Official Journal of the European Union

L 295

Volume 58

English edition

Legislation

12 November 2015

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.

[1] Text with EEA relevance

II

(Non-legislative acts)

REGULATIONS

COMMISSION REGULATION (EU) 2015/2010

of 11 November 2015

amending Regulation (EC) No 1708/2005 laying down detailed rules for the implementation of Council Regulation (EC) No 2494/95 as regards the common index reference period for the harmonised index of consumer prices

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 2494/95 of 23 October 1995 concerning harmonised indices of consumer prices ([1]), and in particular the third paragraph of Article 4 and Article 5(3) thereof,

Having regard to the opinion of the European Central Bank ([2]),

Whereas:

(1) Regulation (EC) No 2494/95 establishes the statistical bases necessary for producing harmonised indices of consumer prices (HICP).

(2) Commission Regulation (EC) No 1708/2005 ([3]) establishes common rules for determining the index reference period for the HICP and sets it at 2005 = 100.

(3) Changes to the sub-index classification of the HICP and the alignment of sub-indices that have been linked to the HICP after the introduction of 2005 = 100 make it necessary to change the index reference period. To ensure the comparability and relevance of the HICP, the index reference period should, therefore, be changed to 2015 = 100.

(4) In accordance with Article 13 of Regulation (EC) No 2494/95, cost-effectiveness has been taken into account in adopting this Regulation.

(5) The measures provided for in this Regulation are in accordance with the opinion of the European Statistical System Committee,

([1]) OJ L 257, 27.10.1995, p. 1.
([2]) Opinion of 1 June 2015 (OJ C 209, 25.6.2015, p. 3).
([3]) Commission Regulation (EC) No 1708/2005 of 19 October 2005 laying down detailed rules for the implementation of Council Regulation (EC) No 2494/95 as regards the common index reference period for the harmonised index of consumer prices, and amending Regulation (EC) No 2214/96 (OJ L 274, 20.10.2005, p. 9).

HAS ADOPTED THIS REGULATION:

Article 1

Article 3 of Regulation (EC) No 1708/2005 is replaced by the following:

'Article 3

Index reference period

1. The common index reference period for the HICP shall be set at 2015 = 100. This new index reference period shall be used for the full time series of all HICP indices and sub-indices, starting with the publication of the HICP for January 2016.

2. Any additional sub-index to be integrated into the HICP shall be linked in December of a particular year at the level of 100 index points and shall be used as of and including January of the following year.'

Article 2

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

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

Done at Brussels, 11 November 2015.

For the Commission
The President
Jean-Claude JUNCKER

COMMISSION IMPLEMENTING REGULATION (EU) 2015/2011

of 11 November 2015

laying down implementing technical standards with regard to the lists of regional governments and local authorities, exposures to whom are to be treated as exposures to the central government in accordance with Directive 2009/138/EC 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 Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) ([1]), and in particular point (a) of Article 109a(2) thereof,

Whereas:

(1) The lists of regional governments and local authorities, exposures to whom are to be treated as exposures to the central government in accordance with Directive 2009/138/EC are of relevance for the calculation of the market risk module and the counterparty default risk module of the solvency capital requirement standard formula.

(2) Where relevant, the regional governments and local authorities included in those lists should be categorised by type, taking into account the conditions laid down in Article 85 of Commission Delegated Regulation (EU) 2015/35 ([2]).

(3) Supervisory authorities have provided relevant information on the specific revenue-raising powers and existing institutional arrangements under national law in relation to the regional governments and local authorities in their jurisdiction and on the extent to which those governments and authorities comply with the requirements laid down in point (a) of Article 109a(2) of Directive 2009/138/EC.

(4) This Regulation is based on the draft implementing technical standards submitted by the European Insurance and Occupational Pensions Authority to the Commission.

(5) The European Insurance and Occupational Pensions Authority has conducted open public consultations on the draft implementing technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Insurance and Reinsurance Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1094/2010 of the European Parliament and of the Council ([3]),

HAS ADOPTED THIS REGULATION:

Article 1

Lists of regional governments and local authorities

The following regional governments and local authorities shall be considered as entities, exposures to whom are to be treated as exposures to the central government of the jurisdiction in which they are established, as referred to in point (a) of Article 109a(2) of Directive 2009/138/EC:

(1) in Austria: any 'Land' or 'Gemeinde';

(2) in Belgium: any 'communauté' or 'gemeenschap', 'région' or 'gewest', 'province' or 'provincie', or 'commune' or 'gemeente';

([1]) OJ L 335, 17.12.2009, p. 1.

