

- (39) Finnjord refers to what it perceives to represent an apparent contradiction in the Authority's decision where the Authority on the one hand does not exclude outright that the aid could have incentive effect in the case at hand, but at the same time raises the question whether Finnjord considered stopping, reducing or halting the project. Finnjord stresses that although its board had the ambition, up until the board meeting of 25 September 2012, to complete the project, this should not be classified as an expression of a desire or an ability to complete the project at any cost. According to the company, the facts and figures made available to the Authority clearly demonstrate that Finnjord would be unable to pay for the completion of the project without the additional financing. Finnjord could not offer any additional collateral, thus it could not have secured further loan financing. Finnjord therefore rejects the preliminary view of the Authority that the aid would be viewed as a welcome but not strictly necessary element in the financing package.

⁽¹⁾ That aid was approved by the Authority by Decision No 304/13/COL (OJ C 330, 14.11.2013, p. 7 and EEA Supplement No 63, 14.11.2013, p. 5).

- (40) Like IN, Finnjord stresses that the reduction of the Enova aid from NOK 200 million to NOK 175 million was a unilateral policy decision by Enova's board. Finnjord points to what it considers to be a number of inconsistencies in Enova's statements about the incentive effect of additional aid to the project, and stresses that the seemingly conflicting views of Enova and IN about the incentive effect of the aid is of no consequence since Enova's policy is more restrictive than what the Environmental Aid Guidelines ('EAG') ⁽¹⁾ allow for.
- (41) With regard to the assessment of whether aid is the appropriate instrument, Finnjord appears to reject the idea that this assessment should be made on the basis of the specific circumstances of the case at hand, and instead refers back to Decision No 39/11/COL, where the Authority found that the initial grant of NOK 175 million of aid was an appropriate instrument to trigger the investment in the project prior to its implementation.
- (42) With regard to the question of proportionality, the company stresses that the project has become more than twice as costly than initially estimated. The rate of return of 12,35 % was in the lower end of the range of profitability required by Finnjord. The updated rate of return of [approximately 9] % without the NOK 16 million of aid, is explained to be far lower than Finnjord would have accepted 'if it could have acted on its own free will'. Even the rate of return of [approximately 11] % with the NOK 16 million in aid is held to be a rather modest return. Finnjord refers to the aid award as a reasonable burden sharing between IN and SNN, and underlines that the loan capital of the project has increased significantly. The risk of default is carried by the company alone. Thus, in the view of Finnjord, the aid clearly does not lead to overcompensation.
- (43) Finnjord is of the view that additional aid from IN will not undermine the competition mechanism under the Energy Fund Scheme. Finnjord stresses that the competition mechanism under the Energy Fund Scheme merely prevents the least efficient projects from receiving aid when the amounts applied for exceed the budget of the scheme. The company invites the Authority to consider whether a preference for the competitive mechanism under the Energy Fund Scheme could interfere with the Norwegian authorities' right to organise its administration of public funds. In that context, Finnjord states that it doubts that the Authority, beyond the rules on cumulation, has a valid legal basis for ensuring that individual aid awards do not interfere with the workings of an aid scheme. Finnjord explains that the notified aid is distributed in an open and transparent manner.

11.3. *Second round of third party comments from Finnjord*

- (44) During the course of the formal investigation, the Authority received a second round of third party comments from Finnjord, wherein the company elaborates on how its lack of liquidity in the fall of 2012 would have led to the project being stopped without the additional financing package which in turn was triggered by the granting of aid by IN. Finnjord makes reference to the Authority's decision in the *Helguvík Aluminium Smelter* case ⁽²⁾ to substantiate why the notified aid to Finnjord has incentive effect.
- (45) The company provides statements from SNN, Finnjord's accountant and chairman as evidence for the necessity of the aid. The company furthermore provides a spreadsheet featuring an updated calculation of the net present value of the project (verified by IN) which gives a [marginally negative return] % with the aid. Finnjord makes reference to Authority and Commission practice ⁽³⁾ relating to cases of unforeseen cost in innovative projects where aid grants expressed, not as a fixed amount, but rather as a percentage of an unknown total cost were found to be compatible with the functioning of the State aid rules.
- (46) At the request of the Authority, Finnjord subsequently provided copies of the two financing agreements concluded by SNN, IN and Finnjord on 14 June 2011 and 12 December 2012 as well as documentation pertaining to the absence of unpledged collateral.

⁽¹⁾ OJ L 144, 10.6.2010, p. 1 and EEA Supplement No 29, 10.6.2010, p. 1.

⁽²⁾ Decision No 344/09/COL *Helguvík Aluminium Smelter* (OJ C 294, 3.12.2009, p. 17 and EEA Supplement No 64, 3.12.2009, p. 10).

⁽³⁾ Inter alia, the Authority's Decision No 503/08/COL *Test Centre Mongstad* (OJ C 297, 20.11.2008, p. 11 and EEA Supplement No 69, 20.11.2008, p. 2) and the Commission Decision in Case N 117/2007 *Decontamination of the site 'Neue Maxhütte Stahlwerke GmbH'* by '57 Profi-Start GmbH' (OJ C 275, 16.11.2007, p. 2).

11.4. *Comments from the Norwegian authorities to the third party comments*

- (47) The Norwegian authorities have provided comments to the two rounds of third party comments from Finnjord. The Norwegian authorities agree with Finnjord and have clarified minor factual issues concerning the source of funding of the proposed NOK 16 million grant. As the disbursement of funds from the relevant sources is applied in a uniform manner, these clarifications have not proven to be essential for the Authority's assessment of the notified measure.

II. ASSESSMENT

1. Presence of State aid

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

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

- (49) This implies that a measure constitutes State aid within the meaning of Article 61(1) of the EEA Agreement if the following conditions are cumulatively fulfilled: the measure: (i) is granted by the State or through state resources; (ii) confers a selective economic advantage to the beneficiary; and (iii) is liable to impact on trade between Contracting Parties and to distort competition.
- (50) The aid measure must be granted by the state or through state resources. In that context, it is recalled that IN is a public entity. Its grants are funded by the Norwegian State. The notified measure is therefore financed by state resources and transferrable to Finnjord under the control of a public entity controlled by the state. Thus, the Authority considers that state resources are involved.
- (51) In order to constitute State aid, the notified measure must confer on Finnjord advantages that relieves it of charges that are normally borne from its budget. The measure must furthermore be selective in that it favours 'certain undertakings or the production of certain goods'. The NOK 16 million direct grant is a transfer of cash that Finnjord would not have received in its normal course of business. The proposed grant is intended exclusively for Finnjord. Therefore, the Authority concludes that this direct grant provides a selective economic advantage to Finnjord.
- (52) The measure must be liable to distort competition and affect trade between the Contracting Parties to the EEA Agreement to be considered State aid within the meaning of its Article 61(1). According to settled case-law, the mere fact that a measure strengthens the position of an undertaking compared with other undertakings competing in intra-EEA trade, is considered to be sufficient in order to conclude that the measure is liable to affect trade between Contracting Parties and distort competition between undertakings established in other EEA States ⁽¹⁾. Finnjord produces ferrosilicon and microsilica, which it sells on the European market ⁽²⁾. Thus, the Authority concludes that the aid affects trade between the Contracting Parties to the EEA Agreement and distorts competition in the EEA as the beneficiary is active in a sector where trade between Contracting Parties takes place.
- (53) Based on the above findings, the Authority concludes that the notified measure in the form of a direct grant of NOK 16 million from IN to Finnjord constitutes State aid within the meaning of Article 61(1) of the EEA Agreement.

