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Legislation

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Contents

[1] Text with EEA relevance.

EN

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

The titles of all other acts are printed in bold type and preceded by an asterisk.

III *Other acts*

EUROPEAN ECONOMIC AREA

II

(Non-legislative acts)

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) 2017/1145

of 8 June 2017

on the withdrawal from the market of certain feed additives authorised pursuant to Council Directives 70/524/EEC and 82/471/EEC and repealing the obsolete provisions authorising those feed additives

(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 10(5) 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. In particular Article 10(2), in conjunction with Article 10(7) of that Regulation provide for specific procedures for the re-evaluation of additives authorised pursuant to Council Directive 70/524/EEC ([2]) and Council Directive 82/471/EEC ([3]).

(2) Article 10(5) of Regulation (EC) No 1831/2003 imposes an obligation on the Commission to adopt a Regulation withdrawing from the market feed additives which were entered in the Community Register of Feed Additives as existing products and for which no applications in accordance with Article 10(2) and (7) of Regulation (EC) No 1831/2003 were submitted before the deadline provided for in those provisions, or for which an application was submitted but subsequently withdrawn. Therefore such feed additives should be withdrawn from the market. As Article 10(5) does not differentiate between authorisations issued with a time limit and authorisations without a time limit, for clarity reasons it is appropriate to provide for the withdrawal from the market of feed additives whose limited authorisation periods pursuant to Directive 70/524/EEC have already expired.

(3) As a consequence of the withdrawal from the market of the feed additives it is appropriate to repeal the provisions authorising them. Consequently Commission Regulations (EC) No 2316/98 ([4]), (EC) No 1353/2000 ([5]), (EC) No 2188/2002 ([6]), (EC) No 261/2003 ([7]), (EC) No 1334/2003 ([8]), (EC) No 1259/2004 ([9]), (EC) No 1288/2004 ([10]), (EC) No 1453/2004 ([11]), (EC) No 2148/2004 ([12]), (EC) No 255/2005 ([13]), (EC) No 358/2005 ([14]), (EC) No 521/2005 ([15]), (EC) No 600/2005 ([16]), (EC) No 833/2005 ([17]), (EC) No 943/2005 ([18]), (EC) No 1206/2005 ([19]), (EC) No 1458/2005 ([20]), (EC) No 1810/2005 ([21]), (EC) No 1811/2005 ([22]), (EC) No 2036/2005 ([23]), (EC) No 252/2006 ([24]), (EC) No 773/2006 ([25]), (EC) No 1284/2006 ([26]) and (EU) No 1270/2009 ([27]) should be amended accordingly and Commission Regulations (EC) No 937/2001 ([28]), (EC) No 871/2003 ([29]), (EC) No 277/2004 ([30]), (EC) No 278/2004 ([31]), (EC) No 1332/2004 ([32]), (EC) No 1463/2004 ([33]), (EC) No 1465/2004 ([34]), (EC) No 833/2005, (EC) No 492/2006 ([35]), (EC) No 1443/2006 ([36]), (EC) No 1743/2006 ([37]), (EC) No 757/2007 ([38]) and (EC) No 828/2007 ([39]) should be repealed.

(4) In the case of feed additives for which applications have been submitted only for certain animal species or categories of animals, or applications have been withdrawn only for certain animal species or categories of animals, the withdrawal from the market should only concern the animal species and categories of animals for which no application has been submitted or the application has been withdrawn.

(5) As regards feed additives whose authorisation did not expire until the date of entry into force of this Regulation it is appropriate to allow a transitional period for interested parties within which existing stocks of the additives concerned, premixtures, compound feed and feed materials which have been produced with those additives may be used up, taking account of the shelf-life of certain feed containing the additives in question.

(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

Withdrawal

1. The feed additives specified in Annex I shall be withdrawn from the market in respect of the animal species or categories of animals as specified in that Annex.

2. The feed additives specified in Annex II shall be withdrawn from the market in respect of the animal species or categories of animals as specified in that Annex.

Article 2

Transitional measures

1. Existing stocks of the additives listed in Annex I may continue to be placed on the market and used until 19 July 2018.

2. Premixtures produced with the additives referred to in paragraph 1 may continue to be placed on the market and used until 19 October 2018.

3. Compound feed and feed materials produced with the feed additives referred to in paragraph 1 or with the premixtures referred to in paragraph 2 may continue to be placed on the market and used until 19 July 2019.

Article 3

Repeals

Regulations (EC) No 937/2001, (EC) No 871/2003, (EC) No 277/2004, (EC) No 278/2004, (EC) No 1332/2004, (EC) No 1463/2004, (EC) No 1465/2004, (EC) No 833/2005, (EC) No 492/2006, (EC) No 1443/2006, (EC) No 1743/2006, (EC) No 757/2007 and (EC) No 828/2007 are repealed.

Article 4

Amendment to Regulation (EC) No 2316/98

Annex II to Regulation (EC) No 2316/98, is amended as follows:

(1) in entry E 4 on Copper — Cu, the words 'Cupric methionate' and all content relating only to Cupric methionate are deleted;

(2) in entry E 5 on Manganese — Mn, the words 'Manganic oxide' and all content relating only to Manganic oxide are deleted;

(3) in entry E 5 on Manganese — Mn, the words 'Manganous carbonate' and all content relating only to Manganous carbonate are deleted;

(4) in entry E 5 on Manganese — Mn, the words 'Manganous hydrogen phosphate, trihydrate' and all content relating only to Manganous hydrogen phosphate, trihydrate are deleted;

(5) in entry E 5 on Manganese — Mn, the words 'Manganous sulphate, tetrahydrate' and all content relating only to Manganous sulphate, tetrahydrate are deleted;

(6) in entry E 6 on Zinc — Zn, the words 'Zinc carbonate' and all content relating only to Zinc carbonate are deleted;

(7) in entry E 6 on Zinc — Zn, the words 'Zinc lactate, trihydrate' and all content relating only to Zinc lactate, trihydrate are deleted;

(8) in entry on E 6 Zinc — Zn, the words 'Zinc chloride, monohydrate' and all content relating only to Zinc chloride, monohydrate are deleted.

Article 5

Amendment to Regulation (EC) No 1353/2000

Regulation (EC) No 1353/2000 is amended as follows:

(1) Article 1 is deleted;

(2) Annex I is deleted.

Article 6

Amendment to Regulation (EC) No 2188/2002

In Annex I to Regulation (EC) No 2188/2002 in entry 11, on 'Endo-1,4-beta-glucanase EC 3.2.1.4 Endo-1,3(4)-beta-glucanase EC 3.2.1.6 Endo-1,4-beta-xylanase EC 3.2.1.8' the words 'laying hens' and all content relating only to laying hens are deleted.

Article 7

Amendment to Regulation (EC) No 261/2003

Regulation (EC) No 261/2003 is amended as follows:

(1) Article 1 is replaced by the following:

'*Article 1*

The preparation specified in Annex I, belonging to the group "Enzymes" is authorised for use as additive in animal nutrition under the conditions laid down in that Annex.';

(2) Annex II is deleted.

Article 8

Amendment to Regulation (EC) No 1334/2003

The Annex to Regulation (EC) No 1334/2003, is amended as follows:

(1) in entry E 4 on Copper — Cu, the words 'Cupric methionate' and all content relating only to Cupric methionate are deleted;

(2) in entry E 5 on Manganese — Mn, the words 'Manganic oxide' and all content relating only to Manganic oxide are deleted;

(3) in entry E 5 on Manganese — Mn, the words 'Manganomanganic oxide' and all content relating only to Manganomanganic oxide are deleted;

(4) in entry E 5 on Manganese — Mn, the words 'Manganous carbonate' and all content relating only to Manganous carbonate are deleted;

(5) in entry E 5 on Manganese — Mn, the words 'Manganous hydrogen phosphate, trihydrate' and all content relating only to Manganous hydrogen phosphate, trihydrate are deleted;

(6) in entry E 5 on Manganese — Mn, the words 'Manganous sulphate, tetrahydrate' and all content relating only to Manganous sulphate, tetrahydrate are deleted;

(7) in entry E 6 on Zinc — Zn, the words 'Zinc carbonate' and all content relating only to Zinc carbonate are deleted;

(8) in entry E 6 on Zinc — Zn, the words 'Zinc lactate, trihydrate' and all content relating only to Zinc lactate, trihydrate are deleted;

(9) in entry E 6 on Zinc — Zn, the words 'Zinc chloride, monohydrate' and all content relating only to Zinc chloride, monohydrate are deleted.

Article 9

Amendment to Regulation (EC) No 1259/2004

Regulation (EC) No 1259/2004 is amended as follows:

(1) Article 2 is replaced by the following:

'*Article 2*

The preparations belonging to the group "enzymes", as set out in Annexes III and VI are authorised for use without a time limit as additive in animal nutrition under the conditions laid down in those Annexes.';

(2) Annex V is deleted.

Article 10

Amendment to Regulation (EC) No 1288/2004

Annex I to Regulation (EC) No 1288/2004 is amended as follows:

(1) entry E 161(z), on 'Astaxantin-rich *Phaffia Rhodozyma* (ATCC 74219)' is deleted;

(2) entry E 1704, on '*Saccharomyces cerevisiae* CBS 493.94' for calves is deleted.

Article 11

Amendment to Regulation (EC) No 1453/2004

Annex II to Regulation (EC) No 1453/2004 is amended as follows:

(1) Entry E 1609 on 'Endo-1,4-beta-xylanase EC 3.2.1.8 Endo-1,4-beta-glucanase EC 3.2.1.4' is deleted;

(2) Entry E 1610 on 'Endo-1,4-beta-glucanase EC 3.2.1.4 Endo-1,4-beta-xylanase EC 3.2.1.8' is deleted;

(3) Entry E 1611 on 'Endo-1,3(4)-beta-glucanase EC 3.2.1.6 Endo-1,4-beta-xylanase; EC 3.2.1.8 Polygalacturonase EC 3.2.1.15' is deleted.

Article 12

Amendment to Regulation (EC) No 2148/2004

Regulation (EC) No 2148/2004 is amended as follows:

(1) Articles 3, 4 and 5 are deleted;

(2) in Annex I, in entry E 567, on 'Clinoptilolite of volcanic origin' the word 'rabbits' and all content relating only to rabbits are deleted;

(3) in Annex II, entry E 1706 on '*Enterococcus faecium* DSM 7134, *Lactobacillus rhamnosus* DSM 7133' is deleted;

(4) Annexes III, IV and V are deleted.

Article 13

Amendment to Regulation (EC) No 255/2005

In Annex II to Regulation (EC) No 255/2005, entry E 1618 on 'Endo-1,4-beta-xylanase EC 3.2.1.8' is deleted.

Article 14

Amendment to Regulation (EC) No 358/2005

Annex I to Regulation (EC) No 358/2005 is amended as follows:

(1) entry E 1619 on 'Alpha-amylase EC 3.2.1.1 and Endo-1,3(4)-beta-glucanase EC 3.2.1.6' is deleted;

(2) entry E 1622 on 'Endo-1,3(4)-beta-glucanase EC 3.2.1.6 and Endo-1,4-beta-xylanase EC 3.2.1.8' is deleted.

Article 15

Amendment to Regulation (EC) No 521/2005

Regulation (EC) No 521/2005 is amended as follows:

(1) Article 1 is deleted;

(2) Annex I is deleted.

Article 16

Amendment to Regulation (EC) No 600/2005

Regulation (EC) No 600/2005 is amended as follows:

(1) Articles 1 and 2 are deleted;

(2) Annexes I and II are deleted;

(3) in Annex III, entry E 1709 on '*Enterococcus faecium* ATCC 53519 and *Enterococcus faecium* ATCC 55593 (In a 1/1 ratio)' is deleted.

Article 17

Amendment to Regulation (EC) No 943/2005

Annex II to Regulation (EC) No 943/2005 is amended as follows:

(1) entry E 1630 on 'Endo-1,4-betaxylanase EC 3.2.1.8 and Subtilisin EC 3.4.21.62' is deleted;

(2) entry E 1631 on 'Endo-1,3(4)-beta-glucanase EC 3.2.1.6 and Endo-1,4-beta-xylanase EC 3.2.1.8' is deleted;

(3) entry E 1632 '3-Phytase EC 3.1.3.8' is deleted.

Article 18

Amendment to Regulation (EC) No 1206/2005

In the Annex to Regulation (EC) No 1206/2005, entry E 1633 'on Endo-1,3(4)-beta-glucanase EC 3.2.1.6, Endo-1,4-beta-xylanase EC 3.2.1.8 and Subtilisin and EC 3.4.21.62' is deleted.

Article 19

Amendment to Regulation (EC) No 1458/2005

Regulation (EC) No 1458/2005 is amended as follows:

(1) Article 1 is deleted;

(2) Annex I is deleted;

(3) in Annex II to the Regulation, entry 60 on 'on Endo-1,4-beta-xylanase EC 3.2.1.8, Endo-1,3(4)-beta-glucanase EC 3.2.1.6' is deleted.

Article 20

Amendment to Regulation (EC) No 1810/2005

In Annex IV to Regulation (EC) No 1810/2005, entry 15 on '*Enterococcus faecium* NCIMB 11181' is deleted.

Article 21

Amendment to Regulation (EC) No 1811/2005

(1) In Annex I to Regulation (EC) No 1811/2005, entry E 1635 on 'Endo-1,3(4)-beta-glucanase EC 3.2.1.6' is deleted.

(2) In Annex II to Regulation (EC) No 1811/2005, entry 63 on 'on Endo-1,4-beta-xylanase EC 3.2.1.8 and Endo-1,3(4)-beta-glucanase EC 3.2.1.6' is deleted.

Article 22

Amendment to Regulation (EC) No 2036/2005

Regulation (EC) No 2036/2005 is amended as follows:

(1) Article 2 is deleted;

(2) Annex II is deleted.

Article 23

Amendment to Regulation (EC) No 252/2006

Regulation (EC) No 252/2006 is amended as follows:

(1) Article 2 is deleted;

(2) Annex II is deleted;

(3) in Annex III, entry 28 on '3-Phytase EC 3.1.3.8' is deleted.

Article 24

Amendment to Regulation (EC) No 773/2006

Regulation (EC) No 773/2006 is amended as follows:

(1) Article 3 is deleted;

(2) Annex III is deleted.

Article 25

Amendment to Regulation (EC) No 1284/2006

Regulation (EC) No 1284/2006 is amended as follows:

(1) Article 1 and Article 3 are deleted;

(2) Annex I and Annex III are deleted.

Article 26

Amendment to Regulation (EU) No 1270/2009

Regulation (EU) No 1270/2009 is amended as follows:

(1) Article 1 is deleted;

(2) Annex I is deleted.

Article 27

Entry into force

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 2017.

For the Commission
The President
Jean-Claude JUNCKER

(1) OJ L 268, 18.10.2003, p. 29.
(2) Council Directive 70/524/EEC of 23 November 1970 concerning additives in feeding-stuffs (OJ L 270, 14.12.1970, p. 1).
(3) Council Directive 82/471/EEC of 30 June 1982 concerning certain products used in animal nutrition (OJ L 213, 21.7.1982, p. 8).
(4) Commission Regulation (EC) No 2316/98 of 26 October 1998 concerning authorisation of new additives and amending the conditions for authorisation of a number of additives already authorised in feedingstuffs (OJ L 289, 28.10.1998, p. 4).
(5) Commission Regulation (EC) No 1353/2000 of 26 June 2000 concerning the permanent authorisation of an additive and the provisional authorisation of new additives, new additive uses and new preparations in feedingstuffs (OJ L 155, 28.6.2000, p. 15).
(6) Commission Regulation (EC) No 2188/2002 of 9 December 2002 concerning the provisional authorisation of new uses of additives in feedingstuffs (OJ L 333, 10.12.2002, p. 5).
(7) Commission Regulation (EC) No 261/2003 of 12 February 2003 concerning the provisional authorisation of new uses of additives in feedingstuffs (OJ L 37, 13.2.2003, p. 12).
(8) Commission Regulation (EC) No 1334/2003 of 25 July 2003 amending the conditions for authorisation of a number of additives in feedingstuffs belonging to the group of trace elements (OJ L 187, 26.7.2003, p. 11).
(9) Commission Regulation (EC) No 1259/2004 of 8 July 2004 concerning the permanent authorisation of certain additives already authorised in feedingstuffs (OJ L 239, 9.7.2004, p. 8).

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

(11) Commission Regulation (EC) No 1453/2004 of 16 August 2004 concerning the permanent authorisation of certain additives in feedingstuffs (OJ L 269, 17.8.2004, p. 3).

(12) Commission Regulation (EC) No 2148/2004 of 16 December 2004 concerning the permanent and provisional authorisations of certain additives and the authorisation of new uses of an additive already authorised in feedingstuffs (OJ L 370, 17.12.2004, p. 24).

(13) Commission Regulation (EC) No 255/2005 of 15 February 2005 concerning the permanent authorisations of certain additives in feedingstuffs (OJ L 45, 16.2.2005, p. 3).

(14) Commission Regulation (EC) No 358/2005 of 2 March 2005 concerning the authorisations without a time limit of certain additives and the authorisation of new uses of additives already authorised in feedingstuffs (OJ L 57, 3.3.2005, p. 3).

(15) Commission Regulation (EC) No 521/2005 of 1 April 2005 concerning the permanent authorisation of an additive and the provisional authorisation of new uses of certain additives already authorised in feedingstuffs (OJ L 84, 2.4.2005, p. 3).

(16) Commission Regulation (EC) No 600/2005 of 18 April 2005 concerning a new authorisation for 10 years of a coccidiostat as an additive in feedingstuffs, the provisional authorisation of an additive and the permanent authorisation of certain additives in feedingstuffs (OJ L 99, 19.4.2005, p. 5).

(17) Commission Regulation (EC) No 833/2005 of 31 May 2005 concerning the permanent authorisation of additives in feedingstuffs (OJ L 138, 1.6.2005, p. 5).

(18) Commission Regulation (EC) No 943/2005 of 21 June 2005 concerning the permanent authorisation of additives in feedingstuffs (OJ L 159, 22.6.2005, p. 6).

(19) Commission Regulation (EC) No 1206/2005 of 27 July 2005 concerning the permanent authorisation of certain additives in feedingstuffs (OJ L 197, 28.7.2005, p. 12).

(20) Commission Regulation (EC) No 1458/2005 of 8 September 2005 concerning the permanent and provisional authorisations of certain additives in feedingstuffs and the provisional authorisation of new uses of certain additives already authorised in feedingstuffs (OJ L 233, 9.9.2005, p. 3).

(21) Commission Regulation (EC) No 1810/2005 of 4 November 2005 concerning a new authorisation for 10 years of an additive in feedingstuffs, the permanent authorisation of certain additives in feedingstuffs and the provisional authorisation of new uses of certain additives already authorised in feedingstuffs (OJ L 291, 5.11.2005, p. 5).

(22) Commission Regulation (EC) No 1811/2005 of 4 November 2005 concerning the provisional and permanent authorisations of certain additives in feedingstuffs and the provisional authorisation of a new use of an additive already authorised in feedingstuffs (OJ L 291, 5.11.2005, p. 12).

(23) Commission Regulation (EC) No 2036/2005 of 14 December 2005 concerning the permanent authorisations of certain additives in feedingstuffs and the provisional authorisation of a new use of certain additives already authorised in feedingstuffs (OJ L 328, 15.12.2005, p. 13).

(24) Commission Regulation (EC) No 252/2006 of 14 February 2006 concerning the permanent authorisations of certain additives in feedingstuffs and the provisional authorisations of new uses of certain additives already authorised in feedingstuffs (OJ L 44, 15.2.2006, p. 3).

(25) Commission Regulation (EC) No 773/2006 of 22 May 2006 concerning the provisional and permanent authorisation of certain additives in feedingstuffs and the provisional authorisation of a new use of an additive already authorised in feedingstuffs (OJ L 135, 23.5.2006, p. 3).

(26) Commission Regulation (EC) No 1284/2006 of 29 August 2006 concerning the permanent authorisations of certain additives in feedingstuffs (OJ L 235, 30.8.2006, p. 3).

(27) Commission Regulation (EU) No 1270/2009 of 21 December 2009 concerning the permanent authorisations of certain additives in feedingstuffs (OJ L 339, 22.12.2009, p. 28).

(28) Commission Regulation (EC) No 937/2001 of 11 May 2001 concerning the authorisation of new additive uses, new additive preparation, the prolongation of provisional authorisations and the 10 year authorisation of an additive in feedingstuffs (OJ L 130, 12.5.2001, p. 25).

(29) Commission Regulation (EC) No 871/2003 of 20 May 2003 permanently authorising a new additive manganomanganic oxide in feedingstuffs (OJ L 125, 21.5.2003, p. 3).

(30) Commission Regulation (EC) No 277/2004 of 17 February 2004 concerning the authorisation without a time limit of an additive in feedingstuffs (OJ L 47, 18.2.2004, p. 20).

(31) Commission Regulation (EC) No 278/2004 of 17 February 2004 concerning the provisional authorisation of a new use of an additive already authorised in feedingstuffs (OJ L 47, 18.2.2004, p. 22).

(32) Commission Regulation (EC) No 1332/2004 of 20 July 2004 concerning the permanent authorisation of certain additives in feedingstuffs (OJ L 247, 21.7.2004, p. 8).

(33) Commission Regulation (EC) No 1463/2004 of 17 August 2004 concerning the authorisation for 10 years of the additive 'Sacox 120 microGranulate' in feedingstuffs, belonging to the group of coccidiostats and other medicinal substances (OJ L 270, 18.8.2004, p. 5).

(34) Commission Regulation (EC) No 1465/2004 of 17 August 2004 concerning the permanent authorisation of an additive in feedingstuffs (OJ L 270, 18.8.2004, p. 11).

(35) Commission Regulation (EC) No 492/2006 of 27 March 2006 concerning the provisional and permanent authorisation of certain additives in feedingstuffs (OJ L 89, 28.3.2006, p. 6).

(36) Commission Regulation (EC) No 1443/2006 of 29 September 2006 concerning the permanent authorisations of certain additives in feedingstuffs and an authorisation for 10 years for a coccidiostat (OJ L 271, 30.9.2006, p. 12).

(37) Commission Regulation (EC) No 1743/2006 of 24 November 2006 concerning the permanent authorisation of an additive in feedingstuffs (OJ L 329, 25.11.2006, p. 16).

([38]) Commission Regulation (EC) No 757/2007 of 29 June 2007 concerning the permanent authorisation of certain additives in feedingstuffs (OJ L 172, 30.6.2007, p. 43).

([39]) Commission Regulation (EC) No 828/2007 of 13 July 2007 concerning the permanent and provisional authorisation of certain additives in feedingstuffs (OJ L 184, 14.7.2007, p. 12).

ANNEX I

Additives referred to in Article 1(1)

PART A

Feed additives to be withdrawn for all species and categories of animals

Identification Number	Additive	Species or category of animals
	Preservatives	
E 201	Sodium sorbate	All species
E 203	Calcium sorbate	All species
E 261	Potassium acetate	All species
E 283	Potassium propionate	All species
E 333	Calcium citrates	All species
E 334	L-Tartaric acid	All species
E 335	Sodium L-tartrates	All species
E 336	Potassium L-tartrates	All species
E 337	Potassium sodium L-tartrate	All species
E 507	Hydrochloric acid	All species
E 513	Sulphuric acid	All species
	Antioxidants	
E 308	Synthetic gamma tocopherol	All species
E 309	Synthetic delta tocopherol	All species
E 311	Octyl gallate	All species
E 312	Dodecyl gallate	All species
	Binders, anti-caking agents and coagulants	
E 330	Citric acid	All species

Identification Number	Additive	Species or category of animals
	Colourants, including pigments	
	Other colourants	
Relevant E number	Colouring agents authorised for colouring foodstuffs by Community rules, with the exception of Allura Red E 129; Brilliant Black PN E 151; Brilliant Blue FCF E 133; Caramel colours E150b, E150c and E150d; Chlorophyllin Copper Complex E 141; Erythrosine E 127; Indigotine E 132; Iron Oxide Red, Black & Yellow E 172; Ponceau 4 R E 124; Titanium dioxide (anatase & rutile structure) E 171; Vegetal Carbon E 153; Tartrazine E 102; Sunset yellow FCF E 110;	All species
E 142	Acid brilliant green BS/(Lissamine green)	All species
	Emulsifying and stabilizing agents, thickeners and gelling agents	
E322	Lecithins (only as stabilizing agents, thickeners and gelling agents)	All species
E 400	Alginic acid	All species
E 402	Potassium alginate	All species
E 404	Calcium alginate	All species
E 405	Propane-1,2-diol alginate (Propyleneglycol alginate)	All species
E 432	Polyoxyethylene (20)-sorbitan monolaurate	All species
E 434	Polyoxyethylene (20)-sorbitan monopalmitate	All species
E 435	Polyoxyethylene (20)-sorbitan monostearate	All species
E 436	Polyoxyethylene (20)-sorbitan tristearate	All species
E 465	Ethylmethylcellulose	All species
E 473	Sucrose esters of fatty acids (esters of saccharose and edible fatty acids)	All species
E 474	Sucroglycerides (mixture of esters of saccharose and mono- and di-glycerides of edible fatty acids)	All species
E 475	Polyglycerol esters of non-polymerised edible fatty acids	All species
E 477	Mono-esters of propane-1,2-diol (propyleneglycol) and edible fatty acids, alone or in mixtures with diesters	All species
E 480	Stearoyl 2-lactylic acid	All species
E 481	Sodium stearoyl 2-lactylate	All species
E 482	Calcium stearoyl 2-lactylate	All species
E 483	Stearyl tartrate	All species
E 486	Dextrans	All species

Identification Number	Additive	Species or category of animals
E 491	Sorbitan monostearate	All species
E 492	Sorbitan tristearate	All species
E 494	Sorbitan monooleate	All species
E 495	Sorbitan monopalmitate	All species
E 496	Polyethyleneglycol 6000	All species
E 497	Polyoxypropylene-polyoxyethylene polymers (M.W. 6 800-9 000)	All species
	Trace elements	
E 1	**Iron — Fe**, Ferrous chloride, tetrahydrate	All species
E 1	**Iron — Fe**, Ferrous citrate, hexahydrate	All species
E 1	**Iron — Fe**, Ferrous lactate, trihydrate	All species
E 2	**Iodine — I**, Calcium iodate, hexahydrate	All species
E 2	**Iodine — I**, Sodium iodide	All species
E 4	**Copper — Cu**, Cupric methionate	All species
E 5	**Manganese — Mn**, Manganic oxide	All species
E 5	**Manganese — Mn**, Manganomanganic oxide	All species
E 5	**Manganese — Mn**, Manganous carbonate	All species
E 5	**Manganese — Mn**, Manganous hydrogen phosphate, trihydrate	All species
E 5	**Manganese — Mn**, Manganous sulphate, tetrahydrate	All species
E 6	**Zinc — Zn**, Zinc carbonate	All species
E 6	**Zinc — Zn**, Zinc chloride monohydrate	All species
E 6	**Zinc — Zn**, Zinc lactate, trihydrate	All species
E 7	**Molybdenum — Mo**, Ammonium molybdate	All species
E 8	**Selenium — Se**, Sodium selenate	All species
	Vitamins, provitamins and chemically well-defined substances having similar effect	
	Betaine. All forms with the exception of betaine anhydrous and betaine hydrochloride	All species
	Biotin. All forms with the exception of D-(+)-biotin	All species

Identification Number	Additive	Species or category of animals
	Carnitine. All forms with the exception of L carnitine and L carnitine L-tartrate	All species
	Choline. All forms with the exception of choline chloride	All species
	Folate. All forms of folate with the exception of folic acid	All species
	Niacin. All forms of niacin with the exception of niacin 99 % and niacinamide	All species
	Omega-3 Essential Unsaturated Fatty acids	All species
	Omega-6 Essential Unsaturated Fatty acids (all with exception of octadecadienoic acid)	All species
	Pantothenic acid. All forms with the exception of Calcium-D-pantothenate and D-panthenol	All species
	Para-amino benzoic acid (PABA)	All species
	Thiamine. All forms with the exception of thiamine hydrochloride and thiamine mononitrate	All species
	Vitamin A. All forms with the exception of retinyl acetate, retinyl palmitate and retinyl propionate	All species
	Vitamin B_6. All forms with the exception of pyridoxine hydrochloride	All species
	Vitamin C. All forms with the exception of ascorbic acid, sodium ascorbyl phosphate, sodium calcium ascorbyl phosphate	All species
	Vitamin E. All forms with the exception of *all-rac-alpha-tocopheryl acetate, RRR-alpha-tocopheryl acetate and RRR alpha tocopherol*	All species
	Vitamin K. All forms of Vitamin K with the exception of Vitamin K_3 as menadione nicotinamide bisulphite and as L-menadione sodium bisulphite	All animal species
	Amino acids, their salts and analogues	
3.1.3.	Methionine/Methionine-zinc, technically pure	All species
3.2.1.	Lysine/L-lysine, technically pure	All species
3.4.2.	DL-Tryptophan, technically pure	All species
	Silage additives	
	Enzymes	
	Xylanase EC 3.2.1.8 from *Trichoderma longibrachiatum* rifar IMI SD185	All species