⁽¹⁾ Case E-6/98 *Norway v EFTA Surveillance Authority* [1999] Ct. Rep. 76, paragraph 59; Case 730/79 *Philip Morris v Commission* EU: C:1980:209, paragraph 11 where it is stated that 'When State financial aid strengthens the position of an undertaking compared with other undertakings competing in intra-Community trade the latter must be regarded as affected by that aid'.

⁽²⁾ As described in the Authority's Decision No 39/11/COL (cited above).

2. Procedural requirements

- (54) Pursuant to Article 1(3) of Part I of Protocol 3, 'the EFTA Surveillance Authority shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid (...). The State concerned shall not put its proposed measures into effect until the procedure has resulted in a final decision'.
- (55) By letter dated 26 June 2013, the Norwegian authorities notified the aid measure of NOK 16 million. The aid has been granted conditionally subject to the Authority's approval and has consequently not been disbursed.
- (56) With reference to the information provided, it appears that the aid has been granted on the basis of an aid scheme that had not been notified to the Authority as the Norwegian authorities considered it to be covered by the then applicable General Block Exemption Regulation (the 'GBER') ⁽¹⁾. The grants from Enova and IN represent investment aid to the same undertaking for the same investment project. The Norwegian authorities therefore concluded that the aid to Finnfjord had to be individually notified as it, in cumulation with the aid from Enova, exceeded the threshold for which individual awards of aid are subject to the notification obligation ⁽²⁾.
- (57) On the basis of the above, the Authority concludes that the Norwegian authorities have complied with their obligations stemming from Article 1(3) of Part I of Protocol 3.

3. Compatibility — Legal basis

- (58) IN argues that the aid to Finnfjord is compatible with Article 61(3)(c) of the EEA Agreement as aid for environmental protection. IN stresses that the aid at hand does not represent a form of rescue aid.
- (59) On the basis of Article 61(3)(c) of the EEA Agreement 'aid to facilitate the development of certain economic activities or of certain economic areas' may be considered compatible with the functioning of the EEA Agreement, where such aid does not affect trading conditions and competition in the EEA to an extent that is contrary to the common interest.
- (60) By Decision No 39/11/COL the Authority approved the initial aid from the Energy Fund Scheme to Finnfjord's energy recovery project after having carried out a detailed assessment of that aid in accordance with chapter 5 of the EAG. The Authority concluded that the notified aid from Enova contributed to the protection of the environment by incentivising Finnfjord to carry out an energy saving measure that it would not have carried out without the aid.
- (61) On 16 July 2014, after having opened the formal investigation, the Authority adopted a new set of Guidelines on State aid for environmental protection and energy 2014-2020 (the 'EEAG') ⁽³⁾, replacing the EAG ⁽⁴⁾. The Authority applies the EEAG from the date of their adoption ⁽⁵⁾, also to awards of individual aid notified prior to the adoption of the EEAG where it is called upon to take a decision after the date of adoption ⁽⁶⁾.

⁽¹⁾ Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General block exemption Regulation) (OJ L 214, 9.8.2008, p. 3), incorporated into point 1j of Annex XV to the EEA Agreement.

See Article 6(1)(b) in conjunction with Article 7(1) of the then applicable GBER.

Article 6(1)(b) reads as follows 'This Regulation shall not apply to any individual aid, whether granted ad hoc or on the basis of a scheme, the gross grant equivalent of which exceeds the following thresholds (...) (b) investment aid for environmental protection: EUR 7,5 million per undertaking per investment project'.

⁽²⁾ Article 7(1) reads as follows: 'In determining whether the individual notification thresholds laid down in Article 6 and the maximum aid intensities laid down in Chapter II are respected, the total amount of public support measures for the aided activity or project shall be taken into account, regardless of whether that support is financed from local, regional, national or Community sources.'

⁽³⁾ Not yet published in the OJ or the EEA Supplement, but available on the Authority's website: <http://www.eftasurv.int/state-aid/legal-framework/state-aid-guidelines/>

⁽⁴⁾ Point 237 of the EEAG.

⁽⁵⁾ Point 237 of the EEAG.

⁽⁶⁾ Point 238 of the EEAG. The Authority notes that it will apply the EAG to aid awarded on the basis of *approved* aid schemes when it is called upon to take a decision after the EEAG became applicable. In the case at hand however, it is the Authority's understanding that the notified aid is not granted on the basis an aid scheme approved by the Authority.

- (62) The Authority approved the aid from Enova as an energy saving measure. The EEAG do not contain a chapter on energy savings, instead a chapter on energy-efficiency has been introduced ⁽¹⁾. The Authority assesses the compatibility of the notified aid on the basis of the energy-efficiency chapter of the EEAG.
- (63) The Authority notes that its assessment of the compatibility of the notified measure in the case at hand would not have been materially different had it applied the EAG. To demonstrate this, the relevant principles of both the EEAG and the EAG are referred to in the following.

4. Scope of the formal investigation procedure

- (64) In the decision to open the formal investigation procedure, and assessing the notified measure under the then applicable EAG, the Authority stressed that, given the fact that it has already assessed the compatibility of the aid from Enova to the Finnjord energy recovery project, it did not doubt that the additional aid, due to its relatively small amount compared to the initial aid, is aimed at a market failure. Furthermore, on the assumption that the aid would have incentive effect and would be necessary, the Authority had no doubts that the distortions of competition and effect on trade would be limited so that the overall balance would be positive. These issues will therefore not be dealt with in the following.
- (65) The subject matter of the following assessment is whether the notified aid has incentive effect and is necessary.

5. Compatibility assessment

5.1. *The aid does not have incentive effect nor is it necessary*

- (66) According to the EEAG ⁽²⁾, in order to be compatible with the functioning of the EEA Agreement, aid needs to provide an incentive effect. Whether the notified aid is necessary to produce a real incentive to undertake investment which would not otherwise be made is a crucial element in the compatibility assessment. It has to be verified whether the aid is necessary to provide an incentive effect for the investment, i.e. whether the aid actually contributes to changing the behaviour of the recipient so that the level of environmental protection is increased ⁽³⁾.
- (67) As a general rule, the Authority will consider that no incentive effect exists when the project has started before the submission by the recipient of an application requesting the aid ⁽⁴⁾. As the case at hand relates to the issue of additional aid to cover the increased costs of an ongoing project, the Authority cannot rely on the presumption for the existence of an incentive effect for aid applications submitted prior to the start of works. In February 2011, Finnjord initiated the NOK 700 million project on the basis of NOK 175 million granted in aid.
- (68) However, the Authority does not exclude the incentive effect of aid to a project that has started when the grant of aid unequivocally ensures the completion of projects that would otherwise not have been completed or adding environmental protection that would otherwise not come to fruition ⁽⁵⁾. In assessing the incentive effect of the aid in this light, the counterfactual situation, i.e. what the company would do without the aid, needs to be closely examined.
- (69) The company completed the project in October 2012 without the aid having been disbursed. On the basis of the information and evidence provided, the Authority does not consider that Finnjord realistically considered stopping, reducing the scope of or halting the project after February 2011 until its completion in October 2012. More specifically and with reference to the conclusions drawn in the board meeting of 25 September 2012, it appears that the company, due to the prohibitive cost involved, did not seriously consider stopping nor

⁽¹⁾ In Point 14(2) of the EEAG, 'energy-efficiency' is defined as an amount of saved energy determined by measuring and/or estimating consumption before and after implementation of an energy-efficiency improvement measure, whilst ensuring normalisation for external conditions that affect energy consumption.