Identification Number	Additive	Species or category of animals
	Microorganisms	
	Enterococcus faecium BIO 34	All species
	Lactobacillus salivarius CNCM I-3238/ATCC 11741	All species
	Pediococcus pentosaceus NCIMB 30089	All species
	Substances	
	Formaldehyde	All species
	Sodium bisulphate	All species
	Flavouring and appetising substances	
	Natural products — botanically defined	
	Birch tincture CoE 88	All species
	Natural products and corresponding synthetic products	
	CAS No 16630-52-7/3-(Methylthio)butanal/Flavis No 12.056	All species
	CAS No 2179-60-4/Methyl propyl disulfide/Flavis No 12.019	All species
	CAS No 36431-72-8/Theaspirane/Flavis No 13.098	All species
	CAS No 3738-00-9/1,5,5,9-Tetramethyl-13-oxatricyclo [8.3.0.0.(4.9)]tridecane/Flavis No 13.072	All species
	CAS No 40789-98-8/3-Mercaptobutan-2-one/Flavis No 12.047	All species
	CAS No 43040-01-3/3-Methyl-1,2,4-trithiane/Flavis No 15.036	All species
	CAS No 495-62-5/1,4(8),12-Bisabolatriene/Flavis No 01.016	All species
	CAS No 516-06-3/D,L-Valine/Flavis No 17.023	All species
	CAS No 5756-24-1/Dimethyl tetrasulfide/Flavis No 12.116	All species
	CAS No 6028-61-1/Dipropyl trisulfide/Flavis No 12.023	All species
	CAS No 689-67-8/6,10-Dimethyl-5,9-undecadien-2-one/Flavis No 07.216	All species
	CAS No 78-98-8/2-Oxopropanal/Flavis No 7.001	All species

PART B

Feed additives to be withdrawn for certain species or categories of animals

Identification Number	Additive	Species or category of animals
	Preservatives	
E 214	Ethyl 4-hydroxybenzoate	Pets
E 215	Sodium ethyl 4-hydroxybenzoate	Pets
E 216	Propyl 4-hydroxybenzoate	Pets
E 217	Sodium propyl 4-hydroxybenzoate	Pets
E 218	Methyl 4-hydroxybenzoate	Pets
E 219	Sodium methyl 4-hydroxybenzoate	Pets
E 222	Sodium bisulphite	Dogs; Cats
E 223	Sodium metabisulphite	Dogs; Cats
E 285	Methylpropionic acid	Ruminants, at the beginning of rumination
	Acidity regulators	
E 210	Benzoic acid	Pigs for fattening
E 340(iii)	Tripotassium orthophosphate	Cats; Dogs
E 350(i)	Sodium malate (Salt of DL- or L-Malic Acid)	Cats; Dogs
E 507	Hydrochloric acid	Cats; Dogs
E 513	Sulphuric acid	Cats; Dogs
	Binders, anti-caking agents and coagulants	
E 567	Clinoptilolite of volcanic origin	Rabbits
E 598	Synthetic calcium aluminates	Dairy cows; Cattle for fattening; Calves; Lambs; Kids; Poultry; Rabbits; Pigs
	Colourants, including pigments	
	Carotenoids and xanthophylls	
E 161b	Lutein	Cats & dogs
E 160c	Capsanthin	Turkeys

Identification Number	Additive	Species or category of animals
E 161c	Cryptoxanthin	Poultry
E 160e	Beta-apo-8′-carotenal	Poultry
E 161g	Canthaxanthin	All species and uses with the exception of: — Chickens for fattening and minor poultry species for fattening for uses belonging to the functional group 2 (a) (ii) — Laying poultry and poultry reared for laying for uses belonging to the functional group 2 (a) (ii). — Ornamental birds and ornamental fish for uses belonging to the functional group 2 (a) (iii)
E 161j	Astaxanthin	All species with the exception of: — Salmon and trout for uses belonging to the functional groups 2(a) (i) and 2(a) (iii) — Ornamental fish for uses belonging to the functional group 2(a) (i)
E 161z	Astaxantin-rich *Phaffia Rhodozyma* (ATCC 74219)	Salmon; Trout
	Other colourants	
E 155	Brown HT	Cats; Dogs
E 104	Quinoline yellow	Food producing animals
E 122	Azorubine (carmoisine)	All species with the exception of cats and dogs
E 160b	Bixin	All species with the exception of dogs and cats
	Emulsifying and stabilizing agents, thickeners and gelling agents	
E 401	Sodium alginate	All species with the exception of Fish; Pets and other non-food producing animals (non-food fur animals)
E 403	Ammonium alginate	All species or categories of animals with the exception of aquarium fish
E 406	Agar	All species with the exception of Pets and other non-food producing animals (non-food fur animals)

Identification Number	Additive	Species or category of animals
E 407	Carrageenan	All species with the exception of Pets and other non-food producing animals (non-food fur animals)
E 418	Gellan gum	Dogs; cats
E 488	Polyoxyethylated glyceride of tallow fatty acids	Calves
E 489	Ether of polyglycerol and of alcohols obtained by the reduction of oleic and palmitic acids	Calves
E 498	Partial polyglycerol esters of polycondensed fatty acids of castor oil	Dogs
	Enzymes	
E 1600	3-Phytase/EC 3.1.3.8 produced by *Aspergillus niger* (CBS 114.94)	Piglets; Pigs for fattening; Sows; Chickens for fattening; Laying hens
E 1600	3-Phytase/EC 3.1.3.8 produced by *Aspergillus niger* (CBS 114.94)	Turkeys for fattening
E 1605	Endo-1,4-beta-xylanase/EC 3.2.1.8 produced by *Aspergillus niger* (CBS 520.94)	Chickens for fattening
E 1608	Endo-1,4-beta-xylanase/EC 3.2.1.8/Endo-1,4-beta-glucanase/EC 3.2.1.4 produced by *Humicola insolens* (DSM 10442)	Chickens for fattening
E 1609	Endo-1,4-beta-xylanase/EC 3.2.1.8/Endo-1,4-beta-glucanase/EC 3.2.1.4 produced by *Aspergillus niger* (CBS 600.94) (coated, solid and liquid forms)	Chickens for fattening; Turkeys for fattening; Piglets (weaned)
E 1609	Endo-1,4-beta-xylanase/EC 3.2.1.8/Endo-1,4-beta-glucanase/EC 3.2.1.4 produced by *Aspergillus niger* (CBS 600.94) (granulate form)	Chickens for fattening; Turkeys for fattening; Piglets (weaned)
E 1610	Endo-1,4-beta-glucanase/EC 3.2.1.4/Endo-1,4-beta-xylanase/EC 3.2.1.8 produced by *Aspergillus niger* (CBS 600.94)	Chickens for fattening
E 1611	Endo-1,3(4)-beta-glucanase/EC 3.2.1.6 produced by *Trichoderma longibrachiatum* (ATCC 2106)/Endo-1,4-beta-xylanase/EC 3.2.1.8 produced by *Trichoderma longibrachiatum* (IMI SD 135)/Polygalacturonase/EC 3.2.1.15 produced by *Aspergillus aculeatus* (CBS 589.94)	Pigs for fattening

Identification Number	Additive	Species or category of animals
E 1614	6-Phytase/EC 3.1.3.26 produced by *Aspergillus oryzae* (DSM 11857)	Chickens for fattening; Laying hens; Turkeys for fattening; Piglets; Pigs for fattening; Sows
E 1615	Endo-1,3(4)-beta-glucanase/EC 3.2.1.6 produced by *Trichoderma longibrachiatum* (CNCM MA 6-10 W)	Chickens for fattening
E 1618	Endo-1,4-beta-xylanase/EC 3.2.1.8 produced by *Aspergillus niger* (CBS 270.95)	Chickens for Fattening; Turkeys for Fattening
E 1619	Alpha-amylase/EC 3.2.1.1/Endo-1,3(4)-beta-glucanase/EC 3.2.1.6 produced by *Bacillus amyloliquefaciens* (DSM 9553)	Chickens for fattening
E 1622	Endo-1,3(4)-beta-glucanase/EC 3.2.1.6/Endo-1,4-beta-xylanase/EC 3.2.1.8 produced by *Trichoderma longibrachiatum* (CBS 357.94)	Chickens for fattening
E 1623	Endo-1,3(4)-beta-glucanase/EC 3.2.1.6 produced by *Trichoderma longibrachiatum* (ATCC 2106), endo-1,4-beta-xylanase/EC 3.2.1.8 produced by *Trichoderma longibrachiatum* (ATCC 2105) and subtilisin/EC 3.4.21.62 produced by *Bacillus subtilis* (ATCC 2107)	Chickens for fattening
E 1624	Endo-1,3(4)-beta-glucanase/EC 3.2.1.6 produced by *Trichoderma longibrachiatum* (ATCC 2106), endo-1,4-beta-xylanase/EC 3.2.1.8 produced by *Trichoderma longibrachiatum* (IMI SD 135) and alpha-amylase/EC 3.2.1.1 produced by *Bacillus amyloliquefaciens* (DSM 9553)	Piglets (weaned)
E 1625	Endo-1,3(4)-beta-glucanase/EC 3.2.1.6 produced by *Trichoderma longibrachiatum* (ATCC 2106), endo-1,4-beta-xylanase/EC 3.2.1.8 produced by *Trichoderma longibrachiatum* (IMI SD 135), alpha-amylase/EC 3.2.1.1 produced by *Bacillus amyloliquefaciens* (DSM 9553) and polygalacturonase/EC 3.2.1.15 produced by *Aspergillus aculeatus* (CBS 589.94)	Piglets (weaned)
E 1626	Endo-1,4-beta-xylanase/EC 3.2.1.8 produced by *Trichoderma longibrachiatum* (ATCC 2105) and subtilisin/EC 3.4.21.62 produced by *Bacillus subtilis* (ATCC 2107)	Piglets (weaned)
E 1627	Endo-1,3(4)-beta-glucanase/EC 3.2.1.6 produced by *Trichoderma longibrachiatum* (ATCC 2106) and endo-1,4-beta-xylanase/EC 3.2.1.8 produced by *Trichoderma longibrachiatum* (ATCC 2105)	Pigs for fattening

Identification Number	Additive	Species or category of animals
E 1628	Endo-1,4-beta-xylanase/EC 3.2.1.8 produced by *Trichoderma longibrachiatum* (ATCC 2105)	Piglets (weaned); Pigs for fattening; Chickens for fattening
E 1629	Endo-1,4-beta-xylanase/EC 3.2.1.8 produced by *Trichoderma longibrachiatum* (ATCC 2105) and endo-1,3(4)-beta-glucanase/EC 3.2.1.6 produced by *Trichoderma longibrachiatum* (ATCC 2106)	Chickens for fattening
E 1630	Endo-1,4-beta-xylanase/EC 3.2.1.8 produced by *Trichoderma longibrachiatum* (ATCC 2105) and subtilisin/EC 3.4.21.62 produced by *Bacillus subtilis* (ATCC 2107)	Chickens for fattening
E 1631	Endo-1,3(4)-beta-glucanase/EC 3.2.1.6 produced by *Trichoderma longibrachiatum* (ATCC 2106) and endo-1,4-beta-xylanase/EC 3.2.1.8 produced by *Trichoderma longibrachiatum* (IMI SD 135)	Chickens for fattening
E 1632	3-Phytase/EC 3.1.3.8 produced by *Trichoderma reesei* (CBS 528.94)	Chickens for fattening; Piglets (weaned); Pigs for fattening
E 1633	Endo-1,3(4)-beta-glucanase/EC 3.2.1.6 produced by *Trichoderma longibrachiatum* (ATCC 2106), endo-1,4-beta-xylanase/EC 3.2.1.8 produced by *Trichoderma longibrachiatum* (ATCC 2105) and subtilisin/EC 3.4.21.62 produced by *Bacillus subtilis* (ATCC 2107)	Chickens for fattening
E 1634	Endo-1,3(4)-beta-glucanase/EC 3.2.1.6 produced by *Aspergillus niger* (MUCL 39199)	Chickens for fattening
E 1635	Endo-1,3(4)-beta-glucanase/EC 3.2.1.6 produced by *Trichoderma longibrachiatum* (ATCC 2106)	Chickens for fattening
E 1636	Endo-1,3(4)-beta-glucanase produced by *Trichoderma reesei* (CBS 526.94/EC 3.2.1.6)	Piglets (weaned); Chickens for fattening
E 1637	Endo-1,4-beta-xylanase produced by *Trichoderma longibrachiatum* (ATCC 2105)/EC 3.2.1.8 and Endo-1,3(4)-beta-glucanase/EC 3.2.1.6 and alpha-amylase produced by *Bacillus amyloliquefaciens* (DSM 9553)/EC 3.2.1.1; subtilisin produced by *Bacillus subtilis* (ATCC 2107)/EC 3.4.21.62 and polygalacturonase produced by *Aspergillus aculeatus* (CBS 589.94)/EC 3.2.1.15	Chickens for fattening

Identification Number	Additive	Species or category of animals
E 1638	Endo-1,3(4)-beta-glucanase/EC 3.2.1.6 produced by *Trichoderma longibrachiatum* (ATCC 2106), endo-1,4-beta-xylanase/EC 3.2.1.8 produced by *Trichoderma longibrachiatum* (ATCC 2105) and alpha-amylase/EC 3.2.1.1 produced by *Bacillus amyloliquefaciens* (DSM 9553)	Piglets (weaned)
E 1639	3-Phytase produced by *Hansenula polymorpha* (DSM 15087)	Chickens for fattening; Turkeys for fattening; Laying hens; Piglets; Pigs for fattening; Sows
E 1640	6-Phytase produced by *Schizosaccharomyces pombe* (ATCC 5233)/EC 3.1.3.26	Chickens for fattening
E 1641	Endo-1,4-beta-xylanase produced by *Trichoderma longibrachiatum* (MUCL 39203)/EC 3.2.1.8	Chickens for fattening
	Micro-organisms	
E 1704	*Saccharomyces cerevisiae* CBS 493.94	Calves
E 1706	*Enterococcus faecium* DSM 7134, *Lactobacillus rhamnosus* DSM 7133	Piglets (weaned)
E 1709	*Enterococcus faecium* ATCC 53519, *Enterococcus faecium* ATCC 55593 (In a 1/1 ratio)	Chickens for fattening
E 1714	*Lactobacillus farciminis* CNCM MA 67/AR	Piglets (weaned)
	Chemically well-defined substances having a similar biological effect to vitamins	
3a900	Inositol	All species with the exception of fish and crustacean
—	Omega-6 Essential Unsaturated Fatty acids (as octadecadienoic acid)	All species with the exception of Pigs for fattening; Sows for reproduction; Sows, in order to have benefit in piglets; Cows for reproduction; Dairy cows for milk production
3a370	Taurine	All species with the exception of canidae, felidae mustelidae and carnivorous fish
E 670	Vitamin D_2	Pigs; Piglets; Bovines; Ovines; Calves; Equines; Other species or categories of animals with the exception of poultry and fish
	Urea and its derivatives	
2.1.2.	Biuret, technically pure	Ruminants from the beginning of rumination

Identification Number	Additive	Species or category of animals
2.1.3.	Urea-phosphate, technically pure	Ruminants from the beginning of rumination
2.1.4.	Diureidoisobutane, technically pure	Ruminants from the beginning of rumination
Flavouring and appetising substances		
Natural products and corresponding synthetic products		
	CAS No 134-20-3/Methyl anthranilate/Flavis No 09.715	Avian species
	CAS No 85-91-6/Methyl N-methylanthranilate/Flavis No 09.781	Avian species
	CAS No 93-28-7/Eugenyl acetate/Flavis No 09.020	Poultry and fish
	CAS No 97-53-0/Eugenol/Flavis No 04.003	Fish
	CAS No 107-85-7/3-Methylbutylamine/Flavis No 11.001	Laying hens
	CAS No 75-50-3/Trimethylamine/Flavis No 11.009	Laying hens
	CAS No 6627-88-9/4-Allyl-2,6-dimethoxyphenol/Flavis No 04.051	Fish and poultry
	CAS No 593-81-7/Trimethylamine hydrochloride/Flavis No 11.024	Laying hens

ANNEX II

Feed additives referred to in Article 1(2)

Identification Number	Additive	Species or category of animals
	Enzymes	
11	Endo-1,4-beta-glucanase/EC 3.2.1.4/Endo-1,3(4)-beta-glucanase/EC 3.2.1.6 and endo-1,4-beta-xylanase/EC 3.2.1.8 produced by *Trichoderma longibrachiatum* (ATCC 74 252)	Laying hens
28	3-Phytase/EC 3.1.3.8 produced by *Trichoderma reesei* (CBS 528.94)	Laying hens
30	Endo-1,3(4)-beta-glucanase/EC 3.2.1.6/Endo-1,4-beta-xylanase/EC 3.2.1.8 produced by *Penicillium funiculosum* (IMI SD 101)	Piglets (weaned); Ducks for fattening
37	Endo-1,4-beta-xylanase/EC 3.2.1.8 produced by *Trichoderma longibrachiatum* (ATCC 2105)/and subtilisin/EC 3.4.21.62 produced by *Bacillus subtilis* (ATCC 2107)	Laying hens
51	Endo-1,4-beta-xylanase/EC 3.2.1.8 produced by *Bacillus subtilis* (LMG S-15136)	Pigs for fattening
60	Endo-1,4-beta-xylanase/EC 3.2.1.8 produced by *Trichoderma longibrachiatum* (ATCC 2105)and endo-1,3(4)-beta-glucanase/EC 3.2.1.6 produced by *Trichoderma longibrachiatum* (ATCC 2106)	Turkeys for fattening
63	Endo-1,4-beta-xylanase/EC 3.2.1.8 produced by *Trichoderma reesei* (CBS 529.94) and endo-1,3(4)-beta-glucanase/EC 3.2.1.6 produced by *Trichoderma reesei* (CBS 526.94)	Turkeys for fattening; Chickens for fattening
64	Endo-1,3(4)-beta-glucanase/EC 3.2.1.6 produced by *Aspergillus aculeatus* (CBS 589.94) and endo-1,4-beta-xylanase/EC 3.2.1.8 produced by *Aspergillus oryzae* (DSM 10287)	Chickens for fattening; Piglets (weaned)
	Micro-organisms	
15	*Enterococcus faecium* NCIMB 11181	Chickens for fattening
24	*Kluyveromyces marxianus var. lactis* K1 BCCM/MUCL 39434	Dairy cows
25	*Lactobacillus acidophilus* DSM 13241	Cats, Dogs
	Coccidiostats and other medicinal substances	
E 764	Halofuginone hydrobromide 6g/kg (Stenorol)	Chickens reared for laying
E 766	Salinomycin sodium 120 g/kg (Sacox 120) (holder of the authorisation Huvepharma NV)	Rabbits for fattening
E 766	Salinomycin sodium 120 g/kg (Salinomax 120G) (holder of the authorisation Zoetis Belgium SA)	Chickens for fattening

COMMISSION IMPLEMENTING REGULATION (EU) 2017/1146

of 28 June 2017

re-imposing a definitive anti-dumping duty on imports of threaded tube or pipe cast fittings, of malleable cast iron, originating in the People's Republic of China, manufactured by Jinan Meide Castings Co., Ltd

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union [1] ('the basic Regulation'), and in particular Article 9(4) thereof,

Whereas:

1. PROCEDURE

(1) By Implementing Regulation (EU) No 430/2013 [2] ('the contested Regulation'), the Council imposed a definitive anti-dumping duty at rates ranging from 14,9 % to 57,8 % on imports of threaded tube or pipe cast fittings, of malleable cast iron, currently falling within CN code ex 7307 19 10 (TARIC code 7307 19 10 10) and originating in the People's Republic of China and Thailand. Bodies of compression fittings using ISO DIN 13 metric thread and malleable iron threaded circular junction boxes without having a lid are not covered by the duty.

The Judgement of the General Court of the European Union

(2) On 12 June 2013, one cooperating Chinese exporting producer, Jinan Meide Castings Co., Ltd ('Jinan Meide or the applicant'), lodged an application at the General Court of the European Union ('the General Court') seeking the annulment of the contested Regulation in so far as it applies to the applicant [3].

(3) On 30 June 2016, the General Court in its judgment found that the rights of defence of Jinan Meide were breached by the rejection of its request for disclosure of normal value calculations using confidential data of an analogue country producer. Jinan Meide had obtained an exclusive authorisation from the analogue country producer waving the confidentiality of its data. In particular, the General Court found that the Commission was wrong to rely on the need to comply with the principle of equal treatment in order to reject this request for disclosure. The General Court held that it could not be ruled out that if the request had been accepted, the outcome of the investigation could have been different. Therefore, the Court annulled the contested Regulation in so far as it imposed an anti-dumping duty on imports of threaded tube or pipe cast fittings, of malleable cast iron, manufactured by Jinan Meide.

2. IMPLEMENTATION OF THE GENERAL COURT'S JUDGMENT

(4) According to Article 266 of the Treaty on the Functioning of the European Union, the Union institutions are obliged to comply with the Court's judgment of 30 June 2016.

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[1] OJ L 176, 30.6.2016, p. 21.

[2] Council Implementing Regulation (EU) No 430/2013 of 13 May 2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of threaded tube or pipe cast fittings, of malleable cast iron, originating in the People's Republic of China and Thailand and terminating the proceeding with regard to Indonesia (OJ L 129, 13.5.2013, p. 1).

[3] Case T-424/13 Jinan Meide Castings Co Ltd v Council.

(5) In its judgment in case T-2/95 [1] (the 'IPS case'), the Court of First Instance recognised that, in cases where a proceeding consists of several administrative steps, the annulment of one of those steps does not annul the complete proceeding. The anti-dumping proceeding is an example of such a multi-step proceeding. Consequently, the annulment of the contested Regulation in relation to one party does not imply the annulment of the entire procedure prior to the adoption of that Regulation. The EU institutions have the possibility to remedy the aspects of the contested Regulation which led to its annulment, while leaving unchanged the uncontested parts which are not affected by the Court judgment — as was held by the Court of Justice in case C-458/98 P [2].

(6) It should be noted that apart from the finding that the Commission was wrong to rely on the need to comply with the principle of equal treatment in order to reject Jinan Meide's request for disclosure, all other findings made in the contested Regulation which were not contested within the time-limits for a challenge or which were contested but rejected by the General Court's judgment or not examined by the General Court and therefore did not lead to the annulment of the contested Regulation, remain valid.

(7) Following the Court's judgment of 30 June 2016, the Commission published a notice [3] concerning the partial reopening of the anti-dumping investigation concerning imports of threaded tube or pipe cast fittings, of malleable cast iron, originating in the People's Republic of China. The reopening was limited in scope to the implementation of the judgment of the General Court with regard to Jinan Meide.

(8) The Commission officially advised Jinan Meide, the representatives of the exporting country and the Union industry of the partial reopening of the investigation. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time-limit set out in the notice.

(9) Following the initial comments received, all other interested parties known to be concerned from the original investigation were contacted and given the opportunity to make their views known in writing and to request a hearing.

(10) All interested parties who so requested were granted the opportunity to be heard by the Commission services and/or the Hearing officer.

2.1. **Comments of interested parties**

(11) The Commission received submissions on various aspects of the investigation from Jinan Meide, other Chinese exporting producers, one Thai exporting producer, five Union producers and eight unrelated importers.

2.1.1. *Comments on the reopening*

(12) Jinan Meide argued that the illegality committed by the Union Institutions which led to the annulment of contested Regulation cannot be cured and the proceeding should be terminated without re-imposing any anti-dumping duty on Jinan Meide.

(13) As stated above in recital 4, the Court of First Instance in the IPS case recognised that, in cases where a proceeding consists of several administrative steps, such as in an anti-dumping proceeding, the annulment of one of those steps does not annul the complete proceeding. Since the Union institutions are obliged to comply with the Court's judgment, this implies the possibility to remedy the aspects of the contested Regulation which led to its annulment, while leaving unchanged the uncontested parts. The claim was therefore rejected.

(14) One unrelated importer claimed that it is procedurally not possible to reopen an investigation which has previously been concluded, as substantive failures would consequently occur, like accepting new information after the closure of a case, discrimination against all other parties to the investigation whose dumping margins would be different if Jinan Meide's dumping margin was amended and a breach of EU and WTO law in the sense that anti-dumping measures cannot be applied retroactively.

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[1] Case T-2/95 Industrie des poudres sphériques (IPS) v Council [1998] ECR II-3939.
[2] Case C-458/98 P Industrie des poudres sphériques (IPS) v Council [2000] ECR I-08147.
[3] OJ C 398, 28.10.2016, p. 57.

(15) This importer also claimed that a reopening does not appear to be permitted under the terms of the basic Regulation.

(16) The same party also stated that the Commission is not authorised to take action to implement a Court judgment in respect of a Council Regulation as the Commission was not the defendant in Case T-424/13. It claimed that the Commission needs to receive formal instructions from the Council to launch a reopening.

(17) It is clear from the judgment of joined cases C-283/14 and C-284/14 [1] that the EU Institutions may reopen an anti-dumping investigation to amend irregularities found by the European Courts even though this is not expressly provided for in the basic Regulation. The EU Institutions are in fact required to take the necessary measures to remedy illegalities. In this case, as the investigating authority, the Commission reopened the investigation in order to implement the Court's judgement. The reopening of this investigation follows the legal procedures required by the basic Regulation, which provide for adoption by the Commission after consulting the Member States under the examination procedure referred to in Article 15(3) of the basic Regulation. The claims were therefore rejected.

(18) One importer stated that it was not clear to what extent a reopening can be carried on under the provisions of the current basic Regulation, as it is apparent the Commission intended to pursue the investigation as if it were put back in time when Council Regulation (EC) No 1225/2009 [2] was still in force.

(19) The law applicable to this reinvestigation is Regulation (EC) No 1225/2009, which was the substantive law at the time of the adoption of the regulation annulled by the Court. In any event, Regulation (EU) 2016/1036 is a codification of Regulation (EC) No 1225/2009 and its amendments. The argument was therefore rejected.

(20) An exporting producer from Thailand argued that the Commission must re-impose the duty of 40,8 % on Jinan Meide without modification, as the General Court did not find fault with any substantive findings, only a procedural irregularity. It also claimed that any substantive reconsideration can only address the normal value calculation for Jinan Meide and all other findings in the contested Regulation should remain valid, as there was no indication in the General Court's judgment that remedying the procedural irregularity should result in any substantive changes to the normal value calculation for Jinan Meide.

(21) In the judgment leading to the present reopening, the General Court held that it could not be ruled out that if the request for disclosure of confidential data of the analogue country producer had been accepted, the outcome of the investigation could have been different. The reopening has therefore to examine possible impact on substance of the investigation. The argument was therefore rejected.

(22) One unrelated importer argued that as the Union industry did not submit any comments concerning the reopening, which allegedly meant that there is no Union interest to conduct this reopened investigation.

(23) The lack of submission by a certain type of operator cannot *per se* lead to any conclusion on substance in an investigation. In any case, five Union producers requested the Commission to re-impose the anti-dumping duty on Jinan Meide urgently and even to register imports for potential retroactive imposition of duties, in order to limit the damage the current situation causes to the Union producers. The argument was therefore rejected.

2.1.2. *Comments on the calculation of normal value*

(24) Jinan Meide claimed that it should get comprehensive access to all information submitted by the analogue country producer and abundant time to lodge comments. All such information was made available to Jinan Meide, and Jinan Meide had time to lodge comments beyond the time-frame foreseen in the basic Regulation, including several hearings with the case team and with the Hearing Officer. Following disclosure of the confidential information and the dumping calculations, Jinan Meide also made submissions outside of deadlines set for that purpose, which were nevertheless considered.

[1] Judgment of 28 January 2016, joined Cases C-283/14 and C-284/14, *Grünwald Logistik Service GmbH*, paragraph 52.
[2] Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ L 343, 22.12.2009, p. 51).

(25) Jinan Meide claimed that an ordinary course of trade test should not be carried out, since the analogue country producer was not able to provide a reliable cost of production by type of the like product. One importer supported this argument, since a cost allocation based on turnover assumes that the same profit margin is generated for all product types, which is allegedly unreliable.