⁽²⁾ Points 139 and 44 of the EEAG. See also Points 171-173 of the EAG as well as its points 27-29.

⁽³⁾ Point 44 of the EEAG. See also Point 142 of the EAG.

⁽⁴⁾ Point 45 of the EEAG. See also Point 143 of the EAG.

⁽⁵⁾ Case T-162/06 *Kronoply v Commission* EU:T:2009:2, para. 85. Upheld on appeal Case C-117/09 P *Kronoply v Commission* EU:C:2010:370.

postponing the project, as a whole or in part, nor reducing its scope. The board meeting protocol from 25 September 2012 states that Finnjord intended to seek additional loan financing from SNN and additional aid from Enova and IN, and that any potential aid would be used directly to reduce the loan Finnjord would seek to obtain from SNN.

- (70) This finding has arguably been supported by the company in its comments to the Authority's decision to open the formal investigation procedure. Although the company refers to its need for an additional NOK [80-95] million in funding and appears to state that the very situation in which it found itself indicates that the company considered abandoning the project, this is contradicted by other statements made by the company where reference is made to the absence of 'free will' (see recital 42 above) and, most of all, by the fact that Finnjord completed the project without the aid having been disbursed.
- (71) If the company did not consider itself to have any option other than continuing the project, the aid would not provide the company with any incentive because the company would — with or without the aid — have completed the project. In other words, the counterfactual scenario is that Finnjord would finalise the project without delays and without reducing its scope also without the aid.
- (72) The Authority is unconvinced by the argument that the aid was the trigger for the NOK [80-95] million financing package and necessary for, in particular, the NOK [45-60] million loan from SNN. Even if the SNN loan provides as a condition that the NOK 16 million aid be granted by IN, the funds (both from SNN and IN) were disbursed without the Authority's prior approval of the additional aid. This demonstrates the severability of the loans from the aid grant. A creditor setting the actual disbursement of aid as a condition for further financing would have awaited for the Authority's clearance prior to disbursing further loan capital if this determines the existence of the financing package. Additionally, the information provided to the Authority does not indicate that Finnjord would have to immediately repay the loans in the event that the Authority would not approve the aid.
- (73) In order to be compatible with the functioning of the EEA Agreement, aid must be necessary. The aid must not subsidise the costs of an activity that an undertaking would anyhow incur and must not compensate for the normal business risk of an economic activity ⁽¹⁾. However, aid for additional costs incurred due to unforeseeable external factors, which cannot be seen as part of the normal business risk of the economic activity at issue, could be held to be compatible with the functioning of the EEA Agreement ⁽²⁾.
- (74) The Authority notes that Finnjord in February 2011, when faced with the cost increase from NOK 511,66 million to NOK 700 million, decided to move forward with the project without applying for any further aid. Thus, the relevant cost for this investigation is the NOK [80-95] million increase from NOK 700 million to NOK [approximately 800] million. This represents an increase of approximately [...] %.
- (75) Based on the information provided, as described in recital 22 above, the cost increases stemmed from: adaptations of existing machinery, adaptations of three existing furnaces, adaptations of smoke ducts, installations in the turbine building and other buildings, longer production shortfalls than expected, and finalisation of the work and the installations. These represent the types of cost increases that the company would be expected to take into account when planning for this type of project, and constitute the normal business risk of the economic activity at issue. They cannot be considered to be caused by external factors and do not appear unforeseeable in nature. The case at hand can therefore be distinguished from the *Helguvík Aluminium Smelter* case ⁽³⁾, referred to by Finnjord. In that case the aid beneficiary had difficulties in obtaining financing during the exceptional 2008 financial crisis in Iceland, a circumstance that can rightly be classified as an unforeseeable external factor. On the basis of the above, it is the view of the Authority that what the Norwegian authorities are proposing with the notified aid measure is to compensate Finnjord for the normal business risk of the project that it undertook.
- (76) The Authority acknowledges that the outcome of its assessment may potentially have been different had the Norwegian authorities, instead of proposing two fixed amount aid disbursements (from Enova and then later from IN), granted aid to cover a certain percentage of the eligible costs of the project. This would especially be the case when the scope of the unforeseeable additional costs is substantial and linked to the fact that the project is innovative and the fact that the costs thereby, by their very nature are difficult to estimate in advance. However, this contention is not relevant for the set of facts that the Authority faces in the case at hand.

⁽¹⁾ Point 44 of the EEAG.

⁽²⁾ Case T-162/06 *Kronoply v Commission* EU:T:2009:2, para. 88.

⁽³⁾ Cited above.

- (77) The Authority stresses that it is up to the Norwegian authorities to demonstrate that the conditions for the derogation from Article 61(1) of the EEA Agreement are satisfied ⁽¹⁾. The facts and arguments presented by the Norwegian authorities (and Finnjord) have not convinced the Authority that the notified aid from IN has incentive effect or that it is necessary.
- (78) On the basis of the above, the Authority has concluded that notified aid to Finnjord from IN lacks incentive effect and that it is not necessary. As the aid for those reasons alone is not compatible with the functioning of the EEA Agreement, the Authority will not assess the appropriateness of the aid nor its proportionality.

6. Conclusion — the aid is not compatible

- (79) Based on the information submitted by the Norwegian authorities, the Authority has concluded that the proposed NOK 16 million cash grant from IN to Finnjord constitutes state aid within the meaning of Article 61(1) of the EEA Agreement.
- (80) The Authority has concluded that this aid is not compatible with the functioning of the EEA Agreement. Consequently, the Norwegian authorities are not authorised to implement it.
- (81) The Authority requests the Norwegian authorities to forward a copy of this decision to Finnjord immediately.

HAS ADOPTED THIS DECISION:

Article 1

1. The NOK 16 million direct grant to Finnjord notified by the Norwegian authorities on 26 June 2013 is incompatible with the functioning of the EEA Agreement.
2. It may therefore not be implemented.
3. The formal investigation procedure is hereby closed.

Article 2

This Decision is addressed to the Kingdom of Norway.

Article 3

Only the English language version of this decision is authentic.

Done at Brussels, 8 April 2015.