(26) However, the Commission consistently carries out the ordinary course of trade test in its investigations. In particular, Article 2(5) of the basic Regulation specifically deals with such situations as referred to by Jinan Meide, stating that in the absence of a more appropriate method, preference shall be given to the allocation of costs on the basis of turnover. In this respect, it is noted that the costs were allocated on the basis of turnover and that no other more suitable method was proposed by any interested party. The decision to allocate costs on the basis of turnover and to carry out an ordinary course of trade test was therefore maintained.

(27) Jinan Meide requested that product types that are sold by the analogue country producer in quantities below 200 kg should be disregarded from the normal value calculation, as prices of such product types are allegedly unreliable. It is noted that Jinan Meide claimed during the original investigation that the 5 % representativity test should not be carried out when normal value is established in an analogue country, and this claim was accepted by the Commission at the time. The claim to disregard sales of product types sold in quantities below 200 kg is rejected since sales prices for types of the like product sold in quantities below 200 kg cannot be considered unreliable, as they were verified and found as reliable as any other sales prices.

(28) One importer supported Jinan Meide's argument, since the price volatility for slow-moving product types would allegedly be high. This would mean that product types may have a very similar quality and cost structure, but might be sold at very different prices. However, the Commission established that, in respect of the analogue country producer, the price volatility is high for all product types, even the best-selling items. Therefore, the alleged high price volatility cannot be used as an argument to exclude slow-moving product types from the dumping calculation. The claim was therefore rejected.

(29) Jinan Meide also claimed that as the Commission had allocated costs of the analogue country producer on the basis of turnover, the normal value should not be constructed if the comparable types of the like product in the analogue country were sold in quantities below 200 kg, but that the normal value should be established in such cases on the basis of prices of other similar types sold in larger quantities. This claim was likewise rejected, as the allocation of total costs on the basis of turnover is in line with Article 2(5) of the basic Regulation and the arguments of Jinan Meide were not sufficient to justify a different methodology in this particular case.

2.1.3. *Comments on the comparison of normal value and export price*

(30) Jinan Meide brought forward claims concerning adjustments in the analogue country producer's data for credit, packing expenses, level of trade, bank charges, domestic transport, credit notes, indirect taxes, technical support, use of different raw materials and different labour productivity.

(31) The Commission accepted the claim concerning domestic transport and the credit costs as related to one single customer of the analogue country producer and the corresponding adjustments were made in the dumping calculation of Jinan Meide.

(32) As concerns the claims regarding the difference in labour productivity and the use of different raw materials, Jinan Meide alleged that the lower productivity per worker and the use of different raw materials lead to a moderate cost increase of the analogue country producer compared to Jinan Meide. In this respect, it should be noted that while some differences in efficiency or productivity might exist between companies, the guiding principle of anti-dumping calculations is to ensure comparability between export prices and normal value, which does not require that the circumstances of an analogue country producer and an exporter in a non-market economy country are completely aligned. Indeed, only differences for factors affecting prices and price comparability between an analogue country producer and an exporter in a non-market economy country warrant an adjustment.

(33) The other claims were found not to be supported by the evidence collected on spot and present on the file and were thus rejected.

2.2. **Other relevant issues**

(34) During the preparation of the final disclosure for Jinan Meide, the Commission spotted a clerical error concerning the adjustment for indirect taxes in the dumping calculation for Jinan Meide. Contrary to what the Commission stated in the text of the provisional ([1]) and definitive ([2]) Regulations, due to a clerical error, the adjustment for indirect taxes was not done at the time of the final disclosure to Jinan Meide, although it was done at the provisional stage. For reasons of good administration, this error was corrected.

2.3. **Disclosure**

(35) On 12 April 2017, the Commission informed all interested parties of the above findings on the basis of which it was intended to propose to re-impose the anti-dumping duty on imports of threaded tube or pipe cast fittings, of malleable cast iron, excluding bodies of compression fittings using ISO DIN 13 metric thread and malleable iron threaded circular junction boxes without having a lid, from Jinan Meide on the basis of the facts collected and submitted relating to the original investigation.

(36) Jinan Meide and three unrelated importers claimed that the Commission could not proceed with the correction of the clerical error (concerning the adjustment for indirect taxes in its dumping margin calculation) in the framework of the present reopening, because the clerical error was not related to the implementation of the judgment of the General Court. Jinan Meide also requested and was granted a hearing with the Hearing Officer. Two unrelated importers claimed that the Commission is prevented from putting the exporting producer in a position worse than originally found.

(37) Jinan Meide reiterated its claim that the Commission should treat product types for which the analogue country's sales volume was below 200 kg as quasi-matching or non-matching product types and that it cannot rely on unreliable costs to exclude sales from the normal value determination.

(38) Jinan Meide challenged the Commission's decision to reject its adjustments requests with regard to level of trade, packing expenses, credit costs, domestic insurance costs and differences in raw materials and productivity.

(39) Jinan Meide claimed that no duty should be imposed on it as a result of alleged procedural violations and other irregularities in these proceedings. In this context, the company claimed that an error in the disclosure of 23 December 2016 put into question whether the Commission disclosed the confidential version of the calculation made at definitive stage of the original investigation, and that the disclosure did not explain the alleged differences with the calculation made in the original investigation. It further claimed that the Commission refused to disclose certain elements despite Jinan Meide's repeated requests. It also submitted that the claims made in Case T-424/13, but not address by the General Court, remained valid and would continue to vitiate the measures in case they would be re-imposed.

(40) The Commission recalls that during the preparation of the final disclosure for Jinan Meide, it spotted a clerical error concerning the adjustment for indirect taxes in the dumping calculation for Jinan Meide. For reasons of good administration, the Commission proposed to correct this error at that stage and properly disclosed this proposal to all interested parties.

(41) Having considered all arguments put forward, the Commission decided to accept Jinan Meide's claim and not to correct the clerical error. The Commission, following the opinion of the Hearing Officer, considered that there is no general prohibition of a *reformatio in peius* in reopening of trade defence cases — that is to say that an interested party subject to a reopening in trade defence cases may be put in a position less favourable than what it was in before that reopening took place. However, the Commission concluded that, in this specific case, the scope of reopening should be limited to the disclosure of the data from the analogue country, receiving comments from interested parties, and, if necessary, revising the duty accordingly. Since the calculation error with regard to the reimbursement of VAT for export sales, and in particular the rate of VAT reimbursement, is not related to the data obtained from the analogue country producer, such correction is considered to be outside the scope of the reopened investigation.

([1]) Commission Regulation (EU) No 1071/2012 of 14 November 2012 imposing a provisional anti-dumping duty on imports of threaded tube or pipe cast fittings, of malleable cast iron, originating in the People's Republic of China and Thailand (OJ L 318, 15.11.2012, p. 10), recital 67.

([2]) See recital 19 confirming recital 67 of the provisional Regulation.

(42) On 29 May 2017, the Commission sent the Additional Disclosure Document informing interested parties of its decision not to correct the clerical error referred to in recital 34. The Commission received comments from one importer only, which restated that due to the limited disclosure to importers it is not in a position to comment on adjustments. Accordingly, in the absence of arguments to the contrary, the findings on adjustments are confirmed.

(43) With regard to the product types sold in quantities below 200 kg, Jinan Meide referred to the Advocate General's opinion in the Goldstar case ([1]) that 'for domestic prices to be comparable there must be a sufficient volume of sales in absolute terms on the domestic market stems from the fact that domestic prices may differ from one sales outlet to another. Furthermore, prices may fluctuate in the course of a single reference period', and '[i]n order to be representative that weighted average must be based on a minimum number of sales'.

(44) In this respect it is noted that the Advocate General continued his opinion in the following subparagraph that this 'does not mean, however, that the Community institutions should, in addition to the aforesaid relative threshold below which sales should be disregarded, fixed at 5 % and calculated for each model, still be required to apply an absolute threshold as well. It makes little sense to establish an absolute minimum threshold in general since the value of an absolute figure depends too closely on the nature of the product.' Thus, the opinion of the Advocate General in fact confirms that it is indeed not necessary to apply an absolute minimum threshold such as the absolute threshold of 200 kg claimed by Jinan Meide.

(45) As regards the issue of price fluctuations, as indicated in recital 28 above, this affected all product types and not only product types in quantities sold below 200 kg.

(46) One unrelated importer supported Jinan Meide's claim concerning representativity of low turnover products and reiterated its comments in that regard. It provided a general statement that Commission's position contradicts general market experience. The Commission's statement is based on data obtained from the analogue country producer. Given that the claim has not been further substantiated and in light of recitals 28 and 42 *et seq*. above, the claim is therefore rejected.

(47) With regard to the claim concerning unreliable costs, Jinan Meide claimed that the Commission eventually resorted to the initial set of cost data submitted even though allegedly it had initially considered that this set did not meet the standards. This argument is not supported by the facts of the investigation. Indeed, the Commission has never considered that the initial set of cost data did not meet the standards. In such circumstances, it is therefore not appropriate to completely disregard the costs reported by the analogue country producer, as claimed by Jinan Meide.

(48) One unrelated importer reiterated its comment that cost allocation based on turnover assumes that the same profit margin is generated for all product types, which allegedly contradicts observed logic in the market. The claim was not further substantiated. As stated in recital 26 above, in accordance with the basic Regulation, in the absence of a more appropriate method, preference shall be given to the allocation of costs on the basis of turnover. The costs were allocated on the basis of turnover and that no other more suitable method was proposed by any interested party. The claim is therefore rejected.

(49) Concerning the level of trade adjustment, Jinan Meide reiterated its claim that when determining whether a level of trade adjustment is warranted, it is sufficient to establish a difference in average prices to different categories of customers. Article 2(10)(d)(i) of the basic Regulation however requires that there is a 'consistent and distinct difference of prices of the seller for the different levels of trade.' A simple comparison of average prices is therefore not considered sufficient to establish such a consistent and distinct difference of prices. To the contrary, an analysis of the information on file shows that all customer types are in all segments of the price range.

(50) One unrelated importer claimed that the Commission should carry out a level of trade adjustment, but, because of lack of access to data, could not comment further. It also claimed that because of lack of access to the calculation of the dumping margin, it could not comment further. In this regard, it is recalled that the Commission is under an obligation to protect confidential information that it has received from interested parties. However, all non-confidential submissions are available to interested parties, who are invited to comment.

([1]) Advocate-General's Opinion in Case C-105/90 Goldstar Co. Ltd v Council of the European Communities, I-704, paragraph 11.

The Commission notes, however, that, as stated in recital 49 above, the information on file showed that in this case there were no consistent and distinct differences in the prices charged to different customer types. Therefore, a level of trade adjustment would not be appropriate.

(51) Concerning the allowance for credit costs, an allowance was deducted on the basis of the information on the sales documentation, both on the export price and normal value side. Jinan Meide argued that the allowance for credit costs on the normal value side should be made on the basis of the actual number of days between the invoice and the payment, since the Commission allegedly deducted an allowance for credit cost on export sales even though no payment term was made on the sales documentation. This claim was found not to be supported by the evidence on file of the investigation. Nor was Jinan Meide able to provide any evidence to support its claim. In addition, it was established that both on the normal value side and on the export price side, the actual payment was often made after the payment term on the sales documentation. Calculating the allowance on credit cost on the basis of the actual payment date on the normal value side and on the basis of the information contained in the sales documentation of the export price side would therefore not result in a fair comparison. The Commission therefore maintained its approach to establish the allowance for credit costs on the basis of the information on the sales documentation for both the normal value and the export price.

(52) As regards the allowance for packing costs, Jinan Meide reiterated their claims that the allocation of packing costs was incorrect, and the resulting allowance for packing costs was very low and not reasonable. It did however not further substantiate its argument, in particular why the resulting allowance was unreasonably low. The Commission therefore maintained its methodology concerning the allowance for packing costs.

(53) Lastly, the Commission rejects Jinan Meide's allegations of procedural violations and other irregularities in these proceedings. The Commission observed all principles and respected all procedural steps. The Commission reopened the investigation, disclosed the data from the analogue country as required to implement the judgement of the Court, and revised Jinan Meide's duty rate accordingly. In all steps of the investigation, interested parties were given the opportunity to comment as well as to be heard at a hearing. In fact, during the whole proceedings, the Commission was transparent and engaging, accommodating meetings at Jinan Meide's request for clarifications and hearings. The Commission clarified the technical problem related to a faulty excel file with calculations which resulted in the inconsistencies referred to by Jinan Meide. This error, in any case, had no impact on the dumping margin and was promptly corrected. The Commission disclosed all confidential information to Jinan Meide, including the confidential file with the figures used for the dumping margin in 2013. With regard to the claims that were made before the General Court but not addressed by the judgment, the Commission contests all the alleged illegalities pointed out by Jinan Meide. The Commission has fulfilled its duty to implement the court judgment by addressing the illegalities found by the General Court. On this basis, the Commission fails to see the procedural violations referred to by Jinan Meide and restates that it complied with all principles and procedural requirements, allowing Jinan Meide (and other interested parties) to exercise its procedural rights throughout the investigation.

(54) Jinan Meide also reiterated their arguments concerning the difference in labour productivity and the use of different raw materials, without providing further arguments or evidence in this respect. This position was supported by one unrelated importer. These arguments are addressed in recital 32 above.

(55) One unrelated importer reiterated its claim that the reopening as such was not compatible with the provisions of the basic Regulation. As stated in recital 17, it is clear from the judgment of joined cases C-283/14 and C-284/14 ([1]) that the EU Institutions may reopen an anti-dumping investigation to amend irregularities found by the European Courts even though this is not expressly provided for in the basic Regulation. The Union's institutions are, in fact, required to take the necessary measures to remedy illegalities. The claim was therefore rejected.

(56) Another unrelated importer pointed to negative effects of the anti-dumping duties (due to impact on profitability and turnover as well as new market conditions, i.e. new prices, new sourcing). As set out in recital 41 above, the scope of the present reopening was limited to implementation of the judgment of the General Court with regard to Jinan Meide, notably to disclose to Jianan Meide the confidential data of the analogue country producer. The claim was therefore rejected.

([1]) Judgment of 28 January 2016, joined Cases C-283/14 and C-284/14, *Grünwald Logistik Service GmbH*, ECLI:EU:C:2016:57, paragraph 52.

(57) One unrelated importer claimed that the change (an alleged increase) of the duty rate necessitated a reassessment of the impact of the duty on importers and users. However, as stated in recital 41, the Commission did not proceed to correct the clerical error related to the VAT reimbursement because it was considered to be outside the scope of the reopened investigation. The claim was therefore rejected.

(58) The same party also claimed that the Commission should carry out an interim review since the original investigation period lies more than five years in the past. The scope of the reopening has been clearly defined in the notice of the reopening ([1]). A reopening and an interim review are instruments with different purposes. That is to say, the purpose of this reopening was to implement the judgment of the General Court with regard to Jinan Meide. An interim reviews, on the other hand, are an instrument with clearly defined legal conditions, notably to review the measures in force due to changed circumstances of a lasting nature. The claim was therefore rejected.

(59) Finally, one party claimed that the Commission should have analysed claims raised in the court proceedings even if they were not addressed by the court to prevent further litigation. The Commission notes that the scope of the present reopening was limited to implementation of the judgment of the General Court with regard to Jinan Meide, notably to disclose to Jinan Meide the confidential data of the analogue country producer. The claim was therefore rejected.

2.4. **Conclusion**

(60) The comparison of the weighted average export price with the re-calculated weighted average normal value by product type on an ex-factory basis showed the existence of dumping. The dumping margin established, expressed as a percentage of the CIF import price at the Union frontier, duty unpaid, was 39,2 %.

(61) The Commission took account of comments made by the parties and concluded that the implementation of the General Court's judgment should take the form of the re-disclosure to Jinan Meide of the final disclosure of 15 March 2013 with the additional information on normal value calculations using confidential data of the analogue country producer. Following the re-disclosure, the Commission received and considered comments from Jinan Meide and other interested parties. On the basis of this assessment, and the considerations recalled in recitals 40 to 58 above, the Commission considered appropriate to re-impose the anti-dumping duty on imports of threaded tube or pipe cast fittings, of malleable cast iron, excluding bodies of compression fittings using ISO DIN 13 metric thread and malleable iron threaded circular junction boxes without having a lid, manufactured by Jinan Meide.

3. **REQUEST FOR REGISTRATION**

(62) The Union industry represented by the five still active Union producers argued that the situation following the annulment of the anti-dumping duty for Jinan Meide warrants a registration of imports. The request has been reiterated following the final disclosure.

(63) Pursuant to Article 9(5) of the basic Regulation, the sole purpose of such registration is however the possible retroactive collection of duties. The conditions for a retroactive collection of duties are however not met in the present case. A registration of imports is therefore not warranted.

4. **CONCLUSION**

(64) On the basis of the above, the Commission considered it was appropriate to re-impose the definitive anti-dumping duty on imports of threaded tube or pipe cast fittings, of malleable cast iron, excluding bodies of compression fittings using ISO DIN 13 metric thread and malleable iron threaded circular junction boxes without having a lid, currently falling within CN code ex 7307 19 10 (TARIC code 7307 19 10 10) and originating in the People's Republic of China and manufactured by Jinan Meide at the rate of 39,2 %.

([1]) OJ C 398, 28.10.2016, p. 57.

Duration of measures

(65) This procedure does not affect the date on which the measures imposed by the contested Regulation will expire pursuant to Article 11(2) of the basic Regulation.

(66) The Committee established by Article 15(1) of Regulation (EU) 2016/1036 did not deliver an opinion,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of threaded tube or pipe cast fittings, of malleable cast iron, excluding bodies of compression fittings using ISO DIN 13 metric thread and malleable iron threaded circular junction boxes without having a lid, currently falling within CN code ex 7307 19 10 (TARIC code 7307 19 10 10) and originating in the People's Republic of China and manufactured by Jinan Meide (TARIC additional code B336).

2. The rate of the definitive anti-dumping duty applicable to the net, free-at-Union-frontier price, before duty, shall be 39,2 %.

3. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 2

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

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

Done at Brussels, 28 June 2017.

For the Commission
The President
Jean-Claude JUNCKER

COMMISSION IMPLEMENTING REGULATION (EU) 2017/1147

of 28 June 2017

amending Implementing Regulation (EU) 2016/1368 establishing a list of critical benchmarks used in financial markets pursuant to Regulation (EU) 2016/1011 of the European Parliament and of the Council

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investments funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014 ([1]), and in particular Article 20(1), thereof,

Whereas:

(1) Benchmarks play an important role in the determination of the price of many financial instruments and financial contracts and of the measurement of performance for many investment funds. The contribution to and administration of benchmarks are in many cases vulnerable to manipulation and persons involved often face conflict of interests.

(2) In order to fulfil their economic role, benchmarks need to be representative of the underlying market or economic reality they reflect. Should a benchmark no longer be representative of an underlying market, such as interbank offered rates, there is a risk of negative effects on, inter alia, market integrity, the financing of households (loans and mortgages) and businesses in the Union.

(3) Risks to users, markets and the economy of the Union generally increase where the total value of financial instruments, financial contracts and investment funds referencing a specific benchmark is high. Regulation (EU) 2016/1011 therefore establishes different categories of benchmarks and provides for additional requirements ensuring the integrity and robustness of certain benchmarks considered as being critical, including the power of competent authorities to mandate, under certain conditions, contributions to or the administration of a critical benchmark.

(4) The additional obligations and powers of competent authorities of administrators of critical benchmarks require a formal process for the determination of critical benchmarks. In accordance with Article 20(1) of Regulation (EU) 2016/1011, a benchmark is considered as being a critical benchmark where it is used directly or indirectly within a combination of benchmarks as a reference for financial instruments or financial contracts or for measuring the performance of investment funds, having a total value of at least EUR 500 billion on the basis of all the ranges of maturities or tenors of the benchmark, where applicable.

(5) Commission Implementing Regulation (EU) 2016/1368 ([2]) established a list of critical benchmarks used in financial markets pursuant to Regulation (EU) 2016/1011. Data analysis and contributions by the European Central Bank have shown that the value of financial instruments and financial contracts referencing the Euro Overnight Index Average (EONIA) in the Union exceeds the threshold of EUR 500 billion set out in Article 20(1) of Regulation (EU) 2016/1011.

(6) The EONIA is an average of unsecured overnight lending transactions of a panel of banks in the interbank market in the Union and in the EFTA. It is the reference interest rate for interest rate swaps in euro. It is therefore crucial for the functioning of the euro swap market and financial stability in the Union.

([1]) OJ L 171, 29.6.2016, p. 1.

([2]) Commission Implementing Regulation (EU) 2016/1368 of 11 August 2016 establishing a list of critical benchmarks used in financial markets pursuant to Regulation (EU) 2016/1011 of the European Parliament and of the Council (OJ L 217, 12.8.2016, p. 1).

(7) Based on calculations by the European Central Bank derived from the daily reports of the 52 largest European banks under the money market statistical reporting, the outstanding amounts of the captured money market instruments in the unsecured and the secured market which reference EONIA can be estimated at around EUR 450 billion and EUR 400 billion for this sample of banks alone. In addition, it is estimated that the vast majority of trades in the euro overnight index swap (OIS) market, with notional amount of some EUR 5,2 trillion, are linked to EONIA. EONIA is therefore used directly or indirectly within a combination of benchmarks as a reference for financial instruments or financial contracts or for measuring the performance of investment funds, having a total value of at least EUR 500 billion on the basis of all the ranges of maturities.

(8) The EONIA is provided by the same benchmark administrator as EURIBOR and the panel of banks contributing input data to EURIBOR is effectively a subset of the panel of banks contributing input data to EONIA. While EURIBOR reflects longer-term lending, EONIA covers overnight lending. It is therefore vital for the stability of financial markets that EONIA is designated as a critical benchmark as well.

(9) The list of critical benchmarks established by Implementing Regulation (EU) 2016/1368 should therefore be amended by adding EONIA.

(10) In light of the crucial importance of EONIA for interbank market and the high number of derivatives in the Union referencing it, this Regulation should enter into force as a matter of urgency.

(11) The measures provided for in this Regulation are in accordance with the opinion of the European Securities Committee,

HAS ADOPTED THIS REGULATION:

Article 1

The Annex to Implementing Regulation (EU) 2016/1368 is replaced by the text in the Annex to this Regulation.

Article 2

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

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

Done at Brussels, 28 June 2017.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX

'*ANNEX*

List of critical benchmarks pursuant to Article 20(1) of Regulation (EU) 2016/1011

No	Benchmark	Administrator	Location
1	Euro Interbank Offered Rate (EURIBOR®)	European Money Markets Institute (EMMI)	Brussels, Belgium
2	Euro Overnight Index Average (EONIA®)	European Money Markets Institute (EMMI)	Brussels, Belgium'

DECISIONS

COUNCIL DECISION (CFSP) 2017/1148

of 28 June 2017

amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 29 thereof,

Having regard to the proposal from the High Representative of the Union for Foreign Affairs and Security Policy,

Whereas:

(1) On 31 July 2014, the Council adopted Decision 2014/512/CFSP ([1]).

(2) On 19 March 2015, the European Council agreed that the necessary measures would be taken to clearly link the duration of the restrictive measures to the complete implementation of the Minsk agreements, bearing in mind that the complete implementation was foreseen for 31 December 2015.

(3) On 19 December 2016, the Council renewed Decision 2014/512/CFSP until 31 July 2017 in order to enable it to further assess the implementation of the Minsk agreements.

(4) Having assessed the implementation of the Minsk agreements, Decision 2014/512/CFSP should be renewed for a further 6 months in order to enable the Council to further assess their implementation.

(5) Decision 2014/512/CFSP should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

The first subparagraph of Article 9(1) of Decision 2014/512/CFSP is replaced by the following:

'1. This Decision shall apply until 31 January 2018.'.

Article 2

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

Done at Brussels, 28 June 2017.

For the Council
The President
H. DALLI

([1]) Council Decision 2014/512/CFSP of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 229, 31.7.2014, p. 13).

COMMISSION DECISION (EU) 2017/1149

of 27 September 2016

on State aid SA.30931 (11/C) (ex N 185/10) implemented by Romania for Romanian regional airports

(notified under document C(2016) 6031)

(Only the Romanian text is authentic)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

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

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

Whereas:

1. PROCEDURE

(1) By electronic notification dated 17 May 2010, Romania notified to the Commission, in accordance with Article 108(3) of the Treaty, an aid scheme providing for public support in favour of small ([2]) regional airports. The notification was registered under case number N 185/2010.

(2) The Commission requested additional information on the notified measure on 23 June 2010, 7 October 2010, 3 December 2010 and 17 March 2011. The Romanian authorities provided the information requested on 22 July 2010, 27 October 2010, 20 January 2011 and 5 April 2011.

(3) On 15 September 2010 the Romanian authorities informed the Commission on certain changes to the notified scheme, in particular as regards the number of beneficiaries.

(4) By letter dated 24 May 2011, the Commission informed Romania that it had decided to initiate the formal investigation procedure laid down in Article 108(2) of the TFEU in respect of the notified aid and of other measures in favour of airports which were not part of the notification but were brought to the attention of the Commission by Romania in the preliminary assessment phase (hereinafter 'the opening decision') ([3]). In particular, in the preliminary assessment phase the Commission was informed by the Romanian authorities that regional airports had been granted public financing in the period 2007-2009 to cover operating losses.

(5) The Commission adopted a Corrigendum to the opening decision on 23 June 2011.

(6) The opening decision was published in the *Official Journal of the European Union* ([4]). The Commission called on interested parties to submit their comments.

(7) With letters dated 27 June 2011, 5 July 2011 and 19 August 2011, Romania submitted its comments on the opening decision.

([1]) OJ C 207, 13.7.2011, p. 3.
([2]) 'D-category' airports, namely, airports with traffic of less than 1 million passengers, as defined by the 2005 guidelines on financing of airports and start-up aid to airlines departing from regional airports (OJ C 312, 9.12.2005, p. 1).
([3]) The formal investigation procedure concerns both the notified scheme for public funding to support the development of infrastructure at small regional airports, as well as the public financing to cover operating losses granted to certain airports.
([4]) See footnote 1.

(8) The Commission received comments from three interested parties, namely the air carrier Carpatair, Cluj-Napoca airport and the Romanian Association of Airports (hereinafter 'RAA').

(9) By letter dated 16 September 2011, the Commission forwarded the comments of the interested parties to Romania.

(10) By letter dated 25 July 2011, Romania withdrew its notification of the planned financing scheme of infrastructure investments at the Romanian small regional airports. Romania undertook to finance such airports in compliance with Commission Decision 2005/842/EC ([5]) (hereinafter 'the 2005 SGEI Decision' on the application of Article 86(2) of the EC Treaty (now Article 106(2) TFEU) (hereinafter 'the 2005 SGEI Decision'). Consequently, on 31 October 2011 the Commission closed its investigation in respect of that measure. The formal investigation procedure remained open as concerns the public funding granted to Romanian regional airports in the period 2007-2009.

(11) The Commission guidelines on State aid to airports and airlines (hereinafter 'the 2014 Aviation Guidelines') were published in the *Official Journal of the European Union* on 4 April 2014 ([6]). They replaced the 2005 guidelines on financing of airports and start-up aid to airlines departing from regional airports (hereinafter 'the 2005 Aviation Guidelines').

(12) On 15 April 2014 a notice was published in the *Official Journal of the European Union* inviting Member States and interested parties to submit comments on the application of the 2014 Aviation Guidelines in this case within one month of the publication date. The Commission received no reply to that invitation.

2. **DETAILED DESCRIPTION OF THE MEASURE/AID**

2.1. *THE DISPUTED MEASURES*

(13) As already mentioned above, in the framework of the notification of infrastructure investments at small regional airports, Romania informed the Commission that most regional airports in Romania were loss-making, and that their operating losses were covered by public financing on a yearly basis.

(14) Table 1 shows the list of the public financing made available to D category airports ([7]) in the period 2007-2009, as submitted by Romania.

Table 1

Public financing granted to 13 regional airports (thousand RON)

Airport	2007	2008	2009	Total
Arad	2 900	3 400	4 041	**10 341**
Bacău	3 730,99	1 765,52	394,14	**5 890,65**
Baia Mare	2 620	6 977	6 135	**15 732**
Cluj-Napoca	34 927	43 500	44 500	**122 927**
Craiova	6 505,33	8 377,08	25 099	**39 981,38**

([5]) Commission Decision 2005/842/EC of 28 November 2005 on the application of Article 86(2) of the EC Treaty to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest (OJ L 312, 29.11.2005, p. 67).
([6]) OJ C 99, 4.4.2014, p. 3.
([7]) See footnote 2.