For the EFTA Surveillance Authority

Oda Helen SLETNES
President

Helga JÓNSDÓTTIR
College Member

⁽¹⁾ Case C-106/09 P *Commission v Government of Gibraltar and United Kingdom* EU:C:2011:732, para. 147. Case C-372/97 *Italy v Commission* EU:C:2004:234, para. 81. C-364/90 *Italy v Commission* EU:C:1993:157, para. 20. Case T-68/03 *Olympiaki Aeroporia Ypiresies AE v Commission* EU:T:2007:253, para. 34.

EFTA SURVEILLANCE AUTHORITY DECISION**No 357/15/COL****of 23 September 2015****to close the formal investigation into State aid in favour of Sandefjord Fotball AS (Norway)
[2016/906]**

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,

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

Having regard to Protocol 3 to the Surveillance and Court Agreement ('Protocol 3'), in particular to Article 7(3) of Part II,

Whereas:

I. FACTS**1. Procedure**

- (1) Following the receipt of complaints and market information, the Authority notified the Norwegian authorities of State aid allegations regarding the financing of the new football stadium in Sandefjord on 31 October 2013 (Document No 686574). In the same correspondence, the Authority requested information on the alleged aid measure, which the Norwegian authorities provided on 29 November 2013 (Documents Nos 691773 and 691774).
- (2) The Authority requested further information from the Norwegian authorities on 16 January 2014 (Document No 694963), which was provided on 14 February 2014 (Document No 699518).
- (3) Based on the information at its disposal, the Authority decided to adopt Decision No 444/14/COL opening the formal investigation procedure into aid in favour of Sandefjord Fotball AS on 22 October 2014 and invited the Norwegian authorities to provide comments. The decision was published in the Official Journal on 15 January 2015, inviting third parties to provide comments within a month of publication.
- (4) The Norwegian authorities were granted an extension of the deadline for comments until 23 December 2014 and provided comments on that date (Documents No 733899-733901). The Authority did not receive any further comments.

2. The beneficiary — Sandefjord Fotball AS

- (5) Sandefjord Fotball club is an association established in 1998 on the basis of a cooperation agreement between the two largest football clubs in the Sandefjord area, namely Sandefjord Ballklubb and IL Runar. The objective of the cooperation was to create a professional football team in Sandefjord that could reach the Norwegian top division.
- (6) Sandefjord Fotball AS, a limited-liability company, operates the professional ('Elite') team ⁽¹⁾. The cooperation between Sandefjord Fotball club and Sandefjord Fotball AS is based on the requirements of the Norwegian Football Association. The club further operates an amateur team and a junior football team. It also runs football summer schools and organises regional football competitions for young amateur players

⁽¹⁾ Further information on the beneficiary can be found in Decision No 444/14/COL.

3. Description of the measure

3.1. Background

- (7) Until 2007, Sandefjord Fotball's Elite team used the municipally owned stadium in Bugårdsparken for training purposes and matches. However, this stadium did not comply with the requirements of the Norwegian football federation for clubs playing in the highest division. An upgrade of the existing stadium was estimated to cost around NOK 40 million, which the municipality of Sandefjord was unwilling to invest.

3.2. The construction of the new stadium

- (8) In 2005, the municipality of Sandefjord and Sandefjord Fotball AS discussed the possibility of constructing a new stadium. The municipality agreed to provide the necessary land, and Sandefjord Fotball AS to finance and run the stadium.
- (9) The municipality acquired several plots of land in the Pindsle area for a total of around NOK 3,7 million. The land was regulated as farmland at the time. The municipality's decision of 6 September 2005 authorising the acquisition foresaw the land to be rezoned for business use and to require the construction of a stadium. In the new zoning plan, the land was split into two parts: plot 152/96 was zoned for mixed stadium and business use, and plot 152/97 for business use. By way of an agreement dated 28 November 2006, both plots of land were then transferred to two wholly-owned subsidiaries of Sandefjord Fotball AS: plot 152/96 to Sandefjord Fotball Stadion AS and plot 152/97 to Sandefjord Fotball Næring AS.
- (10) According to the agreement, Sandefjord Fotball AS was responsible for organising the necessary financing to build the stadium. The construction costs were estimated at NOK 110 million for the project. Sandefjord Fotball AS would contribute NOK 70 million from its own funds and from outside investors, the sale of naming rights, etc., and take out a loan for the remaining NOK 40 million. The contribution of Sandefjord Fotball AS would partly be raised by the sale of the land zoned for business use (plot 152/97) to Pindsle Property AS.
- (11) Besides the construction of the stadium, the agreement contained a number of further obligations. In particular, Sandefjord Fotball AS agreed to carry out road works at the stadium site and to cover costs in relation to the discontinued use of the old stadium, including repairs.
- (12) Shortly after the signing of the agreement, the shares in Sandefjord Fotball Næring AS, which owned plot 152/97, were acquired by Pindsle Property AS for NOK 40 million. No valuation of the company was undertaken prior to the sale.
- (13) The new stadium was completed in July 2007 at a total construction cost of NOK 110 million⁽¹⁾. In addition to the football pitch and stands, it contains a number of other facilities, including an athletics track, a fitness centre and meeting rooms. These are rented out free of charge to other (mainly amateur sport) organisations.

3.3. Subsequent sale of the stadium

- (14) In 2009, Sandefjord Fotball AS encountered financial difficulties. The club decided to raise funds by selling Sandefjord Fotball Stadion AS (the company owning the stadium and adjacent properties on plot 152/96) to Pindsle Property AS. This time, a third-party company valuation was required under Norwegian law as several individuals held board positions and shareholdings in both the company and Pindsle Property AS.
- (15) The expert report of 6 April 2009 valued Sandefjord Fotball Stadion AS at between NOK 14 million and NOK 16 million. The company was sold at a price of NOK 15 million on 9 June 2009.

⁽¹⁾ The Norwegian authorities have confirmed that the initial investment was NOK 110 million. However, the club subsequently invested another NOK 17 million in fixtures and equipment, mostly in the form of work performed by club members ('*dugnadsarbeid*').

4. The opening decision

- (16) On 22 October 2014, the Authority issued its Decision No 444/14/COL opening the formal investigation procedure into aid in favour of Sandefjord Fotball AS.
- (17) In its decision, the Authority came to the preliminary conclusion that the transfer of land to Sandefjord Fotball AS constituted State aid within the meaning of Article 61(1) of the EEA Agreement. In particular, the Authority considered that the transfer took place at below market value both for plot 152/96 (zoned for mixed stadium and business use) and plot 152/97 (zoned for business use).
- (18) As no arguments regarding the compatibility assessment had been put forward by the Norwegian authorities, the Authority had doubts whether the measure could be declared compatible with the functioning of the EEA Agreement.

5. Comments from the Norwegian authorities

- (19) The Norwegian authorities provided comments on the opening decision by way of a letter dated 23 December 2014 (Documents No 733899-733901).