Airport	2007	2008	2009	Total
Iaşi	19 843,12	12 314,89	7 812,15	**39 970,16**
Oradea	3 160	6 021	5 450	**14 631**
Satu Mare	3 890	3 460	2 676	**10 026**
Sibiu	13 889	66 818	13 545	**94 252**
Suceava	5 812,43	5 464,52	4 614,07	**15 918,02**
Targu Mureş	4 083,30	18 175,60	15 573,65	**37 832,55**
Tulcea	11 651	16 921	2 069	**30 641**
Constanța	25 054,85	17 042,27	10 161,42	**52 258,54**
TOTAL	**138 067,02**	**210 236,88**	**142 070,43**	**490 401,3**

(15) During the preliminary investigation phase Romania submitted that this financing would mostly amount to aid exempted from the notification requirement on the basis of the 2005 SGEI Decision. The only exception would be the public financing granted to Timișoara airport. That financing is being investigated by the Commission under case number SA.31662 ([8]).

(16) In particular, Romania claimed that the public financing granted annually to the regional airports represented compensation for the provision of a service of general economic interest (hereinafter 'SGEI'). In this sense, the measure would have cumulatively observed the conditions laid down by the 2005 SGEI Decision, namely:

(a) the operation of the service of general economic interest was entrusted to the airport managers by Government Decision 398/1997/EC laying down, inter alia, the public service obligations (hereinafter 'PSOs'), the parameters for calculating the compensation and the arrangements for avoiding any overcompensation;

(b) the annual traffic at the airports did not exceed 1 000 000 passengers.

(17) Government Decision 398/1997/EC refers to the transfer of ownership of the regional airports from the Ministry of Transport to the local counties councils and thereby changing their statute from 'regii autonome' with special characteristics of national interest to 'regii autonome' with special characteristics of local interest. The Decision includes, inter alia, provisions regarding their assets, budgets and personnel. The Decision lays down in its Annexes provisions regarding the organisational structure and the financing of the airports. The Annexes also list the activities of the airport managers (e.g. management of the airport infrastructure, organisation and provision of handling services, ensuring security of, inter alia, aircrafts, passengers, airport activities, development, maintenance and modernisation of runways, taxiways aprons, equipment, etc.) but they do not present these activities as PSOs imposed on the airport managers. The list of activities applies to all concerned airports across the board, i.e. there is no separate list for each airport. Romania claimed that these activities, namely the overall management of the airports in question, should be regarded as SGEI and the compatibility of the measure should be assessed under Article 106 of the Treaty.

(18) Regarding the financing of the airports, Government Decision 398/1997/EC sets out that the operating and capital costs of the airports in question would be covered by own resources supplemented by public financing. The Romanian authorities contend that this mechanism prevents overcompensation insofar as the airports can only receive the amount necessary to cover all costs, thereby avoiding overcompensation.

(19) In addition, the Romanian authorities pointed out that activities not directly linked to the core activities of the airports are not being subsidised, in accordance with points (34) and 53(iv) of the 2005 Aviation Guidelines.

([8]) State aid — Romania — State aid SA.31662 (11/C) (ex CP 237/10) — Timișoara International Airport — Wizz Air — Invitation to submit comments pursuant to Article 108(2) (OJ C 270, 13.9.2011, p. 11).

(20) One of the airports listed in Table 1, Constanța airport, is not subject to Government Decision 398/1997/EC. The Romanian authorities clarified that the public financing to this airport represents compensation for the discharge of PSOs pursuant to Government Decision 523/1998/EC. This Decision lays down that Societatea Națională 'Aeroportul Internațional Constanța' is a shareholding company owned by the State and that the old legal entity (Regia Autonoma Aeroportul International Constanța — Mihail Kogalniceanu) is abolished. The Decision and its annexes include provisions regarding the assets, the organisational structure, the financing and list the activities to be undertaken by the airport manager (e.g. operating the airport infrastructure, organisation and provision of handling services, ensuring security of passengers, aircraft, etc., maintenance of runways, taxiways, aprons, etc.). These activities are not presented as PSOs imposed on the airport manager. Regarding the financing, the Government Decision 523/1998/EC sets out that depending on the type of assets and costs to be financed, costs would be financed by own resources and credits or by own resources supplemented by public financing or only by public financing ([9]). The Romanian authorities also specified that this airport is a Romania-US military base, therefore its operational continuity is considered a strategic national security objective.

2.2. *GRANTING AUTHORITIES*

(21) For the airport owned by the State (Constanța) the financing in question is granted from the State budget. For the remaining airports, whose ownership was transferred to local authorities by Government Decision 398/1997/EC, the public financing is granted by local authorities through local resources.

2.3. *THE BENEFICIARIES*

(22) The beneficiaries are the operators of Romanian airports at Arad, Bacău, Baia Mare, Cluj-Napoca, Craiova, Iași, Oradea, Satu-Mare, Sibiu, Suceava, Târgu-Mureș, Tulcea and Constanța.

(23) Table 2 shows the traffic at the airports concerned in the period under assessment 2007-2009 as well as in the recent years (2013-2015).

Table 2

Traffic at the thirteen airports

Airport	2007	2008	2009	2013	2014	2015
Arad	67 183	128 835	88 147	40 855	28 405	8 623
Bacău	114 323	119 657	195 952	307 488	313 376	364 727
Baia Mare	15 334	22 468	24 983	16 568	21 560	19 228
Cluj Napoca	390 434	752 181	834 400	1 035 438	1 179 161	1 485 937
Craiova	5 113	13 021	13 977	40 291	138 886	116 947
Iaşi	126 334	145 933	148 538	231 933	273 047	381 603
Oradea	35 805	38 913	39 108	38 805	36 501	8 118

([9]) Government Decision 523/1998/EC foresees that: (i) the capital expenses related to own assets would be financed from own resources, credits and other sources; (ii) the costs related to the creation of new public assets as well as the extension and modernisation of existing public assets would be covered by the State budget; (iii) financing of the airport investments approved by the Government until the date of the creation of the new legal entity would be ensured by own resources supplemented by public financing; (iv) payments obligations for investments related to private assets undue until the establishment of the new legal entity would be covered from own resources supplemented by public financing; (v) payment obligations related to the creation of new public assets or the modernisation of existing ones undue until the establishment of the new legal entity would be covered by the state budget.

Airport	2007	2008	2009	2013	2014	2015
Satu Mare	5 883	7 298	11 101	16 195	12 644	17 375
Sibiu	105 654	141 032	154 160	189 152	215 951	278 403
Suceava	20 909	23 591	32 590	20 054	219 (1)	2 359
Targu Mureş	157 531	70 349	84 120	356 699	343 521	335 993
Tulcea	1 029	4 032	854	1 894	1 311	394
Constanța	48 705	67 227	73 664	70 090	154 320	71 165

(1) Airport was open only in January.

(24) Out of the 13 airports, only five airports (Arad, Baia Mare, Satu Mare, Constanța and Oradea) had another EU airport within 100 km or 60 minutes travelling time. Arad airport is at 50 km and 40 minutes travelling time from Timișoara Airport. Baia Mare and Satu Mare airports are situated 76 km and 1h10 minutes travelling time from each other. Constanța Airport is situated 45 km and 30 minutes travelling time from Tuzla Airport. Oradea airport is situated at 80 km and approximately 1h30 minutes travelling time from Debrecen airport, which is located in Hungary.

Table 3

Distance and travelling time to closest airports

Airport	Closest neighbouring airport	Distance (km)	Travel time
Arad	Timişoara	50	0h40
Bacău	Iaşi	138	2h
Baia Mare	Satu Mare	76	1h10
Cluj Napoca	Târgu Mureş	104	1h27
Craiova	Sibiu	223	3h28
Iaşi	Bacău	128	2h
Satu Mare	Baia Mare	76	1h10
Sibiu	Târgu Mureş	124	1h46
Suceava	Iaşi	170	2h45
Targu Mureş	Cluj-Napoca	107	1h45
Tulcea	Constanța	111	1h30
Constanța	Tuzla	45	0h30
Oradea	Debrecen (Hungary)	80	1h30

(25) As regards the airports for which another airport is located within less than 100 kilometres or 60 minutes travelling time, the Romanian authorities were asked to detail the specificities of the airports concerned, if any, which could justify the assumption that those airports are located in different catchment areas, as defined by the 2014 Aviation Guidelines ([10]).

(26) In reply to this request by the Commission Romania clarified the following ([11]):

ARAD-TIMIȘOARA

(27) Arad airport is open to domestic and international passenger and freight traffic and operated a 1 800 × 45 m runway. The capacity of the airport amounts to 200 passengers/hour. The airport is endowed with good quality technical equipment. According to Romania, at the time of the submission of information, the local authorities approved financing for the extension and the modernisation of Arad airport given, inter alia, the local authorities strategic objective to convert the airport into an intermodal passenger and freight hub for the development of the region.

(28) During the period 2007-2009, the airport was focused on low cost traffic. Blueair operated several European destinations (Verona, Valencia, Stuttgart, Barcelona, Treviso) and Ryanair served one destination (Milano) for the period April-June 2008.

(29) The Romanian authorities have submitted to the Commission an analysis — prepared by the airport in 2008 — of the activity of that time and the passenger traffic for the period 2009-2020.

(30) The analysis showed:

— growth in non-aeronautical revenues from RON 0,7 million in 2007 to RON 1,3 million in 2008,

— growth in aeronautical revenues from RON 1,7 million in 2007 to RON 2,3 million in 2008,

— growth in handling revenues from RON 0,2 million in 2007 to RON 1 million in 2008,

— an increase in the public financing to the airport from RON 2,4 million in 2007 to RON 3,4 million in 2008.

(31) According to the analysis, the airport largely relied on low cost traffic as major growth driver: in 2008 88 % of overall passenger traffic was represented by scheduled flights operated by Blue Air and 11 % by Ryanair traffic. The analysis assumed a diversification of airline connections by attracting a new low-cost airline, EasyJet.

(32) The forecasts presented in the analysis foresaw Arad airport to increase its traffic from 128 834 passengers in 2008 to 1 064 116 passengers in 2020 in an optimistic scenario.

(33) Regarding Timișoara airport, its passenger traffic increased from 859 329 passengers in 2007, 886 083 passengers in 2008 and 991 758 passengers in 2009. From 2007 to 2009, the airport was a regional hub for Carpatair, a regional full service carrier which operated some 32 domestic and European destinations. Other airlines such as Tarom, Lufthansa, Austrian Airlines, Malev, Alitalia, Moldavian Airlines, Alpi Eagles, Skyeurope Airlines, Wizzair served the airport.

BAIA MARE-SATU MARE

(34) The characteristics of the runway at Baia Mare airport allow the operation on a regular basis of aircraft with a maximum capacity of 75 passengers for short-haul flights.

(35) The characteristics of the runway at Satu Mare airport allow the operation of aircrafts with a seating capacity of up to 180 passengers for medium-haul flights. The capacity of the airport amounts to 100 passengers/hour.

([10]) Letter of the Commission of 19 February 2015.
([11]) Romania's letters of 19 March 2015 and of 24 June 2016.

CONSTANȚA-TUZLA

(36) Tuzla airport operates a grass strip used by small aircraft (i.e. not exceeding a maximum take-off weight (MTOW) of 5 700 kg ([12])) and has no radio navigation system. In the period 2007-2009, the number of aircraft movements of aircrafts of maximum MTOW of 5 700 kg from Constanța airport was significantly lower (5 to 16 times lower in the period under assessment) than at Tuzla airport. Tuzla airport mainly serves specialised flights while Constanța airport serves medium and large aircraft for commercial traffic.

ORADEA-DEBRECEN

(37) Debrecen Airport (Hungary) is at 80 km from Oradea airport, but the travelling time is of at least 1h30 since the trip includes passing of a border passport control from Romania which is not in the Schengen area to Hungary which belongs to the Schengen area. Debrecen airport had 42 900 passengers in 2007, 42 650 passengers in 2008 and 25 060 passengers in 2009. The two airports had different business models in 2007-2009 since Debrecen airport was focused on charter flights (with low cost traffic developing only in the last years), while Oradea airport was focused on domestic flights by regional and national full service carriers.

2.4. *BUDGET*

(38) The total budget of the measure under assessment is 490 401,3 thousand RON, as detailed in Table 1.

2.5. *OTHER PENDING INVESTIGATION PROCEDURES*

(39) On 31 July 2015, the Commission opened two formal investigation procedures concerning, inter alia, public funding measures in favour of Cluj-Napoca Airport granted over the period from 2010 to 2014 ([13]) and Târgu Mureș airport granted from 2011 to 2014 ([14]), other than those covered by the investigation subject to this Decision.

3. **GROUNDS FOR INITIATING THE FORMAL INVESTIGATION PROCEDURE**

(40) As explained in recital 4 above, in the opening decision, the Commission decided to initiate the formal investigation procedure in respect to the notified aid and public financing in the period 2007-2009 to cover operating losses. Subsequently, following the withdrawal by Romania of its notification of the planned financing scheme of infrastructure investments, the formal investigation procedure remained opened as concerns the public financing granted to Romanian regional airports in the period 2007-2009 (see recital 10 above).

(41) In the opening decision, the Commission took the preliminary view that the conditions for the compensation for SGEIs not to constitute an advantage within the meaning of Article 107 of the Treaty were not cumulatively met in this case.

(42) Indeed, according to the fourth condition of the Altmark judgement ([15]), the compensation must be limited to the minimum necessary for an efficient undertaking in order for it to escape State aid qualification. This criterion is deemed to be fulfilled if the recipients of the compensation have been chosen following a tender procedure Failing that, the level of compensation must be determined on the basis of an analysis of the costs which a typical undertaking, well run and adequately provided with means so as to be able to meet the necessary public service requirements, would have incurred in discharging those obligations, taking into account the relevant revenues and a reasonable profit for discharging the obligations.

([12]) By comparison an Embraer ERJ 135 ER has a seating capacity of 37 and a MTOW of 19 000 kg.
([13]) Case SA. 32963 (2012/NN) (ex 2011/CP) *Romania — State aid to Wizz Air and Cluj-Napoca Airport* (OJ C 104, 18.3.2016, p. 77).
([14]) Case SA. 33769 (2015/NN) (ex-2011/CP) *— Romania — Alleged aid to Târgu Mureș Transilvania Airport, Wizz Air, Ryanair and other airlines* (OJ C 104, 18.3.2016, p. 45).
([15]) Judgment of 24 July 2003, Altmark Trans and Regierungspräsidium Magdeburg C-280/00EU:C:2003:415, paragraph 93. See also the analysis in recitals 84-85 of the present decision.

(43) The Commission took the preliminary view that this condition was not fulfilled since the operators of the beneficiary airports had not been chosen following a public tender procedure. Nor had Romania claimed that the compensation had been set on the basis of an analysis of the costs of a typical airport operator, well run and adequately provided with means to provide the public service.

(44) Therefore the Commission considered that the measure provided the recipients with an economic advantage and came to the preliminary conclusion that the annual operating subsidies constituted State aid in the meaning of Article 107 of the Treaty.

(45) The Commission also noted that Romania had not contested the aid qualification of the measure.

(46) As concerns compatibility of the measure, the Commission had doubts that the criteria laid down by the 2005 SGEI Decision were complied with and therefore that the operating subsidies paid yearly to the airports were exempted from the notification requirement, as initially claimed by Romania.

(47) In this sense, the Commission first noted that in order for the 2005 SGEI Decision to be applicable in specific cases, the services in question must qualify as genuine SGEIs and be clearly defined as such by the Member State.

(48) The Commission took the view that in this case insufficient information had been provided by Romania to justify that the operation of the thirteen regional airports should be considered SGEI in the sense that the areas served by those airports would be insufficiently connected to the rest of the country if left to the market forces alone.

(49) The Commission further considered that the airport services had not been clearly defined as SGEIs by the Member State. The Commission took the preliminary view that the apparent duplication of regional airports in Romania within the same catchment area could be a reason why those airports were loss making. To this end, the Commission noted that several of these airports had less than 50 000 passengers per year and were located within a linear distance of less than 100 km from each other.

(50) Therefore the Commission took the view that the definition of the public service was not sufficiently clear and may contain manifest error insofar as the operation of the airports could have been defined as SGEI without an effective need to ensure a proper connection of the catchment area of each airport to the rest of the country.

(51) The Commission also had doubts that the requirements of Article 4 of the 2005 SGEI Decision relating to the content of the entrustment act were met in full.

(52) Finally, the Commission noted that although the Romanian authorities have confirmed that only core activities of the airports were being subsidized, it was not sufficiently clear whether in fact only the costs of eligible activities had been subsidized. No specific provision to restrict eligible costs to the core activities of the airports was included in the acts of entrustment.

4. **COMMENTS FROM ROMANIA**

(53) Romania's comments on the opening decision mainly referred to the doubts raised by the Commission on the State aid scheme for the financing of infrastructure for airports with annual traffic of less than 1 million passengers, whose notification has been withdrawn.

(54) As regards the public funding to Romanian regional airports, in reply to the view of Commission according to which the apparent overabundance of airports in certain regions may hinder the development of the airports in question, Romania submitted that the situation of regional airports (with low traffic which does not allow them to reach a level of profitability) was primarily due to the state of development of the regions where those airports were located, rather than to the distance to neighbouring airports.

(55) Regarding the public financing on the basis of the Government Decision 398/1997/EC, Romania clarified that amounts are not paid at the beginning of the year on the basis of forecasts of costs and any surplus is not returned to the State at the end of the financial year as stated in the opening decision, but that such financing is granted at the moment when the activities are undertaken based on justifications and within the limits of the approved budget.

5. COMMENTS FROM INTERESTED PARTIES

5.1. *COMMENTS FROM CARPATAIR*

(56) Carpatair's comments partially refer to public financing to Timişoara airport and Wizz Air. As explained in recital 15, public financing of Timişoara airport and Wizz Air is subject to another formal investigation procedure ([16]). In what follows the Commission will therefore only summarise Carpatair's comments with relevance to the present case.

(57) Carpatair submits that operating aid is generally considered illegal and against EU interest, and should only be granted in exceptional circumstances. Granting operating aid to airports would in Carpatair's view be disruptive for the industry, for the following reasons:

(a) it would create unfair competition between EU airports and allow an airport benefitting from State aid to attract air carriers by offering discounts on airport charges. Airports not benefitting from aid would be unable to compete for carriers effectively;

(b) the measure would urge airports that receive operating aid to grant high discounts to airport charges, and such discounts would not be granted if the airports acted on market terms.

(58) Carpatair points out that operating aid has a negative effect on the air transport and airport services markets as it leads to unfair competition between airports and ultimately unfair competition between airlines operating from those airports. As such, operating aid causes unfair competition between airports in Romania and also affects negatively airports in neighbouring countries such as Hungary.

5.2. *COMMENTS FROM RAA*

(59) RAA is a non-profit private law legal entity representing Romanian civil airports.

(60) RAA comments on the opening decision focus on the aspects related to the State aid scheme for the financing of infrastructure. RAA essentially submits that the infrastructure of most regional airports in Romania requires updating and is well below that of airports of other EU Member States. According to RAA, public funding to upgrade airport infrastructure would be justified by the absence of feasible and reliable transport alternative in Romania (no motorways nor high speed trains).

5.3. *COMMENTS FROM CLUJ-NAPOCA AIRPORT*

(61) According to Cluj-Napoca airport, the public funding granted to it by the local council served to subsidise only non-economic activities and hence fell outside the scope of Article 107(1) of the Treaty.

(62) In particular, the amounts in question presumably aimed to cover costs of certain non-economic activities taking place inside airport premises (such as Border Patrol, Special Forces Brigade, Customs, Police, Special Aviation Unit), as well as costs of support infrastructure and equipment including maintenance, upgrade, management of the infrastructure, costs with the auxiliary services provided by the airport, fire prevention, emergency assistance, safety measures. According to Cluj-Napoca airport, those costs fall under State responsibility in the exercise of its official powers and therefore do not fall within the scope of the rules on State aid.

(63) The airport further submitted that in the period 2007-2009 the airport recorded no operating losses.

6. ROMANIA'S COMMENTS ON INTERESTED PARTIES COMMENTS

(64) By letter dated 17 October 2011 Romania submitted to the Commission its comments on the observations submitted by interested parties in the investigation.

([16]) See footnote 8.

(65) Although these comments exclusively referred to the notified State aid scheme for infrastructure investments, some of those comments are of relevance for the assessment of the operating subsidies under assessment in this Decision. Those comments are summarised in what follows.

(66) Romania submits that most of the Romanian regional airports have an annual traffic of less than 50 000 passengers and none of these airports will exceed 300 000 passengers by 2015. On this basis, Romania considers that public support to those airports is unlikely to affect competition and distort trade between Member States.

(67) Nor would the distance between those airports affect their development in any way, according to Romania. This is because even in those cases where the linear distance between the airports is less than 100 km, the travelling time is generally over 2 hours such that the airports in question exert no competitive pressure on each other.

7. **ASSESSMENT OF THE AID**

(68) As explained in recital 10 above, following the withdrawal by Romania of its notification of the planned financing scheme of infrastructure investments, the formal investigation procedure remained open as concerns the public funding granted to Romanian regional airports in the period 2007-2009. The assessment set out below therefore concerns that measure.

(69) In the light of the decisions to open a formal investigation for Cluj-Napoca Airport and Târgu Mureș airport adopted on 31 July 2015 (see point 39 above), the Commission considers appropriate to close the present investigation for all airports subject to it, except for Cluj-Napoca airport and Târgu Mureș airport. The Commission intends to close investigation SA.30931 with respect to those two airports together with the investigations opened on 31 July 2015. Consequently, the assessment set out below only applies to the measures granted to the 11 other airports.

7.1. *EXISTENCE OF AID*

(70) Pursuant to Article 107(1) of the Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the provision of certain goods, in so far as it affects trade between Member States, shall be incompatible with the internal market save as otherwise provided by the Treaty.

(71) The criteria laid down in Article 107(1) of the Treaty are cumulative. Therefore, in order to determine whether the measures under scrutiny constitute State aid within the meaning of Article 107(1) of the Treaty, all the above mentioned conditions need to be fulfilled. Namely, the financial support:

(a) is granted by the State or through State resources;

(b) favours certain undertakings or the production of certain goods;

(c) distorts or threatens to distort competition;

(d) affects trade between Member States.

7.1.1. ***Economic activity and concept of undertaking***

(72) According to settled case law, the Commission must first establish whether the airport managers are undertakings within the meaning of Article 107(1) of the Treaty. The concept of an undertaking covers any entity engaged in an economic activity, regardless of its legal status and the way in which it is financed ([17]). Any activity consisting in offering goods or services on a given market is an economic activity.

(73) In *Leipzig/Halle Airport*, the General Court held that from the date of the judgment in *Aéroports de Paris* (12 December 2000), the application of State aid rules to the financing of airport infrastructure could no longer be excluded.

([17]) Judgment of 23 April 1991, Höfner and Elser/Macrotron C-41/90 EU:C:1991:161, paragraph 21; Judgment of 17 February 1993, Poucet and Pistre/AGF and Cancava C-160/91EU:C:1993:63, paragraph 17; Judgment of 18 June 1998, Commission/Italy C-35/96, EU:C:1998:303, paragraph 36.

(74) The Commission therefore finds that at least as of from 12 December 2000, the airport manager has been engaged in an economic activity and that it constitutes an undertaking in the sense of Article 107(1) of the Treaty (see also point 29 of the 2014 Aviation Guidelines).

7.1.2. ***Public policy remit***

(75) While airport managers must be considered to constitute undertakings in the sense of Article 107(1) of the Treaty at least as of 12 December 2000, it must be recalled that not all activities of an airport manager are necessarily of an economic nature (see also point 34 of the 2014 Aviation Guidelines) ([18]).

(76) The Court of Justice has held that activities that normally fall under the State's responsibility in the exercise of its official powers as a public authority are not of an economic nature and do not fall within the scope of the rules on State aid.

(77) Therefore, the financing of activities falling within the public policy remit or of infrastructure directly related to those activities in general does not constitute State aid ([19]). At an airport, activities such as air traffic control, police, customs, firefighting, activities necessary to safeguard civil aviation against acts of unlawful interference and the investments relating to the infrastructure and equipment necessary to perform these activities are generally considered to be of a non-economic nature (see also point 35 of the 2014 Aviation Guidelines) ([20]).

(78) However, public financing of non-economic activities must not lead to undue discrimination between airlines and airport managers. Indeed, it is established case-law that an advantage is present when public authorities relieve undertakings of the costs inherent to their economic activities ([21]). Therefore, if in a given legal system it is normal that airlines or airport managers bear the costs of certain services, whereas some airlines or airport managers providing the same services on behalf of the same public authorities do not have to bear those costs, the latter may enjoy an advantage, even if those services are considered in themselves non-economic (see also point 37 of the 2014 Aviation Guidelines).

(79) At no time did Romania claim that the financing granted to any of the regional airports subject to this Decision covered costs which would qualify as public policy remit costs. Nor have any of the airport operators, apart from Cluj-Napoca Airport, claimed in the course of the investigation that it would be the case. As a matter of fact, the compensation mechanism is designed to cover the difference between the revenues and losses of the airports, without making a distinction between public policy remit costs and other types of costs. This question can be left open as regards Cluj-Napoca Airport and Târgu Mureș Airport, since this Decision does not close the pending investigation with respect to those airports. As to the other airports, the Commission concludes that the measures do not constitute compensation for public policy remit costs.

7.1.3. ***State resources and imputability***

(80) The concept of State aid applies to any advantage granted directly or indirectly, financed out of State resources, granted by the State itself or by any intermediary body acting by virtue of powers conferred on it. Thus, it also applies to all advantages granted by regional or local authorities of Member States, whatever their status and description ([22]).

(81) In this case the financing is granted directly by the State or the local authorities through their own resources. Therefore, the Commission confirms that all measures under assessment are granted through State resources and are imputable to the State.

([18]) Judgment of 19 January 1994, SAT Fluggesellschaft/Eurocontrol C-364/92, EU:C:1994:7.
([19]) Commission Decision N 309/2002 of 19 March 2003, Aviation security — compensation for costs incurred following the attacks of 11 September 2001 (OJ C 148, 25.6.2003, p. 7).
([20]) See, in particular, Judgment of 19 January 1994, SAT Fluggesellschaft/Eurocontrol C-364/92, EU:C:1994:7, paragraph 30 and Judgment of 26 March 2009, Selex Sistemi Integrati/Commission C-113/07 P, EU:C:2009:191, paragraph 71.
([21]) See Judgment of 3 March 2005, Heiser C-172/03, EU:C:2005:130, paragraph 36, and case-law cited.
([22]) Judgment of the Court of 14 October 1987, *Federal Republic of Germany* v *Commission of the European Communities*, C-248/84, EU:C:1987:437 and Judgment of the General Court of 12 May 2011, joined cases *Région Nord-Pas-de-Calais*, T-267/08) EU:T:2011:209 and *Communauté d'agglomération du Douaisis* v *European Commission*, T-279/08, EU:T:2011:209, paragraph 108.

7.1.4. ***Selective economic advantage***

(82) The public funding granted to the airport managers aimed at offsetting the losses incurred when carrying out their ordinary activity. Nothing in the factual evidence available to the Commission or in the comments received from Romania or third parties suggest that the granting authorities could expect any financial return as a result of those funding measures when they decided to grant them. Therefore, the measures at issue do not comply with the market economy operator principle.

(83) In the course of the investigation Romania claimed that the disputed public financing would represent compensation for the provision of SGEIs.

(84) In case of undertakings entrusted with the provision of an SGEI, in order to conclude whether or not the measures under assessment constitute an economic advantage within the meaning of Article 107(1) of the Treaty, the Commission must examine observance of the conditions set out by the Court in its judgement in the Altmark case ([23]). Those conditions may be summarised as follows:

(a) the recipient undertaking must actually have public service obligations to discharge and these obligations must be clearly defined (hereinafter 'Altmark 1');

(b) the parameters on the basis of which the compensation is calculated must be established in advance in an objective and transparent manner (hereinafter 'Altmark 2');

(c) the compensation cannot exceed what is necessary to cover all or part of the costs incurred in the discharge of public service obligations, taking into account the relevant receipts and a reasonable profit for discharging those obligations (hereinafter 'Altmark 3');

(d) where the undertaking which is to discharge public service obligations, in a specific case, is not chosen pursuant to a public procurement procedure which would allow for the selection of the tenderer capable of providing those services at the least cost to the community, the level of compensation needed must be determined on the basis of an analysis of the costs which a typical undertaking, well run and adequately provided with means of transport so as to be able to meet the necessary public service requirements, would have incurred in discharging those obligations, taking into account the relevant revenues and a reasonable profit for discharging the obligations (hereinafter 'Altmark 4').

(85) Those four conditions must be fulfilled cumulatively. Therefore, if one of them is not satisfied, it cannot be claimed that the measures at issue do not involve an economic advantage on the basis of the Altmark judgement.

7.1.4.1. **Altmark 1**

(86) The requirement of the first Altmark condition coincides with the requirement of clear entrustment and definition of the SGEI provided by Article 106(2) of the Treaty ([24]).

(87) Article 106(2) of the Treaty applies only to 'undertakings entrusted with the operation' of an SGEI. The Court of Justice has consistently underlined the need for an entrustment act ([25]). Therefore, the need for a clear definition of the SGEI is inherent to and inseparable from the idea of entrustment and derives directly from Article 106(2) of the Treaty.

([23]) Judgment of 24 July 2003, Altmark Trans and Regierungspräsidium Magdeburg, C-280/00, EU:C:2003:415.

([24]) Paragraph 47 of the Communication from the Commission on the application of the European Union State aid rules to compensation granted for the provision of services of general economic interest (OJ C 8, 11.1.2012, p. 4).

([25]) Judgment of the Court of 27 March 1974, *Belgische Radio en Televisie* v *SV SABAM and NV Fonior*, C-127/73, EU:C:1974:6 at paragraphs 19-20; Judgment of 11 April 1989, *Ahmed Saeed Flugreisen and Silver Line Reisebüro GmbH* v *Zentrale zur Bekämpfung unlauteren Wettbewerbs e.V*, C-66/86, EU:C:1989:140 at paragraphs 55-57; Judgment of 2 March 1983, *Gesellschaft zur Verwertung von Leistungsschutzrechten mbH (GVL)* v *Commission*, C-7/82, EU:C:1983:52; Judgment of the Court of 14 July 1981 *Gerhard Züchner* v *Bayerische Vereinsbank AG*, C-172/80, EU:C:1981:178.

(88) In the 2001 Communication on services of general interest, the Commission already underlined the link between clear definition, entrustment and necessity and proportionality of the SGEI compensation under Article 106(2) of the Treaty ([26]). Paragraph 22 of that Communication explained that 'in every case, for the exception provided for by Article 106(2) of the Treaty to apply, the public service mission needs to be clearly defined and must be explicitly entrusted through an act of public authority […]. This obligation is necessary to ensure legal certainty as well as transparency vis-à-vis the citizens and is indispensable for the Commission to carry out its proportionality assessment'. Entrustment and definition are thus a logical prerequisite of any meaningful assessment of the proportionate level of any compensation. The Union Courts have consistently underlined the need for a clear definition of the PSOs for the application of both the *Altmark* exception and Article 106(2) of the Treaty ([27]).

(89) Also the 2011 Communication from the Commission on the application of the European Union State aid rules to compensation granted for provision of SGEIs ([28]) clarifies that the SGEI and the PSOs must be clearly defined in advance. According to paragraph 51 therein, for Article 106(2) of the Treaty to apply, the operation of an SGEI must be entrusted to one or more undertakings. The undertakings in question must therefore have been entrusted with a special task by the State. The first Altmark criterion requires that the undertaking has PSOs to discharge. Accordingly, in order to comply with the Altmark case-law, a public service entrustment is necessary that defines the obligations of the SGEI provider in question and those of the public authority entrusting the SGEI in question. According to paragraph 52 thereafter the public service task must be assigned by way of one or more acts that must at least specify the PSOs; the undertaking and, where applicable, the territory concerned; the nature of any exclusive or special rights assigned to the undertaking by the authority in question.

(90) In this case, Romania claimed that the public financing granted to the airports in question in the period 2007-2009 represented compensation for the provision of SGEIs. Romania claimed that Government Decision 398/1997/EC laid down in a clear and transparent manner the PSOs, the parameters for calculating the compensation and the arrangements for avoiding any overcompensation.

(91) However, whilst Government Decision 398/1997/EC set out that operating and capital costs of the airports listed therein would be covered by own resources supplemented by public financing and listed the activities to be performed by the airport managers across all airports concerned (i.e. not for each airport individually), it did not impose clear PSOs on any of the airport managers.

(92) As concerns Constanța airport, whilst the Government Decision 523/1998/EC set out which costs are either to be supplemented by public financing or be fully covered by public financing and listed the activities to be performed by the airport manager, it did not impose clear PSOs on any of the airport managers.

(93) Romania's claim that airport services would be essential for the economic development of the respective regions or aim to fulfil a strategic security objective does not suffice to consider that the beneficiaries were correctly entrusted with the SGEI to the extent that the PSOs.

(94) Regarding the issue as to whether the airports in question qualify as genuine services of general economic interest, the Commission leaves this question open since an assessment in this respect is not necessary given that, as explained above, the PSOs are not clearly defined in an entrustment act. The Commission therefore does not need to take a position on this aspect.

(95) Therefore, the measures at issue do not comply with Altmark 1.

([26]) Commission Communication on Services of General Interest in Europe (the 2001 SGEI Communication) (OJ C 17, 19.1.2001, p. 4).
([27]) Judgment of 24 July 2003, Altmark Trans and Regierungspräsidium Magdeburg, C-280/00, EU:C:2003:415, paragraph 87; Judgement of 7 November 2012, *CBI* v *Commission*, T-137/10, not yet reported, paragraphs 97 and 98.
([28]) OJ C 8, 11.1.2012, p. 4.

7.1.4.2. **Altmark 4**

(96) The fourth Altmark criterion provides that the compensation must be the minimum necessary in order for it not to qualify as aid. This criterion is fulfilled if the recipient of the compensation has been chosen following a tender procedure that would allow for the selection of the tenderer capable of providing the required SGEI at the least cost to the community or, failing that, if the compensation has been calculated by reference to the costs of an efficient undertaking.

(97) In this case, the beneficiaries have not been chosen following a tender procedure. There is also no evidence showing that that the level of compensation has been determined on the basis of an analysis of the costs which a typical undertaking, well run and adequately provided with the means required to be able to meet the necessary public service requirements, would have incurred in discharging those obligations, taking into account the relevant revenues and a reasonable profit for discharging these obligations (not correctly defined — see recitals 86-95). The Commission therefore considers that the public financing in question cannot be found to have been determined on the basis of the costs of an efficient undertaking.

(98) Consequently, the measures under investigation do not comply with Altmark 4.

7.1.4.3. **Conclusion — existence of a selective economic advantage**

(99) As the Altmark 1 and 4 conditions are not complied with, the Commission finds that the four conditions set out by the Court of Justice in the Altmark case were not cumulatively met in the present case. Since the market economy operator principle is not complied with either as mentioned in recital 82 above, the measures under assessment conferred an economic advantage on the airport managers.

(100) Furthermore, that economic advantage is selective as it is directed at certain undertakings belonging to a given economic sector, namely airports.

7.1.5. ***Distortion of competition and effect on trade between Member States***

(101) Competition between airports can be assessed in the light of airlines' criteria of choice, and in particular by comparing factors such as the type of airport services provided and the clients concerned, population or economic activity, congestion, whether there is access by land, and the level of charges and overall commercial conditions for use of airport infrastructure and services (see point 43 of the 2014 Aviation Guidelines).

(102) Moreover, airport operators are in competition for the management of airport infrastructure, including at local and regional airports. The public funding of an airport may therefore distort competition in the markets for airport infrastructure operation. Moreover, public funding to airports can distort competition and have an effect on trade in air transport markets across the Union. Finally, intermodal competition may also be affected by public funding to airports (see point 44 of the 2014 Aviation Guidelines).

(103) Therefore, the measures under assessment distorted competition or at least threatened to distort competition and affected trade between Member States.

7.1.6. ***Conclusion on existence of aid***

(104) On the basis of the above, the Commission concludes that the measures under assessment constitute State aid to those airports within the meaning of Article 107(1) of the Treaty.

7.2. *TYPE OF AID: EXISTING OR NEW AID?*

(105) The assessment made under Section 3.2.2 'Type of aid: existing or new aid' (paragraphs 93 to 95) of the opening decision as to whether the aid should be considered as existing or new aid under the provisions of Annex V to the Act concerning the conditions of accession of the Republic of Bulgaria and Romania remains valid. Therefore, the measures do not qualify as existing aid.

7.3. *LAWFULNESS OF THE AID*

(106) The measures under investigation were put into effect before formal approval by the Commission. Therefore, they constitute unlawful aid unless they fulfil the relevant conditions of a Union act providing for a block exemption from the notification obligation laid down in Article 108 of the TFEU for certain categories of aid. In this case, the only possible act that could have potentially provided such an exemption is the 2005 SGEI Decision.

(107) In the course of the investigation Romania has argued that the aid to the thirteen airports in question would comply with the conditions laid down in the 2005 SGEI Decision, which was in force when the measures at issue were granted.

(108) The 2005 SGEI Decision applied to airports:

(a) for which the annual traffic does not exceed 1 000 000 passengers;

(b) to airports with an annual turnover before tax of less than 100 million during the two financial years preceding that in which the service of general economic interest was assigned, which receive annual compensation of less than EUR 30 million ([29]).

(109) The 2005 SGEI Decision only applied to aid under the form of public service compensation for genuine SGEI services. In order to benefit from this exemption, public service compensation for the operation of SGEI must also comply with the detailed conditions set out in Articles 4, 5 and 6 thereof ([30]).

(110) Article 4 of the 2005 SGEI Decision requires that the SGEI be entrusted to the undertaking concerned by way of one or more official acts, setting out, inter alia, the nature and duration of the PSOs, the parameters for calculating, controlling and reviewing the compensation, and the necessary arrangements for avoiding and repaying any overcompensation. Article 5 of the 2005 SGEI Decision laid down that the amount of compensation has to be limited to what is necessary to cover the costs incurred in discharging the PSOs, taking into account the relevant receipts and a reasonable profit. Finally, Article 6 of the 2005 SGEI Decision requires Member States to carry out regular controls to ensure that undertakings are not receiving compensation in excess of the amount determined in accordance with Article 5.

(111) As indicated in Section 7.1.4.1, Romania has failed to demonstrate that the airport managers were entrusted with clearly defined PSOs through the alleged entrustment acts on which it relied, namely Government Decision 398/1997/EC and Government Decision 523/1998/EC. The requirements of Articles 4 are therefore not met.

(112) Consequently, the aid to the eleven airport managers cannot be considered compatible with the internal market and exempted from the notification requirement on the basis of the 2005 SGEI Decision.

(113) According to Article 10 of the Commission Decision 2012/21/EU ([31]) (hereinafter 'the 2011 SGEI Decision'), any aid put into effect before its entry into force that was not compatible with the internal market nor exempted from the notification requirement in accordance with the 2005 SGEI Decision can be declared compatible with the internal market and exempt from the requirement of prior notification if the aid fulfils the conditions laid down therein. For similar reasons to those set out in Section 7.1.4.1, the aid does not fulfil the conditions laid

([29]) Article 2(1)(a) thereof.
([30]) See Article 10 thereof for the date of entry into force of the 2005 SGEI Decision and notably the date of application of Article 4 (c), (d) and (e) and Article 6, thereof.
([31]) Commission Decision 2012/21/EU of 20 December 2011 on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest (OJ L 7, 11.1.2012, p. 3).

down in Articles 4, 5 and 6 of the 2011 SGEI Decision, which are largely similar to Articles 4, 5 and 6 in the 2005 SGEI Decision. Therefore, the aid cannot be considered compatible with the internal market and exempted from the notification requirement on the basis of the 2011 SGEI Decision.

(114) The measures at hand thus constitute unlawful State aid.

7.4. *COMPATIBILITY OF THE AID*

(115) For the reasons explained above, the aid cannot be declared compatible with the internal market in accordance with the 2005 SGEI Decision and the 2011 SGEI Decision. Consequently, the Commission will assess the compatibility of the measures at issue on the basis of the criteria laid down respectively in the 2011 SGEI Framework and the 2014 Aviation Guidelines, which seem to be the only possible legal bases under which those measures might potentially be found compatible with the internal market.

7.4.1. ***Compatibility under the 2011 SGEI Framework***

(116) Article 106(2) of the Treaty sets out that 'undertakings entrusted with the operation of an SGEI or having the character of a revenue-producing monopoly shall be subject to the rules contained in this Treaty, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to EU interest.'

(117) That Article provides for a derogation from the prohibition of State aid contained in Article 107 of the Treaty to the extent that the aid is necessary and proportional to ensure the performance of the SGEI under acceptable economic conditions. Under Article 106(3) of the Treaty it is for the Commission to ensure application of this Article, including, inter alia, by specifying under which conditions it considers the criteria of necessity and proportionality to be fulfilled.

(118) Prior to 31 January 2012, the Community framework for State aid in the form of public service compensation (hereinafter 'the 2005 SGEI Framework') ([32]) and the 2005 SGEI Decision represented the Commission's policy of applying the derogation of Article 106(2) of the Treaty.

(119) On 31 January 2012 the new SGEI package, including the European Union framework for State aid in the form of public service compensation (2011) (hereinafter 'the 2011 SGEI Framework') ([33]) and 'the 2011 SGEI Decision' entered into force.

(120) According to paragraph 69 of the 2011 SGEI Framework, 'the Commission will apply the principles set out in this Communication to unlawful aid on which it takes a decision after 31 January 2012 even if the aid was granted before this date'.

(121) Paragraph 16 of the 2011 SGEI Framework sets out the requirements for an SGEI to be considered validly entrusted. Notably paragraph 16(a) thereafter lays down that the entrustment act must spell out the content and duration of PSOs. Therefore, for the same reasons already mentioned in Sections 7.1.4.1 and 7.3 above, in this case the aid cannot be considered compatible under the 2011 SGEI Framework.

(122) The Commission therefore considers that the aid measure in question cannot be declared compatible with the internal market pursuant to Article 106(2) of the Treaty.

([32]) OJ C 297, 29.11.2005, p. 4.
([33]) OJ C 8, 11.1.2012, p. 15.

7.4.2. ***Compatibility under the 2014 Aviation Guidelines***

(123) The 2014 Aviation Guidelines apply to operating aid granted to airports before 4 April 2014 ([34]). The compatibility conditions laid down in the 2014 Aviation Guidelines for operating aid to airports differ depending on whether the aid was granted before or after 4 April 2014, the date of entry into force of the guidelines ([35]).

(124) Operating aid granted before the entry into force of the 2014 Aviation Guidelines, that is before 4 April 2014, may be declared compatible provided that the following conditions are met:

(a) *Contribution to a well-defined objective of common interest*: this condition is fulfilled, inter alia, if the aid increases the mobility of Union citizens and connectivity of the regions or facilitates regional development ([36]);

(b) *Appropriateness of State aid as a policy instrument*: the Member States must demonstrate that the aid is appropriate to achieve the intended objective or resolve the problems intended to be addressed by the aid ([37]);

(c) *Need for State intervention*: the aid should be targeted towards situations where such aid can bring about a material improvement that the market itself cannot deliver ([38]);

(d) *Existence of incentive effect*: this condition is fulfilled if it is likely that, in the absence of operating aid, and taking into account the possible presence of investment aid and the level of traffic, the level of economic activity of the airport concerned would be significantly reduced ([39]);

(e) *Proportionality of the aid amount (aid limited to the minimum necessary)*: in order to be proportionate, operating aid to airports must be limited to the minimum necessary for the aided activity to take place ([40]);

(f) *Avoidance of undue negative effects on competition and trade* ([41]).

7.4.2.1. **Contribution to a well-defined objective of common interest**

(125) The operating support measures granted to Romanian regional airports were aimed to allow the airports to have enough capital to continue operating viably. According to Romania, regional airports have an instrumental role to play in promoting accessibility to catchment areas and the financing at issue improve airport safety, security and efficiency, whilst contributing towards the achievement of wider regional development objectives. In addition, the most convenient mode of transport to/from those regions is air travel, apart from road/rail services, which however in Romania, given the poor condition of the infrastructure, involve considerably higher travelling times.

(126) Nevertheless, the Commission notes that in view of the close proximity between some of the airports in the investigation, a possible duplication of airport infrastructure could militate against finding financing for those airports meets a clearly defined objective of common interest. Therefore the Commission must assess that the financing of those airports does not lead to the duplication of airport infrastructure within the same catchment area.

(127) The 2014 Aviation Guidelines define the 'catchment area of an airport' as the geographic market boundary that is normally set at around 100 kilometres or around 60 minutes travelling time by car, bus, train or high-speed train. The definition of the catchment area of a given airport needs to take into account the specificities of each particular airport. The size and shape of the catchment area depends on various characteristics of the airport, including its business model, location and the destinations it serves.

(128) As set out in recital 24 above, the only airports subject to the present assessment for which another airport is present within the catchment area of 100 km or 60 minutes travelling time by road, train or high-speed train, as set out in point 25 (12) of the 2014 Aviation guidelines are Arad, Baia Mare, Satu Mare, Constanța and Oradea.

([34]) Point 172 of the 2014 Aviation Guidelines.
([35]) Point 137 of the 2014 Aviation Guidelines.
([36]) Points 137 and 113 of the 2014 Aviation Guidelines.
([37]) Points 137 and 120 of the 2014 Aviation Guidelines.
([38]) Points 137 and 116 of the 2014 Aviation Guidelines.
([39]) Points 137 and 124 of the 2014 Aviation Guidelines.
([40]) Points 137 and 125 of the 2014 Aviation Guidelines.
([41]) Points 137 and 131 of the 2014 Aviation Guidelines.

For all the other airports, the Commission considers that the aid contributed to maintaining in operation infrastructure necessary to the mobility of citizens and accessibility of the regions where those airports are located, given in particular the poor quality of the road and rail infrastructure. Therefore, for those airports, the aid contributed to the furtherance of an objective of common interest for the Union. As to the remaining airports, the Commission notes the following.

Arad airport

(129) Arad airport is located only 50 km from Timișoara, which amounts to a travelling time by road of 40 minutes.

(130) Timișoara and Arad airports had different business models during the period 2007-2009. Timișoara was a well-established airport pursuing a business model that is significantly different from that of Arad airport. Timișoara airport offered mainly scheduled flights of regional and international full service carriers connecting Timișoara with a number of Romanian and European cities ([42]) whilst, as mentioned in recitals 28 and 31 above, the business model of Arad was based on low-cost traffic. The two airports continued to operate under different models from 2009 onwards with low-cost traffic drastically reduced and subsequently disappearing at Arad airport (the airport served only 8 632 passengers in 2015 and according to publicly available information, it had no commercial passenger traffic in 2016) and Timișoara airport gearing towards low cost traffic. The fact that the business models of the airports at Timișoara and Arad were different during the period under assessment and subsequently is an indication that the two airports are imperfect substitutes for one another.

(131) According to point 85 of the Aviation Guidelines, the duplication of unprofitable airports or the creation of additional unused capacity does not contribute to an objective of common interest. In this respect, the Commission notes that Timișoara was profitable during the period under assessment. In addition, Timișoara airport made investments in various terminals over 2007-2010 to expand its capacity and cater for increased air traffic (e.g. extension and modernisation of the international flights terminal in 2007, extension of the domestic departure terminal over 2008-2010). Timișoara airport therefore, already far bigger, had to invest to grow, so it is unlikely that absent the aid to Arad, Timișoara could have absorbed Arad's traffic without further investments. This is a further indication of the imperfect degree of substitutability between the two airports.

(132) In the light of the arguments put forward in recitals 130 and 131 above, the Commission finds that while Arad airport is situated in the same catchment area as Timișoara airport, there is no duplication between the two airports.

(133) On the basis of the above, the Commission can conclude that the aid to Arad airport contributed to the mobility of citizens and accessibility of the region where it is located and therefore served a well-defined objective of common interest.

Baia Mare and Satu Mare airports

(134) As regards Baia Mare and Satu Mare airports, they are located 76 km from each other and both airports served mostly scheduled flights to Bucharest operated by the Romanian flag carrier, TAROM. Based on publicly available information, at Baia Mare airport, during the period 2007-2009, TAROM operated several weekly flights to Bucharest, while Austrian Airlines operated one destination (Vienna) during the period April 2008-February 2009 and Blueair served three European destinations for just a few months (October to December 2009). TAROM also operated several weekly flights from Satu Mare airport to Bucharest. However, given the poor condition of the road infrastructure in that area, the travelling time between the two airports is 1h10 minutes by road, which exceeds the 60 minutes travelling time criterion used to delineate the catchment area of an airport according to the 2014 Aviation Guidelines.

(135) In addition, as mentioned in recitals 34 and 35 above there was a difference in the size of the aircrafts which could be regularly operated at the two airports given the difference in infrastructure.

([42]) Low cost carrier Wizz Air Wizz Air started its operations from Timisoara airport only at the end of 2008.

(136) Therefore, in the light of the arguments set in recitals 134 and 135 above, while the two airports are situated within 100 kilometres distance criterion used to delineate the catchment area of an airport according to the 2014 Aviation Guidelines, the Commission finds that there is no duplication between them.

(137) Based on the above, the Commission concludes that the aid received by each of the two airports contributed to a well-defined objective of common interest by increasing mobility and accessibility in the areas where those airports are located.

Constanța airport

(138) Constanța airport is situated at 45 km and 0h30 travelling time from Tuzla airport. In 2007-2009, Constanța offered scheduled flights to several European destinations and therefore had a different business model compared to Tuzla which did not offer any airport services for commercial aviation and focused on specialised flights (e.g. for agricultural purposes, for advertising purposes as well as leisure, training and emergency flights). Consequently, although Tuzla airport is situated in the same catchment area as Constanța airport, it cannot be considered an 'airport' within the meaning of point 25(6) of the 2014 Aviation Guidelines and therefore cannot be regarded as the duplication of the airport infrastructure at Constanța airport.

(139) On this basis, the Commission concludes that the aid to Constanța airport contributed to a well-defined objective of common interest by increasing mobility and accessibility in the area where the airport is located.

Oradea airport

(140) Oradea is 80 km away from Debrecen (Hungary), but traveling time is at least 1h30 (due to the need to pass a non-Schengen border).

(141) In addition, over 2007-2009 the airports had a different business model with Oradea operating domestic flights by regional and national full service carriers and Debrecen airport focusing at that time on charter flights (with low cost traffic developing only in recent years). This is an indication that the two airports in the period under assessment have been imperfect substitutes for one another. Therefore, while the two airports are situated within 100 kilometres distance criterion used to delineate the catchment area of an airport according to the 2014 Aviation Guidelines, the Commission concludes that there is no duplication between them.

(142) Based on the above, the Commission finds that the aid to Oradea airport contributed to a well-defined objective of common interest by increasing mobility and accessibility in the area where the airport is located.

7.4.2.2. **Need for State intervention, appropriateness of State aid as a policy instrument, existence of an incentive effect, proportionality of the aid amount**

(143) As regards necessity of the aid, point 116 of the 2014 Aviation Guidelines requires that the operating aid brings about a material improvement that the market itself cannot deliver. According to point 120 of the 2014 Aviation Guidelines, Member States must demonstrate that the aid is appropriate to achieve the intended objective or resolve the problems intended to be addressed by the aid. This is the case if, absent the aid in question, the Romanian airports in question would likely have been forced to exit the market, depriving Romania's regions of a transport infrastructure which plays a significant role in its accessibility and development, or reduce their activity to a significant extent. According to the 2014 Aviation Guidelines, smaller airports may have difficulties in ensuring the financing of their operation without public funding. According to point 118 of the 2014 Aviation Guidelines, airports with annual passenger traffic below 200 000 passengers per annum may not be able to cover their operating costs to a large extent. In this sense, the Commission notes that traffic at the eleven airports subject to this assessment was below 200 000 passengers in the period 2007-2009.

(144) According to point 124 of the 2014 Aviation Guidelines, operating aid has an incentive effect if it is likely that, in the absence of the operating aid, and taking into account the possible presence of investment aid and the level

of traffic, the level of economic activity of the airport concerned would be significantly reduced. In the present case, absent the aid the activity of the beneficiaries would have been significantly reduced if not terminated altogether due to uncovered losses. According to point 125 of the 2014 Aviation Guidelines, in order to be proportionate, operating aid to airports must be limited to the minimum necessary for the aided activity to take place. The measures under investigation were limited to the minimum necessary to offset losses and allow the airports to continue to operate viably.

(145) Therefore, the Commission concludes that all operating aid was necessary and limited to the minimum necessary for the aided activity to take place.

7.4.2.3. **Avoidance of undue negative effects on competition and trade**

(146) As set out in recital 24 above, the only airports subject to the present assessment for which another airport is present within 100 km or 60 minutes travelling time by road, train or high-speed train are Arad, Baia Mare, Satu Mare, Constanța and Oradea. As explained in recital 128 above, for all the other airports, the Commission considers that the aid contributed to maintaining in operation infrastructure necessary to the mobility of citizens and accessibility of the regions where those airports are located, given in particular the poor quality of the road and rail infrastructure. Therefore, for those airports, the aid contributed to the furtherance of an objective of common interest for the Union and did not give rise to undue distortions of competition. As to the remaining airports, the Commission notes the following.

Arad airport

(147) The Commission notes that in the period under assessment, Arad airport had very limited traffic, both in absolute terms and compared with Timișoara airport (situated at 50 km and 40 minutes travelling time). The number of passengers per year at Arad airport varied between 67 183 and 128 835 in the period under assessment, whereas traffic at Timișoara airport varied between 859 329 to 991 758 passengers per year. Traffic at Arad airport represented only 7,8 % of the traffic at Timișoara airport in 2007, 14,5 % in 2008 and 8,8 % in 2009. The competitive impact of the aid received by Arad airport on Timișoara airport has been very limited in view of the difference in traffic level between the two airports ([43]). More generally, the overall competitive effects of the aid have been necessarily modest in view of the small traffic at the airport. In addition, the traffic evolution at the two airports does not seem correlated. Traffic at Arad airport increased from 67 183 passengers in 2007 to 128 835 in 2008 and decreased to some 88 147 passengers in 2009 while Timișoara airport increased steadily its traffic (from 859 329 passengers in 2007 to 886 083 passengers in 2008 and 991 758 passengers in 2009) ([44]). This absence of correlation suggests that the two airports served different needs and market segments and were not simply duplicating each other.

(148) Furthermore, given that Timișoara airport was profitable between 2007 and 2009 and made investment to increase its capacity, it is unlikely that the effect of the aid to Arad airport have had a material impact on the operations of Timișoara airport.

(149) In view of the above, the Commission considers that the distortions of competition brought about by the aid were limited and did not outweigh the contribution of the aid to mobility and accessibility.

([43]) In case SA 33961 (2012/C) (ex 2012/NN) implemented by France in favour of Nîmes-Uzès-Le Vigan Chamber of Commerce and Industry, Veolia Transport Aéroport de Nîmes, Ryanair Limited and Airport Marketing Services Limited (OJ L 113, 27.4.2016, p. 32), the Commission found that the competitive impact of the aid to Nîmes airport on the nearby Montpellier airport was also, inter alia, found limited due to the difference in traffic between the two airports as the traffic at Nîmes was six times lower that the one of Montpellier.

([44]) The non-correlation of the traffic evolution of the neighbouring airports was also one criteria used in case SA.22614 (C 53/07) implemented by France in favour of the Chamber of Commerce and Industry of Pau-Béarn, Ryanair, Airport Marketing Services and Transavia (OJ L 201, 30.7.2015, p. 109), for arguing compatibility of the aid to Pau airport.

Baia Mare and Satu Mare airports

(150) Given the extremely low level of traffic of the two airports in the period under assessment (from 15 334 passengers in 2007 to 24 983 passengers in 2009 for Baia Mare and from 5 883 passengers to 11 101 passengers in 2009 for Satu Mara) and the difference in size of the type of aircrafts operated as indicated in recitals 34 and 35 above, the Commission concludes that the distortions of competitions caused by the aid were very limited and did not outweigh the positive contribution of the aid to mobility and accessibility.

Constanța airport

(151) As explained in recital 138 above, Constanța which operated commercial traffic had a different business model than the nearby Tuzla airport, which did not offer any airport services for commercial aviation. Tuzla airport is not even an 'airport' within the meaning of point 25(6) of the 2014 Aviation Guidelines. Moreover, Constanța had a very low traffic in the period under assessment, which limits the distortions of competition brought about by the aid that it received. Therefore the Commission finds that the contribution of the aid received by Constanța airport in 2007-2009 to mobility and accessibility outweighed any distortion of competition brought about by that aid.

Oradea airport

(152) As explained in recitals 37 and 140 above, Oradea is 80 km away from Debrecen (Hungary), but traveling time is at least 1h30 (due to the need to pass a non-Schengen border). In addition, over 2007-2009 Oradea had very low traffic (less than 40 000 passengers) and had a different business model compared to Debrecen airport (see recital 141).

(153) On this basis, the Commission considers that contribution of aid received by Oradea airport to mobility and accessibility outweighed any distortion of competition brought about by that aid.

7.4.3. ***Conclusion on the compatibility of the aid***

(154) On the basis of the above assessment, the Commission concludes that the aid granted in 2007-2009 to Romanian airports at Arad, Bacău, Baia Mare, Craiova, Iași, Oradea, Satu-Mare, Sibiu, Suceava, Tulcea and Constanța in the period 2007-2009 is compatible with the internal market pursuant to Article 107(3)(c) of the Treaty.