5.1. *The transaction does not involve State aid*

- (20) In their comments, the Norwegian authorities argue that the transfer of land from Sandefjord municipality to Sandefjord Fotball AS did not amount to State aid, as there was no advantage conferred on the alleged beneficiary.
- (21) The Norwegian authorities argue in particular that the market value of the land at issue was negative at the time of the transaction, and have submitted an expert valuation dated 5 February 2014 to that effect. The main reason for the alleged negative value of the land is that Sandefjord Fotball AS was obliged (by the terms of the transfer of land as well as under the zoning rules) to construct a football stadium as part of the transaction, and that the cost of the stadium construction exceeded the value of the land.
- (22) According to the Norwegian authorities, the obligation to construct a stadium could validly be imposed as a 'special obligation' in line with point 2.2(c) of Part V of the Authority's Guidelines on State aid elements in sales of land and buildings by public authorities ('Sale of Land Guidelines')⁽¹⁾.

5.2. *Any aid amount would be very limited*

- (23) Concerning the amount of the alleged State aid, the Norwegian authorities argue that in the event the Authority were to find that the land at issue had a positive market value, this value would be very limited.
- (24) The Norwegian authorities explain that agricultural land enjoys a special protection in Norway. Its sale and/or a change of use for other purposes are subject to strict controls by regional agricultural boards. In the case of the land at issue, the competent agricultural board only accepted the zoning proposal based on the public interest objective of building a stadium. It would not have been possible for a developer to acquire the land for pure business use. Therefore, the market investor principle cannot be applied to the transfer of land. Instead, the Norwegian authorities consider that any market valuation should be based on the price of agricultural land, which was the only realistic alternative use.

⁽¹⁾ Authority guidelines on State aid elements in sales of land and buildings by public authorities, adopted on 17 November 1999. Available at: <http://www.eftasurv.int/state-aid/legal-framework/state-aid-guidelines/>

- (25) In the alternative, regarding the value of the land zoned for business use (plot 152/97) the Norwegian authorities argue that Pindsle Property AS, the company that acquired Sandefjord Fotball Næring AS for NOK 40 million, paid more than market price. In support of this argument, they refer to the valuation report (Annex 11 of Document No 699518), which concluded that plot 152/97 had a market value of about NOK 15 million ⁽¹⁾. The valuation is based on the average price of land zoned for business use in the Pindsle area at the time of the transaction.
- (26) Furthermore, the Norwegian authorities argue that in any event, a number of deductions have to be made to calculate the aid amount. These deductions result from certain obligations Sandefjord Fotball AS assumed for the benefit of the municipality under the agreement dated 28 November 2006: (i) NOK 2,6 million for the renovation of the old stadium; (ii) NOK 400 000 for the replacement of floodlights in the old stadium; (iii) NOK 1,5 million for the construction of a public walkway; and (iv) NOK 5 million for the construction of a roundabout and a pedestrian crossing. In total, the agreement thus foresaw that Sandefjord Fotball AS had to incur costs amounting to NOK 9,5 million (as estimated at the time) in order to provide services for the municipality ⁽²⁾.

5.3. *Any potential State aid should be declared compatible*

- (27) The Norwegian authorities argue that in the event the Authority found a State aid element in the transaction at issue, any such aid should be declared compatible with the functioning of the EEA Agreement under its Article 61(3)(c).
- (28) The Norwegian authorities highlight that the promotion of sport, including the construction of sport infrastructure, constitutes an objective of common interest. They further argue that State aid is necessary and an appropriate instrument in the present case.
- (29) In particular, the Norwegian authorities explain that there was a need for a new stadium in Sandefjord. They point to the high usage pressure on the existing municipal stadium, which was used by Sandefjord Fotball and other teams at the time. Furthermore, a more modern stadium was required to meet the licensing requirements of the Norwegian Football Association to allow Sandefjord Fotball's Elite team — which had been operating under a temporary exemption — to remain in the highest Norwegian league.
- (30) Sandefjord municipality examined the option of upgrading the existing stadium, which would, however, not have addressed the lack of capacity. In contrast, building a new stadium would solve both the capacity and the licensing problems, and in addition create a venue for football across the county of Vestfold. As can be seen from the table below, the new stadium is used by a variety of clubs. Furthermore, the old municipal stadium has been renovated (financed by Sandefjord Fotball AS) and is fully utilised today by local sports clubs (athletics and football), schools and the general public. This further shows that there was a need for a new stadium in Sandefjord and that any state support was appropriate. Furthermore, upgrading the existing stadium would have required an investment of around NOK 40 million by the municipality, without any prospect of attracting private funds.
- (31) The Norwegian authorities also argue that any aid would be proportionate. First of all, they point to the fact that most of the investment costs for the new stadium were financed by Sandefjord Fotball AS, which contributed the maximum amount possible to the construction costs from its own resources and bank loans. This own contribution ensured that the aid amount was kept to the minimum.
- (32) The Norwegian authorities also highlight the non-economic social and amateur sport activities that have been made possible by the stadium construction. The existing municipal stadium is now fully available for amateur sports. In addition, a number of amateur sport and social activities, including school events, are performed on a regular basis in the new stadium.

⁽¹⁾ The valuation report estimates the combined value of plots 152/96 and 152/97 at NOK 31 million. The NOK 15 million results from apportioning this estimate according to the respective size of the two plots.

⁽²⁾ The final costs amounted to NOK 12 million, with the extra cost being covered by Pindsle Property AS.

- (33) To illustrate this point, the Norwegian authorities have submitted the following table summarising the estimated annual occupation of the stadium by various users for the period 2007 to 2014:

Club	Activities	Hours per year	Payment
Sandefjord Fotball Elite team	20 matches (April-October/November) 100 hrs Training April-October/November 2hrs × 5 × 16 = 160 hrs ⁽¹⁾	260	Yes
Sandefjord Fotball Junior and Recruit teams	Training and matches May-September	60	Yes
Cooperation clubs	Training and matches May-September	30	No
Cooperation clubs	Premises for courses and conferences, celebrations, coach and manager forum, lectures	30	No
Sandar IL (sports club)	End games age 14-19 in the Sandar-cup including opening ceremony (and use of the locker rooms)	25	No
Vestfold Fotballkrets (County football association)	Gatherings for teams in Sandefjord and the rest of the county age 14-16 including training and matches, courses and education for coaches	30	No
Sandefjord Fotball Bredde (children and youth sports), amateur tournaments	The administration of the club uses the premises for courses and conferences. Football school during summer, fall and Easter break age 6-12 on the football field. Amateur tournaments 'Company cups'	90	No

⁽¹⁾ During winter, the Elite team trains on an artificial grass field, but uses the lockers and other inside space at the stadium.

- (34) In addition, nearby schools and several athletic clubs use the athletics track during weekdays. There are also school-organised activity days taking place in the stadium.
- (35) The non-professional use of the stadium thus accounts for more than 50 %. The main limitation on a further increase in non-professional use is the resiliency of the natural grass pitch ⁽¹⁾. The professional team is granted preferential access to the stadium by reservation of the football field for home matches and preferential access to the football field for training. The indoor premises (e.g. the locker rooms and the office premises) can be used all year round by any organisation.
- (36) As can be seen from the table above, most non-professional users of the stadium do not pay any rent. In contrast, the Elite team pays an annual rent of NOK 3 million plus 20 % of ticket sales for the use of the stadium. The Norwegian authorities consider this amount to correspond to market rent: comparable teams pay a rent per hour in the range of NOK 2 000 to 5 000, which in sum results in a lower total rent than NOK 3 million annually. The Norwegian authorities therefore consider that Sandefjord Fotball's Elite team does not benefit from any advantage over its competitors from the rent it pays for the stadium use.