(155) This assessment is entirely without prejudice to any potential future assessment by the Commission of any potential aid granted to those airports after 4 April 2014, since any such aid would have to be assessed against criteria that differ from those applicable to the measures at hand ([45]).

8. **CONCLUSION**

(156) The funding granted by Romanian public authorities between 2007-2009 to airports located in Arad, Bacău, Baia Mare, Craiova, Iași, Oradea, Satu-Mare, Sibiu, Suceava, Tulcea and Constanța constitutes unlawful State aid which is compatible with the internal market pursuant to Article 107(3)(c) TFEU.

(157) For the reasons explained in recital 69, the investigation for the public funding granted to Cluj-Napoca airport and Târgu Mureș airport between 2007-2009 remains open,

HAS ADOPTED THIS DECISION:

Article 1

1. The public funding which Romania has provided in the period 2007-2009 for Romanian airports at Arad, Bacău, Baia Mare, Craiova, Iași, Oradea, Satu Mare, Sibiu, Suceava, Tulcea and Constanța, amounting to 490 401,3 thousand RON, constitute State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union, implemented in breach of Article 108(3) of the Treaty on the Functioning of the European Union.

([45]) In particular for aid granted after April 2014 point 115 of the 2014 Aviation Guidelines foresee that there is a need to prove the capacity of an unprofitable airport to achieve full operating cost coverage at the end of the transitional period (see paragraphs 128 to 130 of the 2014 Aviation Guidelines) and point 132 of the Aviation Guidelines sets out the need for Member States to prove that all airports in the catchment area will be able to achieve full operating cost coverage at the end of the transitional period.

2. The State aid referred to in paragraph 1 is compatible with the internal market within the meaning of Article 107(3)(c) of the Treaty on the Functioning of the European Union.

Article 2

This Decision is addressed to Romania.

Done at Brussels, 27 September 2016.

For the Commission
Margrethe VESTAGER
Member of the Commission

III

(Other acts)

EUROPEAN ECONOMIC AREA

EFTA SURVEILLANCE AUTHORITY DECISION

No 469/15/COL

of 4 November 2015

to close the formal investigation into the alleged State aid to Innovation Norway for its activities within the market of web infrastructure and related services, as well as possible aid in favour of the regional tourist boards and the destination management organisations (*Norway*) [2017/1150]

The EFTA Surveillance Authority ('the Authority'),

HAVING REGARD to the Agreement on the European Economic Area ('the EEA Agreement'), in particular to Article 61(1),

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

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

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

Whereas:

I. **FACTS**

1. *PROCEDURE*

(1) By letter dated 5 July 2013 ([1]), tellUs IT AS (later merged with New Mind ([2]), and henceforth referred to as 'New Mind | tellUs' or 'the Complainant'), made a State aid complaint to the Authority regarding Innovasjon Norge's ('Innovation Norway' or 'IN') economic activities in the market for web infrastructure and related services, within the tourism sector. The Authority received and registered the complaint on 8 July 2013.

(2) After a preliminary examination of the complaint, on 16 July 2014, the Authority decided to initiate the formal investigation procedure provided for in Article 1(2) of Part I of Protocol 3 by adopting Decision No 300/14/COL ('the opening decision') ([3]). By means of this decision, the Authority called upon the Norwegian authorities and interested parties to submit their comments.

([1]) Document No 678002 and Annexes at Documents No 678003 to 678007, 678010 to 678013 and 678017.
([2]) In October 2013, the original complainant, tellUs IT AS, merged with the company New Mind forming New Mind | tellUs. See www.newmind.co.uk
([3]) Published in OJ C 334, 25.9.2014, p. 8 and EEA Supplement No 53, 25.9.2014, p. 1.

(3) By letter dated 1 September 2014 ([4]), the Norwegian authorities provided comments to the opening decision. On 30 September 2014, the Authority met the Norwegian authorities and IN. On that occasion, the Norwegian authorities provided new information and clarifications on their submission dated 1 September 2014. The Authority also asked IN additional questions which were replied to by email dated 17 October 2014 ([5]).

(4) By email of 9 October 2014 ([6]), the Authority received comments from one interested party, the Complainant. By letter of 10 October 2014 ([7]), the Authority forwarded these to the Norwegian authorities. The Authority had conference calls with IN on 27 October 2014 and 5 November 2014.

(5) By letter dated 24 November 2014 ([8]), the Norwegian authorities submitted their comments on the Complainant's observations and further information on the case.

(6) After this, the Authority has received additional information on the case from the Complainant and IN ([9]). The information received from the Complainant was forwarded to the Norwegian authorities.

2. *DESCRIPTION OF THE MEASURES*

(7) The present decision concerns IN's activities within the tourism sector.

(8) IN is a public company, entrusted with the mandate to support innovation and development of Norwegian enterprises and industry. IN supports the national tourism industry. IN has established and manages the website *visitnorway.com*, the most visited Norwegian tourism website ([10]).

(9) Through *visitnorway.com*, IN provides services to regional tourist boards ('RTBs') ([11]) and destination management organisations ('DMOs') ([12]). The RTBs and the DMOs are local/regional entities promoting tourism in their respective geographic areas.

(10) Those services include (i) web infrastructure and related services and (ii) marketing and promotion services in the tourism sector ([13]).

(11) The Complainant and the opening decision refer to possible State aid measures regarding the web infrastructure and related services. Specifically, Article 1 of the opening decision refers to three possible State aid measures.

(12) The first alleged State aid measure concerns State aid in favour of IN by means of foregoing of profits when providing web infrastructure and related services to the RTBs and DMOs.

(13) The second measure is the alleged lack of accounting separation and a transparent cost allocation methodology separating IN's economic and non-economic activities. In particular, a relevant question is whether IN's provision of web infrastructure and related services are cross-subsidised with public funds received to carry out a non-economic service, i.e. the general promotion of Norway as a tourism destination.

([4]) Document No 720775, together with 12 annexes (Documents No 720776 to 720788).
([5]) Document No 726058.
([6]) Document No 725167.
([7]) Document No 725174.
([8]) Documents No 730559, 730560 and 730561.
([9]) The Authority has received a number of emails from the Complainant and IN providing additional information. TellUs sent an email dated 1 January 2015 (Document No 734800). IN sent several e-mails Documents No 742759 (mail dated 16 January 2015), 744264 (mail dated 5 February 2015), 753927 (mail dated 14 April 2015), 754218 (mail dated 17 April 2015), 757843 (mail dated 20 May 2015) and 758656 (mail dated 29 May 2015) and had a conference call with IN on 16 April 2015.
([10]) In particular, *visitnorway.com* had 22,5 million visits and 50 million page views in 2013 and 21,3 million visits and 50,3 million page views in 2014. See information available at: http://www.slideshare.net/hanspetteraalmo/new-structure-for-destinations-on-visitnorwayvom and Document No 758656.
([11]) In Norwegian '*Regionalt selskap*'.
([12]) In Norwegian '*Destinasjonsselskap*'.
([13]) The Authority will provide a description of these services in sections 2.2 and 2.3 below.

(14) The third alleged State aid measure concerns State aid in favour of the RTBs and DMOs, in the form that prices charged for web infrastructure and related services are not sufficient to create a reasonable return for IN on its investments.

2.1. BENEFICIARIES OF THE ALLEGED STATE AID

(15) IN was established in 2003 by the Norwegian Government through the Act on Innovation Norway ([14]) ('the Act on IN'). The State owns 51 % of the company, and the counties own the remaining 49 % ([15]).

(16) The company was established with the purpose to be the Norwegian Government's instrument to promote value-generating business development throughout the country ([16]). IN manages and implements several Norwegian aid schemes. IN supports the national tourism sector. According to the Norwegian authorities: 'IN is amongst others entrusted with the task of offering web marketing services to reach the international and national population on the official website visitnorway.com' ([17]).

(17) Local and regional tourism promotion is ensured by the RTBs and the DMOs. According to the information provided by the Norwegian authorities ([18]), in Norway there are around 300 regional and local tourism organisations, i.e. RTBs and DMOs. Their main objective is to arrange tourism activities and offer tourism information. The RTBs' focus is on marketing the region internationally, while the DMOs work both internationally and nationally to market specific destinations ([19]). In general, their shareholders are both public and private companies ([20]). The RTBs are generally organised as limited liability companies, whose shares are owned by the county authorities and representatives of the tourism industry. The DMOs are local and their shareholder structure varies. However, they are generally owned by local authorities and local tourism businesses.

(18) The RTBs and DMOs do not seek to maximise profit for their owners. Their objective is rather to stimulate the economic activity of the tourism sector in their respective geographical areas ([21]).

2.2. THE WEB INFRASTRUCTURE AND RELATED SERVICES

(19) Web infrastructure and related services in the tourism sector are provided through a 'Destination Management System' ('DMS') ([22]).

([14]) LOV-2003-12-19-130 (in Norwegian '*Lov om Innovasjon Norge*'), available at: http://lovdata.no/dokument/NL/lov/2003-12-19-130?q=lov+om+innovasjon+norge

([15]) Section 2 of the Act on IN.

([16]) The tasks currently carried out by IN were, broadly speaking, previously accomplished by its four predecessor organisations: the Norwegian Industrial and Regional Development Fund ('SND'), the Government Consultative Office for Inventors ('SVO'), the Norwegian Tourist Council ('NTC') and the Norwegian Export Council ('NEC'). In Norwegian: '*Statens nærings- og distriktsutviklingsfond*', '*Statens Veiledningskontor for Oppfinnere*', '*Norges Turistråd*' and '*Norges Eksportråd*'. In 2004, those four entities were discontinued and merged into IN.

([17]) IN's letter dated 28 October 2013 (Document No 688213).

([18]) IN's letter dated 28 October 2013 (Document No 688213).

([19]) See 'The Government's tourism strategy. Destination Norway. National strategy for the tourism industry'. Norwegian Ministry of Trade and Industry. 10 April 2012, page 44. This document was sent to the Authority as Annex 4 (Document No 688216) to IN's letter dated 28 October 2013 (Document No 688213).

([20]) *Ibid*.

([21]) For instance, Visit Trondheim AS' (a RTB) business profile indicated that the company is not intended to provide shareholders direct economic benefit (free translation). In Norwegian: '*Selskapet har ikke som formål å skaffe eierne direkte økonomisk utbytte*' (emphasis added). See the information publicly available at the Central Coordinating Register for Legal Entities, which is part of the *Brønnøysund* Registers. The link is available at: http://w2.brreg.no/enhet/sok/detalj.jsp?orgnr=955715209
Regarding Visit Sørlandet AS (a DMO), it is stated that the company activities are not intended to provide profits to its shareholders. In Norwegian: '*Områdemarkedsføring, profilering og merkevarebygging via tilrettelegging for salg og markedsføring for reiselivet på Sørlandet*. **Selskapets virksomhet tar ikke sikte på å skaffe aksjeeierne økonomisk utbytte**. *Eventuelt overskudd skal benyttes til å fremme selskapets formål. Selskapet kan eie aksjer/andeler i andre selskap*' (emphasis added). See the company's business profile, available at the Central Coordinating Register for Legal Entities, which is part of the *Brønnøysund* Registers, at: http://w2.brreg.no/enhet/sok/detalj.jsp?orgnr=993995282

([22]) Defined as '[s]ystems that consolidate and distribute a comprehensive range of tourism products through a variety of channels and platforms, generally catering for a specific region, and supporting the activities of a destination management organisation within that region. DMS attempt to utilise a customer centric approach in order to manage and market the destination as a holistic entity, typically providing strong destination related information, real-time reservations, destination management tools and paying particular attention to supporting small and independent tourism suppliers'. Definition of 'DMS' available at http://www.newmind.co.uk/technology-platform/destination-management-system

(20) Through a DMS, an IT company offers a service where its clients (destination management companies ([23])) can submit and regularly update information about tourist sites, hotels, restaurants, events and similar information simultaneously on their own webpage, and on external channels such as *visitnorway.com*, Google Maps, tourist information kiosks, mobile portals, and printed newspapers. The information is used by the general public for booking or other purposes.

(21) A DMS can provide different functionalities: (i) a *destinator* functionality (i.e. the creation of a database of points of interest or information flash concerning events, hotels, restaurants, art expositions, etc.); (ii) a *distribution* functionality (i.e. the information stored in the database is distributed to different channels and platforms); and (iii) a *search* functionality (i.e. used on websites to search and present tourism products).

(22) A graphic illustration of these services is included in recital 43 below.

2.3. MARKETING AND PROMOTION SERVICES IN THE TOURISM SECTOR

(23) Tourism marketing and promotion services can refer to the general promotion of a geographic area or to the promotion of specific businesses.

(24) General promotion implies offering to the visitors general tourism information regarding landscapes, culinary traditions, weather, etc. Specific business promotion refers to the marketing of specific contents (i.e. information regarding hotel, restaurants, cultural events, etc.).

(25) Furthermore, when promoting specific contents on *visitnorway.com*, two different possibilities can be identified, either the information is directly published on the website (i.e. the information is hosted within the website), or a link to an external website that publishes the specific information.

2.4. IN'S ACTIVITIES IN THE TOURISM SECTOR

(26) It is within the scope of IN's mandate to promote the tourism industry at a national level. The Norwegian Government has been an active stakeholder in the tourism sector since 1903 ([24]). As indicated in recital 17 above, at the regional and local levels, tourism promotion is performed by the RTBs and the DMOs. The State annual Budget letters, in the chapter devoted to IN, provide instructions for IN's activities in the tourism sector ([25]).

(27) In 2007, the Norwegian authorities adopted a national strategy for the tourism industry, establishing the Governments' main objectives for the sector ([26]). One of these objectives was to strengthen the recognition of Norway as a tourism destination. In this respect, in 2007, IN developed and established the website *visitnorway.com*. According to the strategy for the tourism industry '[t]he website shall compel visitors to travel to Norway and provide good and comprehensive information about Norway and what the tourism industry has to offer' ([27]).

([23]) The concept of destination management companies (DMC) is the term used in the tourism sector for professional services companies offering local knowledge, expertise and resources, specialised in the design and implementation of events, activities, tours, transportation, etc. Broadly speaking, this term refers to travel trade professional services companies.

([24]) IN's letter dated 20 December 2013 (Document No 694258). The National Association of Tourism, which was the joint body for the State, municipal and private stakeholders in the tourism industry, was established in 1903 and continued until 1984. From that point, marketing efforts of the National Association of Tourism were continued by the foundation NORTRA, which in 1999 changed its name to the NTC. Since 2004, the NTC's tasks have been carried out by IN, following the merger of these two entities. Further information on the entities that have traditionally been entrusted with the mandate to promote Norway as a holiday destination was also provided in IN's letter dated 20 December 2013 (Document No 694258).

([25]) Statsbudsjettet 2013 — oppdragsbrev Innovasjon Norge. Page 14. Available at: https://www.regjeringen.no/globalassets/upload/nhd/vedlegg/brev/2013_oppdragsbrev_innovasjonnorge.pdf
Statsbudsjettet 2014 — oppdragsbrev Innovasjon Norge. Available at: https://www.regjeringen.no/contentassets/ab7b70cc80924f038a26a89417d0eb66/in_oppdragsbrev_2014.pdf
Statsbudsjettet 2015 — oppdragsbrev Innovasjon Norge. Available at: http://www.innovasjonnorge.no/PageFiles/2814818/Oppdragsbrev%20KLD%20(2).pdf

([26]) See 'The Government's tourism strategy. Valuable experiences. National Strategy for the Tourism Industry'. The Norwegian Ministry of Trade and Industry. 18 December 2007. Annex 1 (Document No 688214) to IN's letter dated 28 October 2013 (Document No 688213).

([27]) *Ibid*., subtitle 7.5. '*Visitnorway.com*', page 68.

(28) Since the establishment of the *visitnorway.com* website, IN has in addition to providing general content about Norway (non-economic activity), also offered to RTBs and DMOs the ability to promote their specific tourism content (i.e. information on events, hotels, transport, etc.) on the *visitnorway.com* website. IN has signed standard agreements with RTBs and DMOs by means of which the tourism specific content of the RTBs and DMOs is published on *visitnorway.com* (directly or through hyperlinks) against an annual subscription fee calculated on the basis of the annual turnover of the respective RTBs and DMOs. The RTBs and DMOs have historically also had their own websites where they provide general information about their respective geographical areas, as well as promote specific tourism products, i.e. economic services on behalf of their stakeholders and owners.

(29) In 2012, the Norwegian Government adopted a new tourism strategy aimed at improving the national tourism structure ([28]). The objectives of the new strategy were to render the public support to the sector more efficient, reduce the number of actors involved and ensure more coordination amongst them. Moreover, the Norwegian authorities have stated their aim to avoid a diversification of websites dealing with tourism in Norway, with different structure and layouts, booking engines, languages and so on, which are all partly funded by various Government bodies, counties or municipalities.

(30) Following this, in 2013, the Ministry of Trade, Industry and Fisheries adopted a '*new tourism structure*' with the objective to make it easy to select Norway as a tourism destination for tourists ([29]).

(31) IN's budget letter of 2013 (the '2013 Budget letter' ([30])) states that: 'Innovation Norway is to ensure a good distribution of Norwegian travel experience through *visitnorway.com*, and help to make the players in the tourist industry […]'. *visitnorway.com* was thus identified as a key element of the Norwegian tourism promotion strategy ([31]). IN was asked to expand the website and increase its support to the tourism industry. The objective was to offer web marketing services to reach both national and international audiences on the official website *visitnorway.com* ([32]).

(32) Taking into account this objective, IN initiated a project called '*visitnorway's new structure*' (the 'new structure') ([33]). The new structure offered the RTBs and DMOs not only marketing and promotion services (as done through the standard agreements, see recital 28), but also additional services.

(33) IN has made a number of necessary changes to features and functionalities on the *visitnorway.com* platform, in order to remain up to date on technology and to be able to efficiently operate the platform over time. In 2013, IN started to offer some of the DMS functionalities (hereby collectively defined as 'web infrastructure and related services') to Norwegian RTBs and DMOs, that wished to migrate the content from their own websites to *visitnorway.com*. This integration of content on the *visitnorway.com* platform is in line with the objectives laid down by the Norwegian authorities in their new tourism strategy, inter alia, to avoid a diversification of websites dealing with tourism in Norway (see recital 29 above).

(34) Consequently, in 2014 all RTBs and DMOs were offered premium partnership agreements with the possibility to use *visitnorway.com* as their homepage instead of developing or maintaining their own homepage. Migrating to

([28]) See 'The Government's tourism strategy. Destination Norway. National strategy for the tourism industry'. Norwegian Ministry of Trade and Industry. 10 April 2012. Annex 4 (Document No 688216) to IN's letter dated 28 October 2013 (Document No 688213). Available at: https://www.regjeringen.no/contentassets/1ce1d6cdcbac47739b3320a66817a2dd/lenke_til_strategien-engelsk.pdf

([29]) For further information, see the project plan for a new national tourism structure by the Ministry of Trade, Industry and Fisheries (Version 1.2 dated 20 June 2013): http://www.regjeringen.no/upload/NHD/Temasider/Reiseliv/Riktigprosjektplan.pdf

([30]) See footnote 25 above.

([31]) The 2014 Budget letter states that: 'Innovation Norway shall further develop the national tourism portal on the internet visitnorway.com. […]'.

([32]) IN's letter dated 28 October 2013 (Document No 688213).

([33]) IN's letter dated 28 October 2013 (Document No 688213).

visitnorway.com implied terminating their own websites. These services were only offered to RTBs and DMOs and not to the general market; i.e. not to all potential users including the shareholders or external customers of the RTBs and DMOs ([34]).

(35) Once migrated, some of the services that the RTBs and DMOs had previously purchased from companies such as the Complainant, became redundant. In particular, the *search* functionality would be redundant for the RTBs and DMOs, and the licensee contracts with companies such as New Mind | tellUs would normally be terminated. On the contrary, other functionalities — such as the *destinator* functionality — were still required to create and maintain the points of interest or information flash to be published on *visitnorway.com*.

(36) Despite premium partnership agreements having been offered to all RTBs and DMOs, not all of them were/are interested in the new services, since migrating to *visitnorway.com* implied, inter alia, accepting the editorial conditions and restrictions imposed by IN ([35]). Therefore, some of the RTBs and DMOs maintain standard agreements by means of which IN provides to them promotion and marketing services (see recital 28 above).

(37) The tourism 'new structure' project within *visitnorway.com* (see recital 32 above) also encompassed two pilot projects — Alfa and Beta — in 2013, prior to the signing of the premium partnership agreements in 2014 as described in the recital 34 above. This will be further described in the following.

Project 'Pilot Alfa'

(38) In March 2013, IN launched a project called 'Pilot Alfa' together with two pilot customers — *VisitSørlandet* and *VisitTrondheim*. Pilot Alfa refers to the migration of the websites of Visit Sørlandet AS ([36]) (RTB) and Visit Trondheim AS ([37]) (DMO) to the *visitnorway.com* platform.

(39) The two undertakings were selected as pilot project participants and signed a premium partnership agreement with IN in order to use *visitnorway.com*. As a consequence of those agreements, both companies redirected their URL ([38]) to *visitnorway.com* and discontinued the use of their own homepages. The information available on those pages (i.e. general tourism information and specific tourism contents) migrated to *visitnorway.com*.

([34]) In contrast to the IN's database services, the New Mind | tellUs' solution is offered to all companies in the tourism sector (not just the RTBs and the DMOs) and it distributes the information entered into the database to a number of different media channels at the same time.

([35]) IN has explained in its reply to the opening decision (Document No 720775) that IN offers to all the RTBs and DMOs the same agreement (there is a template agreement, a copy of which was sent to the Authority). However, several RTBs and DMOs are not interested in signing the premium agreements because of the restrictions imposed by IN. For instance: (i) many DMOs find profiling their region within the common, national framework of *visitnorway.com* alienating, (ii) IN's editor can halt or change content that a premium partner has published on their page if there is a conflict of interest or if the content does not fit the profile of *visitnorway.com*, (iii) if a DMO terminates its own websites, it loses its domain name, etc.

([36]) The RTB *was* established as a regional enterprise for Aust-Agder and Vest-Agder in 2010. The company is owned by the county and local authorities and some private companies such as Color Line, Fjord Line, Amusement Park, etc. See 'The Government's tourism strategy. Destination Norway. National strategy for the tourism industry'. See footnote 19. Further information on the Company is provided by the Central Coordinating Register for Legal Entities, which is part of the Brønnøysund Registers, at http://w2.brreg.no/enhet/sok/detalj.jsp?orgnr=993995282

([37]) Visit Trondheim AS was founded in 1989 with the objective to develop the Trondheim tourism industry. Its shareholders are: Rezidor Hotels Norway AS (12,77 %), Bo-hotell AS (7,34 %), Realinvest AS (6,78 %) and others (73,11 %).
According to its business profile: 'Visit Trondheim is the travel destination company for organisations, institutions, companies and government departments that have interests tied to the tourism industry in Trondheim and the Trondheim region. The development of the travel destination shall be done in coordination with community, business and tourism development. Visit Trondheim shall define and provide hosting services and profile marketing, as well as sell, market and contribute to the development of Trondheim and the Trondheim region as a tourist, conference, culture and event destination. Visit Trondheim shall make sure that all involved parties are pulling in the same direction to ensure that Trondheim reaches the desired position as a travel destination as well as its ambitions with regard to attractiveness and reputation. It is not the company's objective to provide its owners with direct economic gain. Upon liquidation of the company, any profit will go to the object of the company' (free translation). Further information on the company is provided by the Central Coordinating Register for Legal Entities, which is part of the Brønnøysund Registers: http://w2.brreg.no/enhet/sok/detalj.jsp?orgnr=955715209

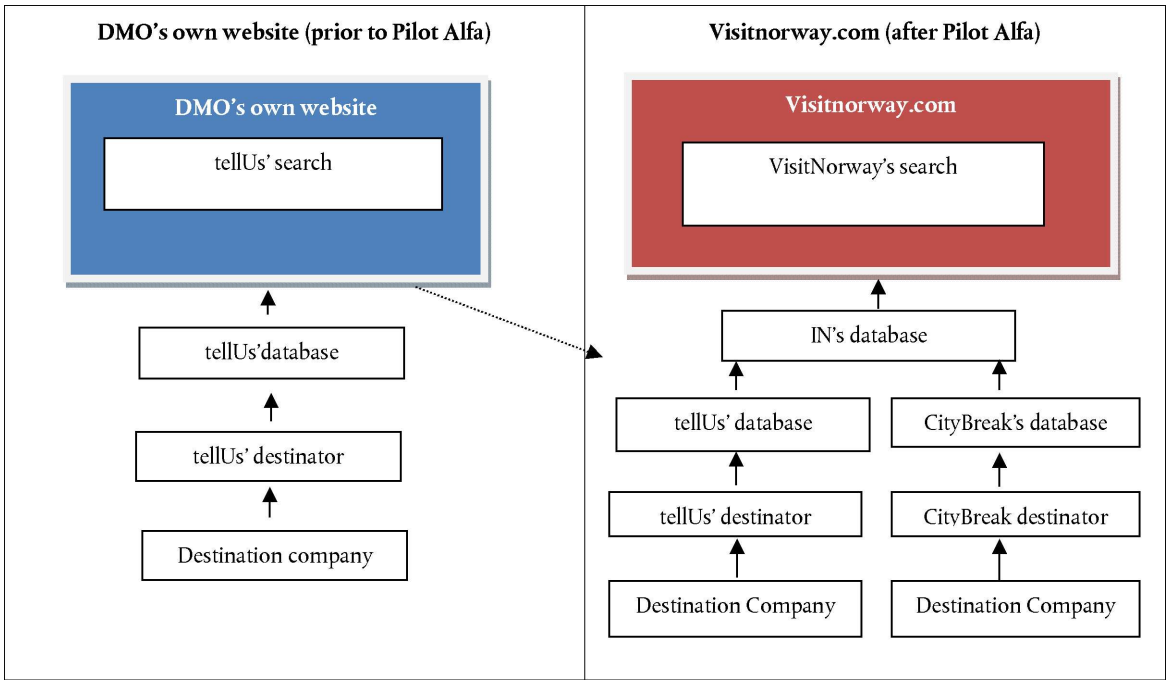
([38]) URL stands for Uniform Resource Locator. A URL is a formatted text string used by web-browsers, email clients and other software to identify a network resource on the internet.

(40) When the two companies operated their own websites, they were clients of the Complainant. Accordingly, they used *tellUs destinator* and *tellUs search* functionalities and paid a licence fee to the Complainant for this use. However, upon redirecting their URL to *visitnorway.com* and terminating their own websites, these companies ended their contracts for the search functionality, since, for technical reasons, only IN's search functionality can be used on *visitnorway.com* (the only search engine on the website is the one developed by IN and installed on the platform).

(41) Both companies still had to contract with the Complainant or a similar firm for the *destinator* functionality. IN is not providing this functionality. The Complainant used to be the sole supplier of DMS services on the Norwegian market. However, in 2012-2013, an international competitor, Citybreak, entered the market offering the *destinator* functionality, i.e. allowing tourism providers to create a database of points of interest ([39]).

(42) The RTBs and the DMOs which migrated to *visitnorway.com* could therefore choose among different companies offering the *destinator* functionality (New Mind | tellUs or CityBreak or any other operator which might enter the market), while customers using *tellUs search* services could only use *tellUs destinator* functionalities. When New Mind | tellUs was the only provider of web and infrastructure services, all RBTs and DMOs had to contract with New Mind | tellUs for both the *search* and *destinator* functionalities.

(43) The uses of the different functionalities, before and after Pilot Alfa, are presented in the following graphic:



Source: the Authority, based on the information provided by the Norwegian authorities (Document No 688213).

(44) The services that IN was offering to RTBs and DMOs before the implementation of the new structure project (i.e. online marketing and promotion services on the *visitnorway.com* website), were offered for a fee calculated on the basis of their annual turnover rather than on the market price of the services obtained (see recital 28 above). This pricing system was also applied under Pilot Alfa, with no additional charges made for the additional services provided by IN (web infrastructure and related services).

([39]) IN's letter dated 28 October 2013 (Document No 688213).

(45) The Norwegian authorities have explained ([40]) that the reason for not charging extra for the additional services was that the new services were under development, and that the two companies involved in the pilot project invested significant time and effort in helping to develop IN's new functionalities, thereby compensating IN by providing valuable feedback and input on the new services.

Project 'Pilot Beta'

(46) From July 2013 to November 2013, IN undertook 'Pilot Beta'. During this pilot project, IN studied new business models, including the possibility of promoting new premium partnership agreements to all RTBs and DMOs.