⁽¹⁾ There are plans to install an artificial grass pitch to allow for an increased usage.

- (37) Furthermore, the Norwegian authorities highlight that any effect on trade and competition would be very limited due to the local character of the club. Tickets to home matches are in general only sold locally and to supporters of visiting Norwegian teams. Income from kiosk sales during matches varies between NOK 600 000 and NOK 1 million annually. As regards branded merchandise, the market is mostly limited to the supporters in the county of Vestfold. There is no competition between clubs regarding these products. The arena name has been sold to Komplettno, which is a Sandefjord-based web shop for electronics. Only local firms advertise at the arena.
- (38) Even regarding the market for players, the effect on trade and competition is limited. Sandefjord Fotball AS trades players only to a very limited extent and only with other Norwegian clubs. For instance, during the period 2011 to 2013, trading in players has resulted in an income of merely NOK 1,35 million and costs of NOK 860 000.
- (39) Regarding TV rights, the Norwegian authorities explain that these rights are administered centrally by the Norwegian Football Association. A club's share of proceeds depends on its ranking in two highest Norwegian leagues. As there is no real interest for Norwegian league football outside Norway, these TV rights do not have any real impact on trade and competition.

II. ASSESSMENT

1. Presence of State aid

- (40) Article 61(1) of the EEA Agreement reads as follows: 'Save as otherwise provided in this Agreement, any aid granted by EC Member States, EFTA States or through state resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Contracting Parties, be incompatible with the functioning of this Agreement'.
- (41) This means that a measure constitutes State aid within the meaning of Article 61(1) of the EEA Agreement if the following conditions are cumulatively fulfilled: the measure is granted by the state or through state resources, confers a selective economic advantage on an undertaking, and is liable to affect trade between Contracting Parties and to distort competition.

1.1. State resources

- (42) In order to constitute State aid, a measure must be granted by the state or through state resources. The concept of the state does not only refer to the central government, but embraces all levels of the state administration (including municipalities) as well as public undertakings ⁽¹⁾.
- (43) The land at issue was acquired by Sandefjord municipality and then transferred to two subsidiaries of Sandefjord Fotball AS. The Authority therefore concludes that the transfer of land involves state resources.

1.2. Undertaking

- (44) It is well-established case law that undertakings are entities engaged in economic activities, regardless of their legal status and the way in which they are financed ⁽²⁾. Economic activities are activities consisting of offering goods or services on a market ⁽³⁾.
- (45) Sandefjord Fotball AS is a professional football club organised as a private company. It is active on several markets, including the transfer market for football players as well as the markets for ticket sales, television rights, club memorabilia and sponsorship.

⁽¹⁾ Article 2 of 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 at point 1a of Annex XV to the EEA Agreement.

⁽²⁾ Judgment in *Höfner and Elser v Macroton*, C-41/90, EU:C:1991:161, paragraphs 21-22; judgment in *Pavlov and Others*, Joined Cases C-180/98 to C-184/98 EU:C:2000:428; and judgment in *Private Barnehagers Landsforbund v EFTA Surveillance Authority*, E-5/07, EFTA Ct. Rep. 2008, p. 61, paragraph 78.

⁽³⁾ Judgment in *Ministero dell'Economica e delle Finanze v Cassa di Risparmio di Firenze SpA*, C-222/04, EU:C:2006:8, paragraph 108.

- (46) The Authority therefore concludes that Sandefjord Fotball AS constitutes an undertaking within the meaning of Article 61 of the EEA Agreement.

1.3. *Economic advantage*

- (47) A transfer of land to an undertaking may confer an economic advantage, in particular if it takes place at a price that is below the market price.
- (48) A transaction transferring state resources does not constitute State aid when it is carried out in line with normal market conditions so that it does not confer an advantage on an undertaking ⁽¹⁾. This is known as the market economy operator test.

1.3.1. *Transfer of plot 152/96*

- (49) At the time of the transfer to Sandefjord Fotball AS, plot 152/96 was zoned for the construction of a football stadium and business use. Any construction on the plot of land therefore needs to include a stadium in order to receive planning permission. Given that the construction costs of the stadium exceeded any potential value of the land, the Norwegian authorities argue that the market price of plot 152/96 was zero, if not negative.
- (50) The Authority notes that zoning obligations can influence the market price of land. However, the obligation to build a football stadium cannot reduce the market price to zero, in particular in case of a transaction aimed at assisting a football club in building a new stadium ⁽²⁾.
- (51) In addition, the Authority refers to Section 2.2(d) of its Sale of Land Guidelines, which states that in principle, 'the market value should not be set below primary ⁽³⁾ costs during a period of at least three years after acquisition unless the independent valuer specifically identifies a general decline in market prices for land and buildings in the relevant market.' In the case at hand, the municipality of Sandefjord acquired the land that was later divided into plots 152/96 and 152/97 for NOK 3,7 million. The Authority notes that the transfer of land to Sandefjord Fotball AS took place at a price below the acquisition cost for the municipality.
- (52) Based on the above, the Authority concludes that the transfer of plot 152/96 conferred an economic advantage on Sandefjord Fotball AS.

1.3.2. *Transfer of plot 152/97*

- (53) Plot 152/97 was zoned for business use at the time of the transfer to Sandefjord Fotball AS. The Norwegian authorities argue that the transfer of plot 152/97 should be assessed in the context of the contract of 28 November 2006, which obliges the football club in particular to build the stadium in exchange for the land. Given that the estimated construction costs of the stadium exceeded the value of the land, the transfer could not result in the granting of an economic advantage.
- (54) The Authority notes that plot 152/97 is zoned for business use. According to the planning rules, there is thus no obligation to build a stadium in relation to this plot of land. Nor was there any binding restriction based on its former zoning as agricultural land in existence at the time of the transfer to Sandefjord Fotball AS. Only the contract of 28 November 2006 obliges Sandefjord Fotball AS to organise and finance the construction of the stadium. It is the only legal instrument foreseeing that plot 152/97 would be sold to finance part of the construction.

⁽¹⁾ Judgment in *SFEI and Others*, C-39/94, EU:C:1996:285, paragraphs 60-61.

⁽²⁾ In this context, the Authority also refers to Section 2.2(c) of its Sale of Land Guidelines, which states that when carrying out a valuation, '...[o]bligations whose fulfilment would at least partly be in the buyer's own interest should be evaluated with that fact in mind.'

⁽³⁾ I.e. the acquisition costs incurred by the public authority in question.

- (55) The Authority considers that a market economy operator selling land would not have imposed such conditions in relation to the construction or financing of a stadium. The Authority therefore cannot accept the argument that the contractual link between the transfer of plot 152/97 to Sandefjord Fotball AS and the construction of the stadium should be taken into account in the assessment of whether there is an economic advantage.
- (56) The Authority further notes that shortly after the transfer, Sandefjord Fotball AS sold the shares in Sandefjord Fotball Næring AS, the company owning plot 152/97, to Pindsle Property AS for NOK 40 million. This sale indicates that the land at issue had an economic value.
- (57) Based on the foregoing, the Authority concludes that the transfer of plot 152/97 conferred an economic advantage on Sandefjord Fotball AS.