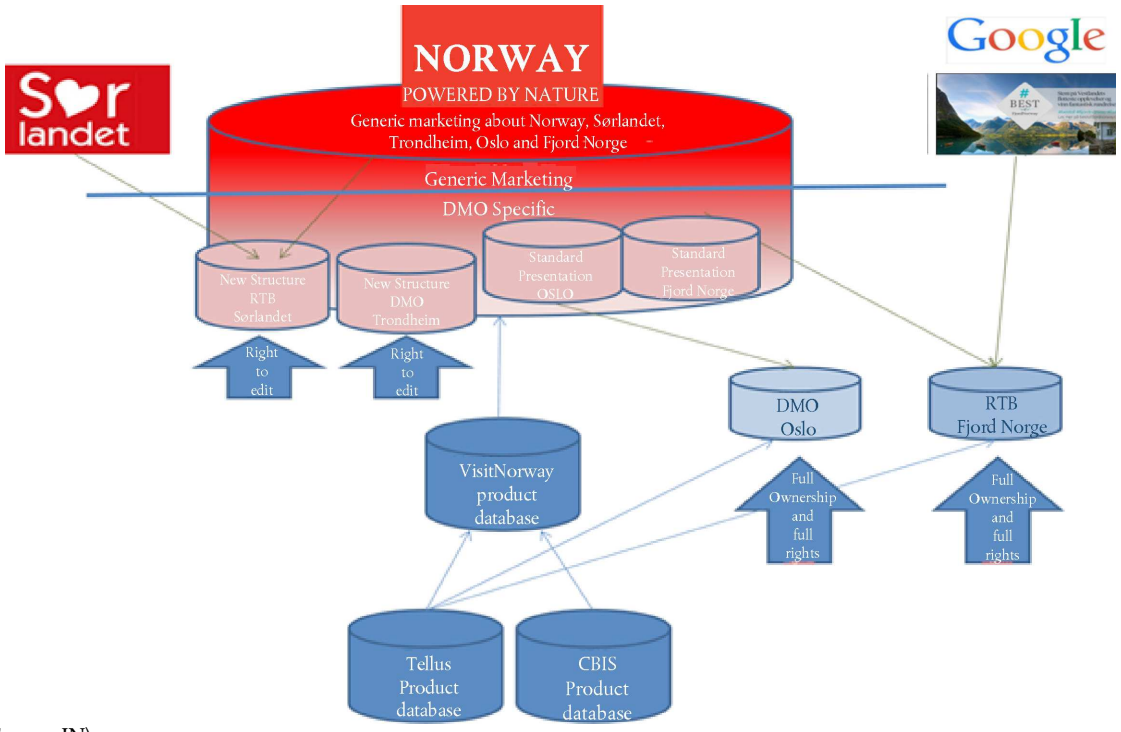
(47) From 1 January 2014, IN offered premium partnership agreements to all interested DMOs and RTBs on a non-discriminatory basis. IN introduced a new pricing model for these services, where, according to the Norwegian authorities, the price charged was intended to reflect the costs of the services provided by IN, plus a reasonable profit. The new price model also applied to the two pilot projects, i.e. VisitSørlandet and VisitTrondheim as of 1 January 2014.

(48) Consequently, as illustrated in figure 2 below, IN offered two different possibilities to the RTBs and the DMOs ([41]): (i) services under the premium partnership agreements ([42]), and (ii) promotion under non-premium agreements ([43]). Irrespective of its relationship with the RTBs and the DMOs, *visitnorway.com* promotes Norway as a tourism destination, providing general information on the country ([44]).

(49) Premium partnership agreements were signed with RTBs and DMOs that wanted to migrate to *visitnorway.com*. In relation to those RTBs and DMOs that did not want to migrate their websites to *visitnorway.com* (non-premium partners), IN offered the same promotion and marketing services as before by means of the standard agreements.

Figure 2

Current structure of *visitnorway.com*



(*Source:* IN)

([40]) Second IN letter dated 28 October 2013 (Document No 688215). See also IN's reply to the opening decision (Document No 720775).
([41]) Defined as 'DMO specific' in figure 2.
([42]) Defined as 'new structure' in figure 2.
([43]) Defined as 'standard presentation' in figure 2.
([44]) Defined as 'generic marketing' in figure 2.

3. *THE COMPLAINT*

(50) New Mind | tellUs argues in its complaint that IN's promotion activities and its tasks in relation to *visitnorway.com*, as a national tourism portal, can be considered a service of general economic interest ('SGEI') in line with the EEA State aid rules.

(51) However, in 2013, IN entered a new market ([45]), offering new economic services to the RTBs and the DMOs allowing them to migrate their websites to *visitnorway.com* (i.e. the web infrastructure and related services). New Mind | tellUs considers that those services are not part of the mandate received by IN and are not provided in line with the *Altmark* ([46]) case-law.

(52) The Complainant underlines that while providing economic services, IN should not receive State aid ([47]).

(53) In particular, the complaint refers to four different forms of alleged State aid:

(a) the non-implementation of a separation of accounts for commercial activities within IN;

(b) the profits foregone through the non-profit orientation of IN's economic activities;

(c) alleged aid to the RTBs and DMOs, granted by IN in the form of web infrastructure and related services at prices below market price; and

(d) the general exemption from the income tax granted to IN, also applicable to IN's economic activities.

(54) Finally, New Mind | tellUs also alleges that IN encourages its clients to terminate their previous contracts with New Mind | tellUs, offering free translation services to the RTBs and DMOs migrating to *visitnorway.com* ([48]).

4. *GROUNDS FOR INITIATING THE FORMAL INVESTIGATION PROCEDURE*

(55) On 16 July 2014, the Authority decided to initiate the formal investigation procedure provided for in Article 1(2) of Part I of Protocol 3.

(56) However, the Authority limited the scope of the formal investigation to three of the measures identified by the Complainant: (i) the non-implementation of a separation of accounts for commercial activities within IN and the lack of a costs allocation mechanism, (ii) the profits foregone through the non-profit orientation of economic activity, and (iii) the alleged aid granted by IN to the RTBs and DMOs in form of prices not sufficient to obtain a reasonable return on investment, while providing them web infrastructure and related services.

(57) The general exemption from the income tax granted to IN was excluded from the opening decision ([49]). An existing aid procedure has been initiated regarding this issue.

(58) Regarding the measures within the scope of the opening decision, the Authority considered, on a preliminary basis, that the provision of web infrastructure and related services constituted an economic activity, separable from the mere promotion of Norway as a tourism destinations. These new services were offered to all the RTBs and DMOs only as of 1 January 2014. Hence, the Authority concluded that if the measures were to constitute State aid, they would amount to new aid ([50]).

(59) Moreover, the Authority was also of the opinion that if it were established that IN was not charging a competitive market price for the services provided to the RTBs and DMOs, the existence of new State aid in favour of those entities could not be excluded.

([45]) According to the Complainant: 'to date, the offering of IT platform infrastructure services to the tourism industry has not been part of IN's activities'. Complaint (Document No 678002), p. 8.
([46]) According to the Court in its judgment in *Altmark Trans and Regierungspräsidium Magdeburg*, C-280/00, EU:C:2003:415, the compensation of services fulfilling the four criteria established in paragraphs 89-93 of the judgment does not entail State aid.
([47]) For further detail on the complaint, please see the opening decision referred to in recital 2 above.
([48]) Email dated 15 November 2013 (Document No 690346).
([49]) For further detail, see recitals 61 and 62 of the opening decision.
([50]) For further detail, see recitals 115 to 126 of the opening decision.

(60) Finally, the Authority doubted that the alleged State aid measures could be considered compatible with the EEA Agreement under Article 61(3)(c) as aid to promote tourism activities ([51]).

(61) Taking into account these preliminary conclusions, the Authority considered that it did not have sufficient information to exclude the existence of State aid or its incompatibility with the EEA Agreement. The formal investigation procedure was therefore initiated.

5. *COMMENTS FROM THIRD PARTIES TO THE OPENING DECISION*

(62) Only New Mind | tellUs, the Complainant, submitted observations on the opening decision.

(63) On the substance, the Complainant underlines that IN has entered into an already well-functioning market for web infrastructure and related services, which are economic services. The entrance into this market does not respond to an instruction from the State and would be in conflict with IN's main task of promoting private entrepreneurship.

(64) New Mind | tellUs subscribes to the Authority's preliminary findings on the presence of state resources, imputability, selectivity and potential distortion of competition.

(65) On the existence of an advantage, the Complainant considers that IN has cross-subsidised their web infrastructure and related services. This is so because within IN there is no proper separation of accounts, and because IN is foregoing profits when providing these economic services to RTBs and DMOs. The Complainant insists also that IN offers translation services free of charge (see recital 54 above).

(66) Regarding the alleged aid in favour of RTBs and DMOs, the Complainant argues that the Norwegian authorities have not informed them about the opening decision.

(67) Furthermore, it is argued that during the pilot projects, the selected pilot customers were not paying for services obtained. The price model introduced later by IN does not cover all relevant costs nor give a reasonable profit. In particular, IN has not included in its calculations all development costs related to the infrastructure created for the new structure (NOK 18 million), and IN is not calculating ROI ('return on investment'). Therefore, the RTBs and DMOs obtain an advantage.

(68) As regards compatibility, the Complainant argues that there is no market failure in the market in question. Furthermore, the fact that IN offers free or subsidised translation services to the RTBs and DMOs migrating content to the *visitnorway.com* platform, constitutes a tie-in condition in breach of antitrust rules, and therefore the alleged State aid cannot be declared compatible.

(69) On 13 January 2015, the Complainant sent to the Authority a copy of the 2015 State Budget letter ([52]). In its opinion, this letter confirms that IN's activities in the web infrastructure and related services are not within IN's mandate, which is limited to the general promotion of Norway as a tourism destination.

6. *COMMENTS FROM THE NORWEGIAN AUTHORITIES TO THE OPENING DECISION AND TO THE THIRD PARTY'S COMMENTS*

(70) The Norwegian authorities replied to the opening decision ([53]) stating that the measures at hand do not constitute State aid, and that if any of the measures do constitute State aid, such aid would have to be classified as existing aid since the promotion of tourism of Norway was one of IN's predecessors' tasks from prior to the EEA Agreement being signed.

(71) In the alternative, if new aid was to be found, it should be considered compatible with the EEA Agreement as compensation for an SGEI or under Article 61(3)(c) of the EEA Agreement, as aid to promote the tourism sector.

([51]) For further information on the Authority's reasoning on compatibility, see recitals 129 to 137 of the opening decision.
([52]) Additional information from the Complainant (email from the Complainant dated 13 January 2015 (Document No 734800)).
([53]) IN's reply to the opening decision (Document No 720775).

(72) The Norwegian authorities state that 'if an economic activity can be separated from the task of the public body, the body may be regarded as an undertaking in this function. All of the activities are, however, to be regarded as non-economic if the activities are not possible to separate from each other' ([54]). On this premise, the Norwegian authorities consider that the Authority has misunderstood the facts, since the services at stake, i.e. web infrastructure and related services, are not provided on a stand-alone basis, but only as an integrated part of the services offered through *visitnorway.com*, which as a whole must be considered as non-economic activity. The provision of these services to RTBs and DMOs is part of IN's task of promoting Norway as a tourism destination, which is part of the national tourism strategy to promote business. Consequently, the web infrastructure and related services cannot be assessed on its own but only as part of IN's promotional activities.

(73) In any event, when IN enters into agreements to provide paid services, it uses a basic cost model to ensure that all relevant costs of the services for IN is taken into account. This methodology was codified in the 'Guidelines for user payments' extracted from the IN 2011 Budget letter ([55]), and IN has applied it since 2011. IN has also used this cost allocation methodology in the premium agreements allowing IN to cover all costs related to the premium agreements. IN has also included in their budget and prices an expected profit of [… % to … %]. The Norwegian authorities have also explained that the tourism sector and, in particular, the web infrastructure services market, is a very dynamic sector. Consequently, IN and *visitnorway.com* must adapt the services that are being provided in line with technological and market developments.

(74) As regards compatibility, the Norwegian authorities argue the application of the SGEI rules. According to the Norwegian authorities, if the services assessed in this case were considered as economic activities and aid was to be found, such aid should be assessed under the SGEI compatibility rules ([56]). It is the opinion of the Norwegian authorities that the provision of these services fulfils the spirit of Commission Decision 2012/21/EU ([57]).

(75) The Norwegian authorities also argue that the measures at stake should be declared compatible with the functioning of the EEA Agreement, pursuant Article 61(3)(c) of the EEA Agreement as State aid to promote the tourism sector.

(76) The Norwegian authorities underline that granting RTBs and DMOs access to the platform has increased competition in the downstream *destinator* services market. This has to be taken into account in order to balance any possible negative effect of the alleged aid. The Norwegian authorities explain that because *visitnorway.com* aggregates information about travel products from all possible competitors, i.e. New Mind | tellUs or Citybreak or any other company which might enter the market, the competitive pressure in this market has increased. In the past, New Mind | tellUs was the only provider in the market. Furthermore, IN offers the platform to RTBs and DMOs, which do not compete with undertakings outside the Norwegian borders.

(77) The Norwegian authorities dispute that IN offers free translation services to RTBs and DMOs which have signed premium agreements and have explained how IN support translation costs in different scenarios. In general, IN covers a share of the translation costs of RTBs and DMOs regarding information of general interest as part of its task to promote Norway as a tourism destination. However, it only covers 50 % of the translation costs of RTBs' and DMOs' specific points of interest ([58]). This is the general rule towards all RTBs and DMOs. However, regarding RTBs and DMOs that have migrated to *visitnorway.com* (i.e. the premium partners), IN does not cover

([54]) *Ibid*.

([55]) The Norwegian authorities sent to the Authority as Annex 2 to their reply to the opening decision (Document No 720777) an English translation of the document 'Review of the allocation for business development and administration in IN' (chapter 2421, item 70). The cost model is based on the number of hours spent by IN to provide paid services.

([56]) The Norwegian authorities do not claim the absence of state aid because the application of the *Altmark* conditions, but rather the application of the spirit of the SGEI Decision, to conclude the compatibility of the alleged State aid measures.

([57]) Commission Decision 2012/21/EU of 20 December 2011 on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operating of services of general economic interest (OJ L 7, 11.1.2012, p. 3).

([58]) The Norwegian authorities have explained that *visitnorway.com* offers general information and product information. General information refers to public interest information such as news regarding the night lights etc. Product information refers to specific commercial activities, i.e. hotels, tourism activities, etc. See recital 48 above.

any translation cost. In other words, the premium partners lose the translation facilities. Therefore, contrary to the Complainant's allegations, there is no incentive to sign a premium partner agreement in order to receive compensation for translation costs.

(78) Replying to the comments of the Complainant, the Norwegian authorities underline that IN is not a competitor of New Mind | tellUs. It is true that granting access to *visitnorway.com* to the RTBs and the DMOs has led to services previously offered by external IT companies becoming partly redundant, but IN is not competing directly with the Complainant. In other words, IN is not replacing New Mind | tellUs as an IT supplier, but some of the functionalities (such as *TellUs search*) are no longer needed or technically feasible.

(79) The Norwegian authorities have also submitted to the Authority evidence to demonstrate that IN has informed the RTBs and the DMOs of the opening decision. IN sent e-mails to all premium partners (alleged beneficiaries of State aid) and IN's website also referred to the opening decision ([59]).

(80) Finally, replying to the latest mail received from the Complainant ([60]) (cited in recital 69 above), the Norwegian authorities considered that the issue pointed out by New Mind | tellUs was already duly replied to. Therefore, there was no need for further clarifications ([61]).

II. **ASSESSMENT**

1. *THE PRESENCE OF STATE AID*

(81) 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.'

(82) A measure constitutes State aid pursuant to Article 61(1) of the EEA Agreement if it fulfils four conditions. First, the measure must be funded by the State or through state resources and be imputable to the State. Second, the measure must confer an advantage. Third, the measure must favour selected undertakings or economic activities. Fourth, the measure must be liable to affect trade between Contracting Parties and liable to distort competition in the EEA.

(83) For State aid to be present, all the cumulative conditions of Article 61(1) must be met ([62]).

1.1. THE SCOPE OF THE PRESENT DECISION

(84) The opening decision refers to alleged State aid in favour of IN as well as in favour of the RTBs and the DMOs. The Authority's concerns, following the information received by the Complainant and the Norwegian authorities, were focused on the web infrastructure and related services provided by IN to the RTBs and DMOs by means of the premium partnership agreements.

(85) However, during the formal procedure, the Authority has concluded that in order to assess IN's behaviour in the web infrastructure and related services market, it is also necessary to assess the other commercial services provided by IN to RTBs and DMOs, i.e. the promotion and marketing of specific contents services. This is so because IN's business plan regarding the new structure refers to both types of services.

([59]) Annex I to IN's letter dated 24 November 2014. Comments to New Mind | tellUs' observations (Document No 730560).
([60]) Additional information from the Complainant. Email from the Complainant dated 13 January 2015 (Document No 734800).
([61]) The Norwegian authorities' reply to the email sent by the Complainant dated 13 January 2015, see footnote above (Document No 742759).
([62]) Judgments in *Belgium* v *Commission (Tubemeuse)*, C-142/87, EU:C:1990:125, paragraph 25, and in *France Télécom (Bouygues)*, T-425/04 RENV and T-444/04 RENV, EU:T:2015:450, paragraph 186.

(86) Consequently, even if specific promotion and marketing services were not covered by the opening decision and are not covered by the present decision, the Authority will refer to them to the extent needed to decide on the alleged State aid measures through web infrastructure and related services.

1.2. POSSIBLE STATE AID MEASURES IN FAVOUR OF IN

1.2.1. *Whether IN can be considered an 'undertaking'*

(87) It follows from Article 61(1) of the EEA Agreement that in order to constitute State aid, the measures must favour certain undertakings or the production of certain goods. Article 61(1) of the EEA Agreement only applies where the recipient of an aid is an undertaking. Consequently, it is necessary to examine whether IN qualifies as an undertaking within the meaning of Article 61(1) of the EEA Agreement.

(88) Undertakings are entities engaged in an economic activity, regardless of their legal status and the way in which they are financed ([63]). Economic activities are those consisting of offering goods or services on a market ([64]). All entities that are legally distinct from the State and which engage in economic activities are considered to be 'undertakings'. Article 61(1) of the EEA Agreement covers all public and private undertakings ([65]).

(89) If an entity is performing economic activities, it is to be considered as an undertaking in relation to those specific services alone, without reference to the way in which its other activities should be classified ([66]).

(90) The Norwegian authorities have maintained that the provision of web infrastructure and related services cannot be defined as an economic activity. In their opinion, those services are not separable from the services offered to the RTBs and DMOs to promote Norway as a tourism destination through *visitnorway.com*. Since the development and management of this platform respond to the objective of promoting Norway as a tourism destination and this general task cannot be defined as an economic activity, nor can the IT services under scrutiny in this case be defined as such.

(91) The Authority maintains the opposite conclusion, confirming its preliminary view expressed in the opening decision.

(92) The Authority notes, firstly, that the 2013 Budget letter ([67]) allows IN to provide both economic and non-economic activities, given that a difference is established regarding the financing of those activities: the economic activities must be provided on market terms and therefore financed by the clients. Consequently, the legal possibility exists for IN to provide simultaneously economic and non-economic services.

(93) Secondly, the Authority considers that the fact that IN on certain occasions acts as an instrument of the State to ensure a general promotion of Norway and in this respect does not provide services or goods on the market, is not sufficient reason to conclude that IN is not offering other economic services in the tourism sector.

(94) Thirdly, the Authority agrees that the promotion of Norway as a tourism destination is not an economic activity. However, on the platform, IN offers different types of services. IN offers marketing and promotion of general contents regarding Norway, i.e. general information about the light nights, weather, geographic characteristics of the country, etc., but also specific tourism content, i.e. promotion of hotels, restaurants, or other business. Marketing general information on Norway is not an economic activity, but promoting specific tourism businesses constitutes an economic activity.

([63]) Judgments in *Höfner and Elser* v *Macroton*, C-41/90, EU:C:2011:732, paragraphs 21-23; *Pavlov and Others*, C-180/98 to C-184/98, EU:C:2000:428 and Case E-5/07 *Private Barnehagers Landsforbund* [2008] EFTA Ct. Rep. p. 62, paragraph 78.

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

([65]) Judgment in *Banco Exterior de España*, C-37/92, EU:C:1993:836, paragraph 11.

([66]) Economic and non-economic activities can co-exist within the same sector and sometimes be provided by the same organisation. In this scenario, the entity is to be regarded as an undertaking only with regard to its economic activities. See, judgment in *Commission* v *Italy*, C–118/85, EU:C:1987:283, paragraph 7. See also Commission Decision 2006/225/EC of 2 March 2005 on the aid scheme implemented by Italy for the reform of the training institutions (OJ L 81, 18.3.2006, p. 25), recital 43.

([67]) Available at: https://www.regjeringen.no/globalassets/upload/NHD/Vedlegg/Brev/2013_oppdragsbrev_innovasjonnorge.pdf#search=OPPDRAGSBREV&regj_oss=1

(95) The Authority cannot accept the argument that providing web infrastructure and related services to the RTBs and DMOs does not constitute an economic activity because the final aim is to provide a non-economic activity, namely general promotion of Norway as a tourism destination. It is the Authority's view that the aim of the Norwegian authorities is not relevant when establishing whether IN provides an economic activity. The Authority considers that the promotion of private tourism business entails an economic activity.

(96) The case-law has accepted in certain cases that 'there is no need to dissociate the activity of purchasing goods from the subsequent use to which they are put in order to determine the nature of that purchasing activity, and that the nature of the purchasing activity must be determined according to whether or not the subsequent use of the purchased goods amounts to an economic activity' ([68]). However, the Authority recalls that the recipients of IN's IT services, the RTBs and DMOs, are also using these services to carry out both economic and non-economic services. The RTBs and DMOs provide general tourism promotion of their respective geographic areas, but also specific tourism activities on behalf of their shareholders and clients. The Authority thus concludes that IN provides economic services.

(97) Fourthly, the Authority considers that, contrary to the argument put forward by the Norwegian authorities, see recital 90 above, in order to promote Norway as a tourism destination it is not necessary also to provide web infrastructure and related services. In fact, until 2013, IN was successfully promoting tourism in Norway despite the fact that only from this date it offers those web services through the premium partnership agreements. The Authority underlines that the Norwegian authorities have not provided any evidence to conclude that unless the referred web services are offered through *visitnorway.com*, IN's efforts promoting tourism in the country will be inefficient. Therefore, the Authority does not accept that in order to promote Norway as a tourism destination it is necessary to also provide the web infrastructure and related services. The Authority thus fails to see that the services are inseparable.

(98) Fifthly, the Authority recalls that in defining a service as economic, a significant factor is whether competition exists on the market in question, i.e. if there are other entities offering the same or substitutable goods and services ([69]). Web infrastructure and related services are also provided by private operators, such as the Complainant, and therefore the Authority concludes that this condition is met in the present case.

(99) In its case-law, the CJEU has underlined that economic activities are normally offered against remuneration ([70]). Both the Complainant and IN provide web infrastructure and related services against remuneration, therefore the Authority considers this another reason why these services should be defined as economic.

(100) It is the Authority's view that this conclusion holds even if IN does not provide the web infrastructure and related services as a stand-alone service; when the websites of RTBs and DMOs are integrated into *visitnorway.com*, the RTBs and DMOs receive services from the platform, which they previously used to purchase from private operators against remuneration. Consequently, it is not relevant whether the provision of these services is only offered to RTBs and DMOs and not to other destination management companies.

(101) Consequently, the Authority concludes that IN is an undertaking within the meaning of Article 61(1) of the EEA Agreement when providing web infrastructure and related services.

1.2.2. ***Economic advantage***

(102) As already stated, the Norwegian authorities have argued that the provision of web infrastructure and related services must be understood in the context of IN's activities to promote tourism, as part of the Norwegian

([68]) See judgement in *Federación Española de Empresas de Tecnología Sanitaria (FENIN)* v *Commission*, C-205/03, EU:C:2006:453, paragraph 26.
([69]) AG Opinion in *Federación Española de Empresas de Tecnología Sanitaria (FENIN)* v *Commission*, C-205/03, EU:C:2005:666, paragraph 31.
([70]) See judgments in *Pavel Pavlov and Others*, C-180/98 to C-184/98, EU:C:2000:428, paragraph 76 and in *Ambulanz Glöckner*, C-475/99, EU:C:2001:577, paragraph 20.

objective to reduce the number of RTBs and DMOs and render the tourism industry more efficient. The Authority recalls that Article 61(1) of the EEA Agreement does not distinguish between State interventions by reference to their causes or their objectives but defines them by reference to their effects ([71]). The CJEU has stated that 'it follows that the concept of State aid is objective; the test being whether a state measure confers an advantage on one or more particular undertakings' ([72]). Therefore, the purposes of the new Norwegian tourism structure are not relevant in order to determine whether the alleged measures entail and advantage and a State aid.

(103) In the present case, the existence of an advantage depends on (i) whether IN has cross-subsidised its economic activities with the public funds received to compensate its non-economic activities, and (ii) whether IN has required an adequate return on capital (reasonable profit) for the economic services provided to the RTBs and DMOs.

(104) These two issues will be assessed in the next two subsections. For the purpose of the assessment, the Authority will determine whether the RTBs and DMOs were charged for the services purchased from IN a price below the level which would prevail in a competitive market setting (i.e. absent market power). The Authority considers that a reasonable proxy for such a competitive level is a price sufficient to cover the incremental costs, i.e. the directly attributable variable costs and an appropriate share of common (fixed) costs, plus an adequate return on capital ([73]).

1.2.2.1. **Cross-subsidisation of the web infrastructure and related services**

(105) When an entity carries out both economic and non-economic activities, a cost-accounting system should be in place to ensure that the economic activities are not subsidised through state resources allocated to the non-economic activities of that entity ([74]).

(106) Objective and transparent cost allocation mechanisms should be in place to ensure that the state resources allocated to the non-economic activities of that entity do not cover incremental costs related to the economic activities. Without such mechanisms in place, the economic activities may gain advantages from the public funds granted to non-economic activities. Furthermore, internal accounts should allow for the identification of the costs and revenues corresponding to the different services ([75]).

(107) Consequently, the Authority will check whether IN has had in place a methodology allowing it to separate costs and revenues of its economic and non-economic activities, as a means to exclude the risk of cross subsidisation between IN's different activities. The Authority will also assess IN's accounts regarding the economic services provided to the RTBs and DMOs.

([71]) Case E-6/98, *Norway* v *ESA*, Rep. 1998 p. 242, paragraph 34. See also judgments in *Commission and Spain* v *Government of Gibraltar and United Kingdom*, C-106/09 and C-107/09, EU:C:2011:732 and *France* v *Commission*, C-241/94, EU:C:1996:353, paragraphs 19 and 20.

([72]) Judgment in *Ladbroke Racing* v *Commission*, T-67/94, EU:T:1998:7, paragraph 52, and *SIC* v *Commission*, T-46/97, EU:T:2000:123, paragraph 83.

([73]) Judgment in *Chronopost SA* v *Commission*, C-83/01 P, C-93/01 P and C-94/01 P, EU:C:2003:388, paragraph 40.

([74]) See, for example, the Authority's Decisions No 84/15/COL *regarding the alleged cross-subsidisation of maritime courses provided by Rednings-selskapet and the University of TromsØ* (OJ C 193, 11.6.2015, p. 9), available at: http://www.eftasurv.int/media/esa-docs/physical/84-15-COL.pdf); No 142/03/COL *Regarding Reorganisation and Transfer of Public Funds to the Work Research Institute* (OJ C 248, 16.10.2003, p. 6); No 343/09/COL *on the property transactions engaged in by the Municipality of Time concerning property numbers 1/152, 1/301, 1/630, 4/165, 2/70, 2/32* (OJ L 123, 12.5.2011, p. 72); No 496/13/COL *concerning the financing of Harpa Concert Hall and Conference Centre* (OJ L 172, 12.6.2014, p. 36), recital 56 and the decisions cited therein; and No 174/13/COL *concerning the financing of municipal waste collectors* (OJ C 263, 12.9.2013, p. 5). In the same vein, the Guidelines on State aid for Research, Development and Innovation (R & D&I) states that: 'Where the same entity carries out activities of both economic and non-economic nature, the public funding of the non-economic activities will not fall under Article 61(1) of the EEA Agreement if the two kinds of activities and their costs, *funding and revenues can be clearly separated so that cross-subsidisation of the economic activity is effectively avoided*. Evidence of due allocation of costs, funding and revenues can consist of annual financial statements of the relevant entity' (paragraph 18, emphasis added).

([75]) These conditions are set out in the Transparency Directive (Commission Directive 2006/111/EC of 16 November 2006 on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings (OJ L 318, 17.11.2006, p. 17)), incorporated into the EEA Agreement by Decision of the EEA Joint Committee No 55/2007 of 8 June 2007 (OJ L 266, 11.10.2007, p. 15 and EEA Supplement No 48, 11.10.2007, p. 12).