1.4. *Selectivity*

- (58) The alleged State aid results from a transaction between the municipality of Sandefjord and Sandefjord Fotball AS. It represents a selective measure within the meaning of Article 61 of the EEA Agreement, in the sense that it only concerns one particular undertaking.

1.5. *Distortion of competition and effect on trade between Contracting Parties*

- (59) According to the case law regarding effect on trade and distortion of competition, the Authority '[i]s required, not to establish that such aid has a real effect on trade [...] and that competition is actually being distorted, but only to examine whether that aid is liable to affect such trade and distort competition' ⁽¹⁾.
- (60) The mere fact that aid strengthens an undertaking's position compared to that of other undertakings competing in intra-EEA trade is enough to conclude that the measure is liable to distort competition and to affect trade between the Contracting Parties to the EEA Agreement ⁽²⁾.
- (61) In 2006, Sandefjord Fotball's Elite team was playing in the highest Norwegian division, with the possibility of qualifying for European championships. Moreover, professional football clubs deploy economic activities in several markets other than participating in football competitions, such as the transfer market for professional players, publicity, sponsorship, merchandising or media rights. Aid to a professional football club thus potentially strengthens its position on each of those markets, most of which may cover several countries in the EEA. As regards the market for the transfer of players, Sandefjord Fotball AS was at the time — and still is today — active on the transfer market, potentially recruiting players from other countries in the EEA.
- (62) The Authority therefore concludes that the measure is liable to distort competition and to affect trade between the Contracting Parties to the EEA Agreement.

1.6. *Conclusion on the existence of aid*

- (63) Based on the above findings, the Authority concludes that the measure constitutes State aid within the meaning of Article 61(1) of the EEA Agreement.

⁽¹⁾ Judgment in *Italy v Commission*, C-372/97, EU:C:2004:234, paragraph 44.

⁽²⁾ Judgment in *Philip Morris Holland BV v Commission*, C-730/79, EU:C:1980:209, paragraphs 11-12; judgment in *Fesil ASA and Finnjord Smelteverk AS v EFTA Surveillance Authority*, Joined Cases E-5/04, E-6/04, E-7/04, EFTA Ct. Rep. 2005, p. 117, paragraph 94 and judgment in *Libert and others*, Joined Cases C-197/11 and C-203/11, EU:C:2013:288, paragraphs 76-78.

1.7. **Aid amount**

- (64) Regarding plot 152/96, the Authority recognises that the zoning obligation including the construction of a stadium reduces the market value of the land ⁽¹⁾. However, as explained in recital 50 above, a market price of zero cannot be justified in the present case. Based on Section 2.2(d) of the Authority's Sale of Land Guidelines, Sandefjord municipality should have sold the land at least for a price that covered its own acquisition costs. On that basis, the Authority considers the aid amount regarding this plot of land to amount to NOK 1,9 million ⁽²⁾.
- (65) Regarding plot 152/97, the Authority notes that Sandefjord Fotball AS sold the shares in Sandefjord Fotball Næring AS, the company owning plot 152/97, to Pindsle Property AS for NOK 40 million. Pindsle Property AS is a private company, and was not part of the same group as Sandefjord Fotball AS at the time of the transaction. The sale thus took place between two independent companies ⁽³⁾. The Authority has not received any convincing evidence that this transaction did not take place at market price. Accordingly, the Authority considers that it represents the best available indication of market value for plot 152/97.
- (66) Based on the above, the Authority concludes that the total market value of the land transferred to Sandefjord Fotball AS amounted to NOK 41,9 million at the time of the transaction. However, under the agreement dated 28 November 2006, Sandefjord Fotball AS also assumed several obligations to carry out works on behalf of Sandefjord municipality. As set out in recital 26 above, the estimated total cost of these obligations was NOK 9,5 million at the time of the agreement. The Norwegian authorities have explained that but for the terms of the agreement, these works would have been carried out by the municipality. Accordingly, the Authority accepts that their total cost — as foreseen at the time of the agreement — should be deducted from the aid amount.
- (67) The Authority therefore concludes that the total aid granted to Sandefjord Fotball AS amounted to NOK 32,4 million.

2. **Procedural requirements**

- (68) Pursuant to Article 1(3) of Part I of Protocol 3, 'the EFTA Surveillance Authority shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid (...). The state concerned shall not put its proposed measures into effect until the procedure has resulted in a final decision'.
- (69) The transfer of the land at issue has not been the object of a prior notification to the Authority. The Authority therefore concludes that the Norwegian authorities have not complied with their obligations stemming from Article 1(3) of Part I of Protocol 3.

3. **Compatibility**

- (70) Pursuant to Article 61(3)(c) of the EEA Agreement, aid to facilitate the development of certain economic activities or of certain economic areas may be considered compatible with the functioning of the EEA Agreement where such aid does not adversely affect trading conditions to an extent contrary to the common interest.
- (71) The Authority notes that it has not yet issued any guidelines covering State aid for the construction of sports infrastructure. The measure at hand will therefore be assessed directly under Article 61(3)(c) of the EEA Agreement.

⁽¹⁾ See also Decision No 225/15/COL of 10 June 2015 raising no objections to aid in the form of a transfer of land to Vålerenga Fotball, paragraph 31.

⁽²⁾ The municipality of Sandefjord acquired the land that was later divided into plots 152/96 and 152/97 for NOK 3,7 million. The value of NOK 1,9 million results from apportioning this amount according to the respective size of the two plots.

⁽³⁾ This is further shown by the absence of an independent expert valuation, which is required under Norwegian company law for transactions between companies in the same group.

- (72) In line with the practice at the time the aid was granted, the Authority's assessment is based on the following steps:
- Is the aid measure aimed at a well-defined objective of common interest?
 - Is the aid well-designed to deliver the objective of common interest, i.e. does the proposed aid address the market failure or other objective? In particular:
 - Is State aid an appropriate instrument?
 - Is there an incentive effect, i.e. does the aid change the behaviour of the firms?
 - Is the aid measure proportionate, i.e. could the same change in behaviour be obtained with less aid?
 - Are the distortions of competition and effect on trade limited, so that the overall balance is positive?
- (73) The above questions will be addressed in the following paragraphs.

3.1. *Objective of common interest*

- (74) The Authority notes first of all that the promotion of sport is not directly mentioned in the EEA Agreement as a common objective. However, promoting sport can be considered as part of the promotion of education, training and youth as well as social policy. Closer cooperation in these fields is considered an aim of the EEA, as set out notably in Articles 1 and 78 of the EEA Agreement. The modalities of this closer cooperation are further defined in Protocol 31 to the EEA Agreement on cooperation in specific fields outside the four freedoms. Article 4 of this Protocol is headed 'Education, training, youth and sport' and foresees for example the participation of the Contracting Parties in the European Year of Education through Sport 2004. This illustrates the close link between the promotion of sport and the aims set out in the EEA Agreement.
- (75) This interpretation is consistent with the approach of the European Commission ('the Commission'). In the European Union, the promotion of sport is specifically mentioned in Article 165 TFEU, which was introduced by the Lisbon Treaty. However, also prior to the Lisbon Treaty the Commission recognised the specificity of the role sport plays in European society, based on volunteer-driven structures, in terms of health, education, social integration and culture. Since the Lisbon Treaty, the promotion of sport has also been recognised as contributing to the overall goals of the Europe 2020 strategy by improving employability and mobility, notably through actions promoting social inclusion in and through sport, education and training.
- (76) Given the above, the Authority concludes that the promotion of education, training and youth development through sport constitutes an objective of common interest. The Authority further notes that the financing of sport infrastructure can also benefit from the General Block Exemption Regulation if certain conditions are fulfilled. This further demonstrates that the promotion of sport, including the construction of sport infrastructure, represents an objective of common interest.