Cost allocation mechanism

(108) As already stated, a public undertaking carrying out economic and non-economic activities must implement accounting systems and procedures which permit it to allocate all incremental costs incurred in providing the economic service to the accounts containing economic activities ([76]).

(109) On the basis of the information provided by IN, the Authority has concluded that the common costs are the following (i) development costs of the new structure project, (ii) general operating costs, i.e. follow up and administration, webmaster support, etc., and (iii) technical operating costs of the platform, i.e. IT consultants, annual software licence fees, maintenance hardware and software, etc. ([77]).

(110) The Norwegian authorities have explained that the **development costs** represent costs for the project management, concept development, technical development and improvements, testing and work done by consultants to prepare *visitnorway.com* for the new structure project. The development costs were approximately NOK 18 million in 2013 ([78]).

(111) According to the reply from the Norwegian authorities to the opening decision ([79]), NOK 4 million were allocated to the economic services provided through the platform. According to the information provided, taking into account cost sharing based on full transparency between generic marketing and specific marketing ([80]), the large majority of the operating and technical costs of the new structure (approximately 89 %) is connected to generic marketing of Norway (non-economic activity). Therefore, IN's business model included NOK 4 million of the development costs as investments costs. The Norwegian authorities have provided information confirming that this is a reasonable allocation of development costs. In particular, IN has informed the Authority that by screening 15 766 editorial pages and 19 000 listings, it has been calculated that 84,3 % of all page views are defined as generic marketing and 15,7 % of all the page views are business listings in the period 23 March 2014 to 23 March 2015 ([81]). Therefore, the largest part of the development costs should be allocated to the non-economic services of the platform.

(112) Based on the information provided and referred to above, the Authority notes that the percentage of development costs allocated to IN's economic services is over 20 %, which is larger than the actual share of costs related to the promotion of specific contents as referred to above. The Authority concludes therefore that the allocation of NOK 4 million to the business model of the premium partnership agreements is reasonable and justified.

(113) The Complainant argues, however, that the development costs should also include parts of the costs related to the establishment of the platform itself in 2007.

(114) IN confirms that these costs have not been included in the costs calculation. IN argues that the platform existed already before the premium agreements were signed, and the RTBs and DMOs already had cooperation agreements, paying an annual partner-fee, which contributed to the establishment of the platform ([82]). Furthermore, the initial costs were not included because they were not capitalised ([83]), as permitted by Norwegian accounting standards (NRS 19) ([84]). NRS 19 relates to relevant direct cost and capitalisation of costs. According to this standard, intangible assets, i.e. non-monetary assets without physical substance, which the company uses in the manufacture or sale of goods and services, do not need to be capitalised. Following these rules, in the case of *visitnorway.com*, none of the development costs have therefore been capitalised.

(115) In addition, the Norwegian authorities explain that in 2015 a new cloud based DMS platform for *visitnorway.com* will be implemented. The current platform with all content, routines, software licences etc., will remain in place until the end of 2015 and then be discontinued. Only text and photos will be moved to the new platform and no value will remain with the old technical platform due to the technical evolution in the market. Therefore, according to IN, there is no economic reason to capitalise IT projects such as *visitnorway.com*.

([76]) Judgment in *Chronopost SA* v *Commission*, C-83/01 P, C-93/01 P and C-94/01 P, EU:C:2003:388, paragraph 40.
([77]) Reference is made to the graphic included in IN's letter dated 28 October 2013 (Document No 688215).
([78]) The Authority notes that the development costs were taken into account in the budget of IN for 2013, year in which the costs occurred. See further details in recitals 113 to 115.
([79]) IN's reply to the opening decision (Document No 720775).
([80]) Attachment to IN's mail to the Authority dated 14 April 2015 (Document No 753927).
([81]) Attachment 2 to IN's mail dated 14 April 2015 (Document No 753927).
([82]) Annex 3 to IN's reply to the opening decision (Document No 720778).
([83]) A capitalised cost is recognised as part of a fixed asset on a company's balance sheet, rather than being charged to expense in the period incurred. Consequently, a non-capitalised costs is an expense only for the year in which it takes place.
([84]) A copy of the NRS 19 was sent to the Authority as Annex II to the letter dated 24 November 2014 (Document No 730560).

(116) The Authority accepts this argument given that the Norwegian accounting standards allow for the non-capitalisation of these types of costs. The Authority considers that to the extent that all companies in Norway are entitled not to capitalise these types of costs, even if this fact could be considered as an advantage, it is not selective. The measure (the possibility not to capitalise a cost) is open to all sectors of the economy, all forms of companies and all forms of production. Therefore, when incurring expenses covered by the NRS 19 rule, the measure would constitute neither a selective advantage nor State aid ([85]).

(117) Regarding the **general operating costs** for the period 2013-2018, an hourly full cost methodology is applied by IN to allocate the different costs ([86]). This methodology is based on the guidelines cited in recital 73 above, adopted in 2011 and applied since. According to this methodology, the price for services is based on the number of hours devoted by employees to provide such services ([87]). IN's hourly costs contain direct personnel costs for the person carrying out the work, and the overhead costs that are necessary to ensure that that person is able to do his/her job ([88]). Overhead costs include rent, office, telephony, management, and joint services such as finance, IT, HR, etc. IN increases the cost per hour 3 % every year from 2014 onwards to ensure that all costs continue to be covered ([89]).

(118) Applying this methodology, IN ensures that the different projects are funded by the remuneration from individual clients, covering the costs spent by IN on providing them with the service.

(119) Accordingly, it is the Authority's view that this, at least in the present case, is a sufficient methodology for allocating common costs.

(120) The Authority observes that during the pilot study (2012-2013), the hourly cost assigned to accounts of the two pilot studies was lower than the standard full cost hourly rate established by IN. ([90]) However, this reduced hourly fee was offset by taking into account the time devoted by the RTBs and the DMOs to provide content, feedback and assistance in developing the new structure ([91]).

(121) Regarding the allocation of **technical costs**, IN uses a methodology based on 'cost per page view' ([92]). According to this methodology, IN calculates the cost per page view on the platform and thereafter calculates the share of the technical costs that should be paid by the RTBs/DMOs based on their actual share of page views. It is the Authority's view that this methodology enables IN to appropriately allocate costs between generic marketing and commercial services. IN's business plan foresees to charge for the economic services provided to the RTBs and DMOs according to this methodology until 2018.

(122) Therefore, the Authority is of the view that there is an objective and transparent cost allocation mechanism in place which enables IN to safeguard that only revenues from economic activities is used to cover the costs related to their operations (including incremental costs and an appropriate share of the common costs).

([85]) According to the case-law, a measure which is potentially accessible to all undertakings is not selective. See, inter alia, judgment in *Germany* v *Commission*, C-156/98, EU:C:2000:467, paragraph 22.

([86]) The Authority notes that this methodology has been applied consistently to all the premium agreements since 2013, including the agreements concerning the two first pilot projects, i.e. VisitSØrlandet and VisitTrondheim. In Annex 4 to the reply to the opening decision (Document No 720779), IN provided the Authority with a copy of all the signed premium partnership agreements.

([87]) The hourly *full* cost model differs from the *basic* cost model, were some common costs can be deducted from total cost. This model has not been applied by IN in the framework of the partnership agreements. IN has explained that since the Guidelines for User payments from 2011, this model was put aside. The full cost methodology is used for all IN's services, if the same service can be provided by private actors (Document No 720775, reply to the opening decision).

([88]) The percentage of employees' time expended on the project is also pre-established (Doc No 720778, Annex 3 to IN's reply to the opening decision).

([89]) The Authority notes that in 2013 only the pilot projects were signed.

([90]) IN's letter dated 24 November 2014 (Document No 730560).

([91]) In the reply to the opening decision (Document No 720775), IN explains in further detail that the RTBs and DMOs have been involved in the new project structure since 2013. The RTBs and DMOs have also invested time and resources. Their direct involvement and participation in the project justify an hourly rate below the general hour rate calculated by IN. A complete list of the extra cost of the pilots projects was submitted to the Authority as Annex 6 of IN's reply to the opening decision (Document No 720781).

([92]) This price methodology has been used by other private companies active in the market. Information regarding this costs allocation method can be found at: https://www.adspeed.com/Knowledges/1104/Blog/How_much_charge_advertising_website.html or http://www.quora.com/What-is-an-industry-accepted-cost-per-page-view-of-dynamic-content-not-cache-able For instance, this is the methodology used by Google for some of its services (information available at https://support.google.com/adwords/answer/2472735?hl=en).

Separation of accounts

(123) During the formal investigation procedure, the Norwegian authorities have provided the Authority with further information on the accounting system within IN.

(124) The annual accounts of IN contain consolidated accounts for the company, including profit and loss, balance sheet and notes pursuant to the Norwegian Accounting Act. These accounts are audited by an external auditor, approved by the general assembly of IN and filed with the Norwegian national business register. These consolidated accounts can be disaggregated into eight different sub-accounts, one for each of the activities/programmes carried out by IN (loans, funds, projects etc.). These sub-accounts have their own profit and loss as well as balance sheet accounts.

(125) *Visitnorway.com* is included in the account for project activities. Furthermore, IN has explained that each individual project — like *visitnorway.com* — has a specific sub-account. In particular, the projects have separate project numbers for commercial external activities ([93]). In this manner, it is ensured that the revenues and costs of all activities of IN can be properly classified and allocated.

(126) *Visitnorway.com* has four project accounts between which IN splits all costs and revenues relating to operating the platform ([94]). The four project sub-accounts are: (i) editorial operating services external consultants (ii) upgrade and maintenance services external consultants, (iii) technical operation external services, and (iv) new structure external services ([95]). The costs and revenues of premium agreements are codified in the new structure external services project account ([96]).

(127) These four project sub-accounts contains costs and revenues for the *visitnorway.com* platform as a whole. Economic and non-economic services costs and revenues are clearly identified, but codified together. The Authority has not found any indication that costs and revenues have not been correctly identified as economic or non-economic. It can be concluded therefore, that there is no *formal* separation of accounts, but costs and revenues of the different kind of services can still be clearly identified.

(128) During the formal investigation procedure ([97]), IN has committed to increase the transparency of its accounting system regarding economic activities related to the tourism sector and it has committed to maintain more detailed accounts as from 1 January 2014.

(129) In order to ensure additional transparency in its current accounting system, IN will review the four accounts already existing within the *visitnorway.com* project account. The costs and revenues in each of the four accounts will be further separated between economic and non-economic activity. Consequently, formal separation of accounts will exist from January 2014.

(130) The Authority considers that accurate and formal separation of account as of 1 January 2014 will be sufficient to prevent cross subsidisation of economic services provided through the premium partnership agreements. The Authority notes that prior to 2014, IN only provided economic services to the pilot project customers, and from 1 January 2014, IN offered the pilot project customers the same prices as those applicable in the rest of the premium agreements.

(131) The Authority underlines that the fact that creating eight accounts is actually possible, illustrates that the current accounts are already sufficiently transparent. The Authority thus considers that the accounting system implemented by IN until the current date allows for the separation of the costs of the economic and non-economic services with a sufficient degree of accuracy, even though there is no *formal* separation of the accounts between the economic and non-economic services.

([93]) IN's reply to the opening decision (Document No 720775).
([94]) IN's email to the Authority dated 14 April 2015 (Document No 753927).
([95]) IN's email to the Authority dated 20 May 2015 (Document No 757843). A copy of the account was submitted to the Authority attached to IN's letter dated 28 October 2013 (Documents No 688215 and to, Annex 3 to IN's reply to the opening decision (Document No 720778).
([96]) IN's email to the Authority dated 20 May 2015 (Document No 757843).
([97]) IN's reply to the opening decision (Document No 720775). See also IN's email dated 14 April 2015 (Document No 753927).

(132) In conclusion, the Authority takes note of the proposal offered by the Norwegian authorities and it concludes that the current accounting system already allows to identify the different costs and revenues of the economic and non-economic services provided through *visitnorway.com* and that there is no evidence of cross-subsidisation from non-economic to economic activities.

1.2.2.2. **The alleged profits foregone**

(133) Public companies must behave in the market as ordinary economic operators ([98]). No advantage within the meaning of Article 61(1) of the EEA Agreement is being granted by the State if a private investor can be expected to act in the same way, i.e. when a public company acts in line with the market economy investor principle (MEIP) ([99]).

(134) Any business owner or investor will normally require a return on its investment in order to invest in a commercial undertaking ([100]). Such an expectation of profitability represents a normal and expected business cost for the undertaking. Consequently, no advantage financed by state resources is involved when a public company covers costs (variable and an appropriate contribution to common costs) plus an adequate return on the capital investment ([101]).

(135) The Authority has already stated in its Manufacturing Guidelines that: '[i]f a public enterprise has an inadequate rate of return, the EFTA Surveillance Authority could consider that this situation contains elements of aid, which should be analysed with respect to Article 61. In these circumstances, the public enterprise is effectively getting its capital cheaper than the market rate, i.e. equivalent to a subsidy' ([102]).

(136) However, the Authority also recalls that according to the same Guidelines, the investor has a wide margin of discretion and 'within that wide margin the exercise of judgement by the investor cannot be regarded as involving State aid'. It follows that '[o]nly where there are no objective grounds to reasonably expect that an investment gives an adequate rate of return that would be acceptable to a private investor in a comparable private enterprise operating under normal market conditions, is State aid involved even when this is financed wholly or partially by public funds' ([103]).

(137) Accordingly, the Authority has assessed the pricing policy of IN regarding the economic services provided under the pilot projects as well as under the premium partnership agreements through the platform *visitnorway.com*. The objective is to assess whether IN's business model for the IT services provided within the framework of *visitnorway.com* new structure (i.e. premium partnership agreements) included a reasonable profit expectation.

(138) The Norwegian authorities have explained ([104]) that IN's pricing policy ensures that all relevant costs are covered and a reasonable profit obtained by the revenues from the economic activities ([105]). Even if they consider that IN's activities in this sector are not economic in nature, the commercial agreements are designed to cover all costs as well as to generate a profit for IN.

([98]) Judgment in *EPAC* v *Commission*, T-204/97 and T-270/97, EU:T:2000:148, paragraph 122.
([99]) Judgment in *Westdeutsche Landesbank Girozentrale and Land Nordrhein-Westfalen* v *Commission*, (*West-LB*) T-228/99 and T-233/99, EU:T:2006:405, paragraph 207.
([100]) Judgment in *West-LB, see above*, paragraph 314 and in *Italy v Commission (Eni-Lanerossi)*, C-303/88, EU:C:1991:136, paragraph 22.
([101]) Judgment in *Chronopost SA* v *Commission*, C-83/01 P, C-93/01 P and C-94/01 P EU:C:2003:388, paragraph 40.
([102]) Section 1(2) of the Manufacturing Guidelines, which provides that '[t]his Chapter firstly focuses on, the one hand, on the act referred to in point 1 of Annex XV to the EEA Agreement, hereinafter referred to as the Transparency Directive and, on the other hand, it develops the principle that where the State provides finances to a company in circumstances that would not be applicable to an investor operating under normal market economy conditions, it does this in contradiction to the market economy investor principle, and state aid is involved'. The Manufacturing Guidelines are available at: http://www.eftasurv.int/?1=1&showLinkID=16995&1=1 (OJ L 274, 26.10.2000. EEA Supplement No 48 of the same date).
([103]) *Ibid*, point 1 under the title 'practicality of the market economy investor principle'.
([104]) IN's reply to the opening decision (Document No 720775).
([105]) This is in line with the mandates established regarding public services. For instance, in the broadcasting guidelines the Authority considers that it is not reasonable to ask for a profit in the provision of the public service. On the contrary, regarding economic activities a profit element, which represents the fair remuneration of capital taking into account risk, is reasonable. See paragraph 72 of the Guidelines.

(139) Based on the cost allocation methodology described above, see recitals 108 to 122 above, the Norwegian authorities have explained the price model used during the pilot projects and the premium partnership agreements, in order to show that the prices for the provision of web infrastructure and related services to the RTBs and the DMOs are sufficient to generate a reasonable return.

(140) This profitability is not measured on the platform *visitnorway.com* as a whole ([106]), but rather on the profitability of the economic activities (economic services provided to the RTBs and DMOs though the premium and standard agreements). IN's initial business plan for the new structure included revenues from the services provided to RTBs and DMOs under the two types of agreements: (i) premium agreements and (ii) standard agreements.

(141) Following a detailed assessment of the information provided, there is no evidence that IN does not attempt to obtain a reasonable profit from the commercial agreements, including the premium agreements. On the contrary, there is evidence that, in practice, IN expected to obtain a profit on these economic activities over the period 2013 to 2018. IN has provided a business case to the Authority based on the estimated costs and revenues associated with the commercial agreements, showing a positive net present value ([107]), using a discount rate of 7 %. In particular, IN's business model estimated a net profit between [… % and … %] ([108]).

(142) During the formal procedure, IN has also explained ([109]) that it is changing to a new cloud-based destination management system (DMS) where it has […].

(143) The Authority notes that the comparison between the conduct of a public and private operator must be made by reference to the attitude of a private operator at the time of the investment or development of the business plan, 'having regard to the available information and foreseeable developments at the time' ([110]). The changes to *visitnorway.com* that occurred after the business model of the new structure was drafted are therefore not relevant for the State aid assessment. The relevant issue is whether the original business model aimed to obtain profits from providing services to RTBs and DMOs.

(144) In the analysis of the two pilot projects — during the Pilot Alfa phase — it is stressed by the Norwegian authorities that VisitSørlandet and VisitTrondheim intensively contributed to develop the model and invested significant time in the projects. Annex 6 to IN's reply to the opening decision ([111]) provides a concrete list of the types of extra work performed in the pilots during 2013, while planning a new structure for *visitnorway.com*. Among these extra works performed by the pilot customers, IN refers to: (i) evaluate what content should continue to be part of the platform, (ii) planning of the transition of links from existing solutions to preserve search engine ranking from existing content, (iii) set up/evaluate the basic structure, front page, subpages and folder structure for content that is not their own pages, etc.

(145) As a consequence, the profitability of the pilot projects cannot be assessed in isolation but only as part of a long-term project. The issue is not whether IN would obtain profits in the short term from the pilot projects, but

([106]) IN provides through the platform *visitnorway.com* non-economic and economic services. The overall operation of the platform does not necessarily provide for a profit. However, the scope of the present decision is limited to access whether IN obtains a reasonable profit from the economic services. The figures regarding the provision of non-economic services fall outside the scope of the state aid rules.

([107]) Annex 3 to IN's reply to the opening decision (Document No 720778). Detailed Excel sheets were sent to the Authority concerning the premium partner agreements costs and the economic model for cost allocation (Document No 727330).

([108]) IN's reply to the opening decision (Document No 720775).

([109]) IN's letter dated 24 November 2014 (Document No 730560).

([110]) Judgment in *French Republic* v *Commission (Stardust Marine)*, C-482/99, EU:C:2002:294, paragraph 70. According to the Court, '[i]t is necessary to place oneself in the context of the period during which the financial support measures were taken in order to assess the economic rationality of the State's conduct, and thus to refrain from any assessment based on a later situation' (paragraph 71).

([111]) Document No 720781.

rather whether the new structure and the premium partnership agreements would ensure long-term profitability ([112]). In fact, pilot projects, by their very nature, are not carried out by public or private companies with an immediate expectation of profitability, but rather to assess their economic and business rationale ([113]). The case-law accepts that there is not automatically State aid every time the State foregoes revenues. In fact, following CJEU ([114]) and Commission practice ([115]), the Authority considers that reduced prices do not entail State aid, if they are objectively justified by economic reasons.

(146) Furthermore, the Authority notes that since 2014, the two pilot project customers have been offered the same price structure on the premium partnership agreement as the remaining RTBs and DMOs ([116]). In fact, this explains the reference made by the Complainant when referring to a 'raise of price' between the old premium agreements and the new premium agreements. Indeed, the partnership agreements signed as of 2014 provide for higher fees than the fees requested during the pilot phases (see recital 44 above) ([117]).

(147) The data sent to the Authority ([118]) demonstrates that the average profit initially foreseen from the premium partner agreements for the period 2013 to 2018 (between [… % to … %].) is in line with the margin obtained by private operators offering web services to the RTBs and the DMOs ([119]).

(148) IN has explained in its reply to the opening decision ([120]) that even if it does not know its competitor's pricing models, it has nevertheless collected publically available annual accounts for the top web development companies providing services to the RTBs and DMOs. According to IN, private operators offering web services to the RTBs and DMOs have an average profit margin of […] ([121]). Therefore, IN maintains that its estimated profit margin between [… % to … %] is in accordance with the margins obtained in the market ([122]).

(149) The Authority recalls that according to case-law, the average return of the sector can be used as an indicator of the absence of aid ([123]). Therefore, the Authority finds that as a profit margin of […] % when providing web infrastructure and related services would be acceptable for a market investor, IN's business model was in line with the market economic investor principle.

(150) Finally, IN provided some information ([124]) on the argument put forward by the Complainant according to which *visitnorway.com* has a value in itself, because of the brand and the domain (being one of the most visited tourism platforms in Norway), that has not been taken into account. The Authority understands that the Complainant's argument is that because *visitnorway.com* brand has an economic value, the RTBs and DMOs should also pay for the indirect profit of the use of this brand.

(151) IN considers that this value is negligible. To support its conclusion, IN hired an external consultant, NetNames, which estimated the value of the domain to USD 20 000 ([125]). The value of the domain was based on a comparison with different, but comparable, domains. Taking into account the costs of *visitnorway.com*, the external expert confirmed IN's conclusions that the value of the domain is negligible. The Authority can see no basis to question this conclusion.

([112]) The case-law accepts that public companies might look at long-term profit maximisation. See judgments in *Italy* v *Commission (Lanerossi)*, C-303/88, EU:C:1991:136, paragraph 22; *Italy* v *Commission (ALFA-FIAT)*, C-305/89, EU:C:1991:142, paragraph 20; and *Ciudad de la Luz* v *Commission*, T-319/12 and T-321/12, EU:T:2014:604, paragraph 41.

([113]) The General Court has underlined the need for public undertakings to demonstrate the economic rationale of their projects. See judgment in *Corsica Ferries*, T-565/08, EU:T:2012:415, paragraph 84.

([114]) Judgment in *van der Kooy BV*, 67/85, 68/85 and 70/85, EU:C:1988:38, paragraphs 29 and 30 and in *Belgium v Commission*, C-56/93, EU:C:1996:64, paragraph 10.

([115]) In the SFMI-Chronopost decision, the Commission concluded that it was not abnormal that in the start-up period, payments made by a new undertaking for logistical and commercial assistance provided by the mother company covered only variable costs. (Commission Decision 98/365/EC of 1 October 1997 concerning alleged State aid granted by France to SFMI-Chronopost (OJ L 164, 9.6.1998, p. 37)).

([116]) IN's letter dated 24 November 2014 (Document No 730560).

([117]) See IN's reply to the opening decision (Document No 720775).

([118]) IN's letter dated 28 October 2013 (Document No 688215) and IN's reply to the opening decision (Document No 720775)).

([119]) Annex 7 to IN's reply to the opening decision (Document No 720782).

([120]) IN's reply to the opening decision (Document No 720775).

([121]) Annex 7 to IN's reply to the opening decision (Document No 720782).

([122]) IN's letter dated 28 October 2013 (Document No 688215).

([123]) Judgments in *WestLB* v *Commission*, paragraph 254 and in *Ciudad de la Luz* v *Commission*, paragraph 44.

([124]) IN's letter dated 24 November 2014 (Document No 730559).

([125]) A copy of the reply from NetNames was sent to the Authority (Annex III) to IN's letter dated 24 November 2014 (Document No 730560).

(152) Consequently, the Authority considers that IN acted correctly when not including the use of the brand *visitnorway.com* as an extra cost for the RTBs and DMOs.

(153) The Authority concludes therefore that IN's commercial agreements, including the premium agreements, are undertaken with the expectation of long-term profitability and in line with the market economy investor principle (MEIP).

1.2.3. ***Conclusion***

(154) The Authority concludes that when providing web infrastructure and related services to the RTBs and DMOs, IN has in place a proper cost allocation mechanism and accounting system which allows it to accurately identify costs and revenues associated with those services.

(155) It is also established that IN has not foregone profits from offering these services. IN has acted in line with the MEIP.

(156) The Authority concludes accordingly that IN has not obtained State aid within the meaning of Article 61(1) of the EEA Agreement, when providing web infrastructure and related services to the RTBs and DMOs, through the premium partnership agreements.

1.2.4. ***Alleged State aid in favour of RTBs and DMOs***

1.2.5. ***Whether RTBs and DMOs can be considered 'undertakings'***

(157) As already explained above, see recital 87, Article 61(1) of the EEA Agreement only applies where the recipients of a State aid are undertakings.

(158) As already stated in recital 18 above, the Authority notes that the RTBs and DMOs are not established in order to maximise profit for the entity itself or for its shareholders, but rather to increase and promote the business activities of their shareholders and clients.

(159) The Authority recalls nevertheless that the application of the State aid rules does not depend on whether the entity is set up to generate profits. Based on the case-law, non-profit entities can offer goods and services on a market, too ([126]). Where this is the case, non-profit providers remain within the scope of State aid rules.

(160) The Authority considers that similarly to IN, the RTBs and DMOs provide economic and non-economic services. The promotion of specific tourism services constitutes an economic activity, see recital 28 above. Therefore, those entities are considered undertaking regarding those services.

1.2.6. ***Existence of an advantage in favour of the RTBs and DMOs***

(161) IN has demonstrated that even if it is a non-profit organisation, the premium partnership agreements are signed with reasonable long-term profitability expectations. IN pricing model foresees a return of [… % to … %] (see section 1.2.2.2 above). The data provided by IN demonstrates that in practice this expected profitability has also been achieved. The data indicates that IN's investment in the new structure of *visitnorway.com* has generated a profit in 2013. In 2014 and 2015 a negative profit is expected, but a stable and reasonable profit is foreseen for the period 2016-2018. The average profit is in line with the one of private operator offering web services to the RTBs and DMOs ([127]).

([126]) Judgments in *Van Landewyck*, 209/78 to 215/78 and 218/78, EU:C:1980:248, paragraph 88; in *FFSA and Others*, C-244/94, EU:C:1995:392, paragraph 21; and in *MOTOE*, C-49/07, EU:C:2008:376, paragraphs 27 and 28.

([127]) Reference is done to the email sent by IN dated 17 April 2015 (Document No 754218) and IN's reply to the opening decision (Document No 720775), chapter 4.3.3.2.

(162) Consequently, the Authority concludes that there is no advantage in favour of the RTBs and/or DMOs by means of obtaining web infrastructure and related services below market price.

(163) Furthermore, contrary to the Complainant's statements, see recitals 54 and 65 above, the Authority has been reassured that no free translation services are provided to the RTBs and DMOs which migrate to IN.

(164) The Norwegian authorities have explained that the premium partners do not obtain free translation services, but on the contrary, their translation support is less than that offered to the non-premium partners, i.e. the RTBs and DMOs which do not migrate to *visitnorway.com*, see recital 77 above.

(165) Based on the above, the Authority concludes that the alleged tie-in condition to subscribe to premium agreements does not exit.

1.2.7. ***Conclusion***

(166) On these premises, the Authority finds that the RTBs and the DMOs have not received State aid within the meaning of Article 61(1) of the EEA Agreement when receiving web infrastructure and related services from IN.

2. *CONCLUSION*

(167) As the Authority has now concluded that there is no advantage in favour of IN, or the RTBs and DMOs, it is not necessary to assess whether the remaining conditions of Article 61(1) of the EEA Agreement are met,

HAS ADOPTED THIS DECISION:

Article 1

1. Innovation Norway has not received State aid within the meaning of Article 61(1) of the EEA Agreement by cross-subsidising its web infrastructure and related services in the tourism sector with public funds received to compensate its non-economic services in the same sector, i.e. the general promotion of Norway as a tourism destination. Innovation Norway has had a cost allocation mechanism and accounting methodology allowing it to adequately identify the costs and revenues linked to its web infrastructure and related services.

2. Innovation Norway has not obtained State aid within the meaning of Article 61(1) of the EEA Agreement by foregoing profits when providing web infrastructure and related services to the Regional Tourist Boards and Destination Management Organisations.

Article 2

The Regional Tourist Boards and Destination Management Organisations have not received State aid within the meaning of Article 61(1) of the EEA Agreement by means of obtaining web infrastructure and related services at prices below competitive market price.

Article 3

This Decision is addressed to the Kingdom of Norway.

Article 4

Only the English language version of this decision is authentic.

Done at Brussels, 4 November 2015.

For the EFTA Surveillance Authority

Sven Erik SVEDMAN
President

Helga JÓNSDÓTTIR
College Member

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