3.2. *Appropriate instrument*

- (77) In order to assess whether State aid is effective to achieve the identified objective of common interest, the Authority first has to diagnose and define the problem that needs to be addressed. State aid should be targeted towards situations where aid can bring a material improvement that the market alone cannot deliver. In addition, the proposed aid measure must be an appropriate instrument to address the identified objective of common interest.

- (78) There is a recognised market failure in the provision of football stadiums in Norway in the form of a lack of commercial investment in stadiums, which are structurally loss-making as their revenues are insufficient to cover the cost of the investment ⁽¹⁾.
- (79) Furthermore, the Norwegian authorities have demonstrated a genuine need for a new football stadium in Sandefjord. This is evidenced by the capacity problems at the existing municipal stadium at the time of the measure and the fact that the old stadium did no longer fulfil the licensing requirements of the Norwegian Football Association. Finally, given the unprofitable nature of stadium infrastructure, State aid was required to trigger the investment.
- (80) Against this background, the Authority concludes that State aid was an appropriate instrument.

3.3. *Incentive effect*

- (81) The Authority can only declare State aid compatible with the functioning of the EEA Agreement if it has an incentive effect. An incentive effect occurs when the aid induces the beneficiary to change its behaviour to further the identified objective of common interest, a change in behaviour which it would not undertake without the aid.
- (82) The Authority notes first of all that the construction of the stadium had not started before the transfer of land at issue.
- (83) Moreover, the information provided by the Norwegian authorities shows that Sandefjord Fotball AS could not have financed the construction of the stadium without the State aid, as it did not have the financial means nor the ability to borrow sufficient funds to cover the shortfall. Its own financial contribution to the stadium construction was already at the limit of what was possible ⁽²⁾.
- (84) Based on the above, the Authority concludes that the aid measure had an incentive effect.

3.4. *Proportionality*

- (85) State aid is considered to be proportionate if the aid amount is limited to the minimum needed to achieve the identified objective of common interest. The Authority generally bases its assessment of proportionality on the concepts of eligible costs and maximum aid intensities.
- (86) As stated in recital 67 above, the aid amount granted to Sandefjord Fotball AS totals NOK 32,4 million. In order to assess the aid intensity, this figure has to be put in relation to the eligible investment costs. The Authority considers that the expenses incurred by Sandefjord Fotball AS on behalf of Sandefjord municipality, which have been subtracted from the aid amount — see recital 66 above — cannot form part of the eligible costs. The total investment costs of NOK 110 million therefore need to be reduced by NOK 9,5 million. The eligible investment costs therefore amount to NOK 100,5 million, and the corresponding aid intensity is 32 %. The Authority notes that this aid intensity is rather low, and that the rest of the investment was financed by the beneficiary, Sandefjord Fotball AS.
- (87) However, the aid intensity also has to be assessed in the light of the social benefits arising from the stadium infrastructure. As set out in Section I.5.3 above, the stadium is used for a variety of non-professional uses by a number of users including amateur sports teams and schools. Altogether, these non-economic uses represent more than 50 % of the total use of the stadium.

⁽¹⁾ See also Decision No 225/15/COL of 10 June 2015 raising no objections to aid in the form of a transfer of land to Vålerenga Fotball, recital 65.

⁽²⁾ See in particular the information provided in Document No 699518, page 29.

- (88) Furthermore, the Authority notes that the stadium infrastructure is to a certain degree multi-functional, combining a football stadium with an athletics track, a fitness centre and a number of other inside areas. This increases the possibilities to use the stadium for non-economic purposes. Finally, the Authority notes that the Elite team pays market rent for the use of the stadium (see also Section II.3.5 below), whereas the amateur clubs and other non-commercial users can access the stadium for free. This further underlines the social contribution the stadium is making to the community.
- (89) Based on the above, the Authority concludes that the aid measure is proportionate.

3.5. No undue distortion of competition and trade

- (90) For aid to be compatible with the functioning of the EEA Agreement, the negative effects of the aid measure in terms of distortions of competition and impact on trade between Contracting Parties must be limited and outweighed by the positive effects in terms of contribution to the objective of common interest.
- (91) At the outset, the Authority notes that the stadium financed by the State aid at issue primarily has a local and regional focus. The infrastructure is not aimed at attracting international events, nor is it intended to be used extensively by any commercial users other than Sandefjord Fotball's Elite team.
- (92) The Elite team is paying rent for its use of the stadium. The current rental terms are based on negotiations with the private owners of the stadium. There is thus a presumption that the rent corresponds to market terms. This is furthermore confirmed by the comparison with typical stadium rent paid by other clubs, which the Norwegian authorities have provided (see recital 36 above).
- (93) The Authority also notes that the aid intensity is low, and the corresponding contribution by Sandefjord Fotball AS to the investment costs further reduces the risk of distortions.
- (94) Finally, the economic activities carried out by Sandefjord Fotball AS only have a very limited impact on trade and competition within the EEA due to the local character of the club. Its ticket sales, merchandising, sponsorship and advertising activities are primarily aimed at the local community and the county of Vestfold. Its activities on the market for players is also very limited and centred on Norway. Finally, Sandefjord Fotball AS does not have any direct influence on the commercialisation of TV rights, which are administered centrally by the Norwegian Football Association, and in any event only receives very limited income from them.
- (95) The Authority therefore concludes that any distortions of competition and trade caused by the aid measure are limited.

3.6 Balancing and conclusion

- (96) Based on the assessment set out above, the Authority has balanced the positive and negative effects of the notified measure. The Authority concludes that the distortions resulting from the aid measure do not adversely affect trading conditions to an extent contrary to the common interest.

4. Conclusion

- (97) Based on the information submitted by the Norwegian authorities, the Authority has concluded that the transfer of land constitutes State aid within the meaning of Article 61(1) of the EEA Agreement. The Authority has concluded that this aid is compatible with the functioning of the EEA Agreement.

HAS ADOPTED THIS DECISION:

Article 1

The State aid granted in favour of Sandefjord Fotball AS is compatible with the functioning of the EEA Agreement pursuant to Article 61(3)(c) thereof.

Article 2

This Decision is addressed to the Kingdom of Norway.

Article 3

Only the English language version of this decision is authentic.

Done at Brussels, 23 September 2015.

For the EFTA Surveillance Authority

Sven Erik SVEDMAN
President

Helga JÓNSDÓTTIR
College Member

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