([2]) Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 12, 17.1.2015, p. 1).

([3]) Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48).

(3) in Denmark: any ‘region’ or ‘kommune’;

(4) in Finland: any ‘kaupunki’ or ‘stad’, ‘kunta’ or ‘kommun’, or the ‘Ahvenanmaan maakunta’ or the ‘Landskapet Åland’;

(5) in France: any ‘région’, ‘département’ or ‘commune’;

(6) in Germany: any ‘Land’, ‘Gemeindeverband’ or ‘Gemeinde’;

(7) in Liechtenstein: any ‘Gemeinde’;

(8) in Lithuania: any ‘savivaldybė’;

(9) in Luxembourg: any ‘commune’;

(10) in the Netherlands: any ‘provincie’, ‘waterschap’ or ‘gemeente’;

(11) in Poland: any ‘województwo’, ‘związek powiatów’, ‘powiat’, ‘związek międzygminny’, ‘gmina’, or the ‘miasto stołeczne Warszawa’;

(12) in Portugal: the ‘Região Autónoma dos Açores’ or the ‘Região Autónoma da Madeira’;

(13) in Spain: any ‘comunidad autónoma’ or ‘corporación local’;

(14) in Sweden: any ‘region’, ‘landsting’ or ‘kommun’;

(15) in the United Kingdom: the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly.

Article 2

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, 11 November 2015.

For the Commission
The President
Jean-Claude JUNCKER

COMMISSION IMPLEMENTING REGULATION (EU) 2015/2012

of 11 November 2015

laying down implementing technical standards with regard to the procedures for decisions to set, calculate and remove capital add-ons in accordance with Directive 2009/138/EC 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 Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking up and pursuit of the business of Insurance and Reinsurance (Solvency II) ([1]), and in particular the third sub-paragraph of Article 37(8) thereof,

Whereas:

(1) Directive 2009/138/EC provides for a possibility for the supervisory authorities to set a capital add-on for an insurance or reinsurance undertaking. It is necessary to provide for procedures for decisions to set, calculate and remove capital add-ons.

(2) In order to enable the insurance or reinsurance undertaking to provide information and justifications which may mitigate or challenge the need for a capital add-on before taking a decision on setting the capital add-on, the supervisory authority should give the insurance or reinsurance undertaking the possibility to provide reasons against setting a capital add-on.

(3) The cooperation of the insurance or reinsurance undertaking with the supervisory authority is essential in view of ensuring the effectiveness of the capital add-on as a supervisory measure. In order to enable the supervisory authority to base the capital add-on on accurate and up to date information, the insurance or reinsurance undertaking should calculate the capital add-on at the request of the supervisory authority.

(4) In order to enable the insurance or reinsurance undertaking to remedy the deficiencies that led to the imposition of the capital add-on it is necessary to specify the content of the decision to set a capital add-on.

(5) The supervisory authority and the insurance or reinsurance undertaking should not rely only on the annual review of the capital add-on, but should proactively monitor the circumstances which led to the setting of the capital add-on in order to take appropriate measures. To this end, the insurance or reinsurance undertaking should therefore provide the supervisory authority with progress reports on remedying the deficiencies that led to the imposition of the capital add-on. It is also necessary to provide for a procedure to review decisions on capital add-on if there is a material change in the circumstances that led to the setting of the capital add-on.

(6) This Regulation is based on the draft implementing technical standards submitted by the European Insurance and Occupational Pensions Authority to the Commission.

(7) The European Insurance and Occupational Pensions Authority has conducted open public consultations on the draft implementing technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Insurance and Reinsurance Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1094/2010 of the European Parliament and of the Council ([2]),

([1]) OJ L 335, 17.12.2009, p. 1.

([2]) Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48).

HAS ADOPTED THIS REGULATION:

Article 1

Notification before setting a capital add-on

1. The supervisory authority shall notify the insurance or reinsurance undertaking concerned of its intention to set a capital add-on and the reasons for setting the capital add-on.

2. The supervisory authority shall set a deadline by which the insurance or reinsurance undertaking is to respond to the notification referred to in paragraph 1. The supervisory authority shall consider any information provided by the insurance or reinsurance undertaking before taking its decision.

Article 2

Calculation of capital add-on

If required by the supervisory authority, the insurance or reinsurance undertaking shall perform the calculation of the capital add-on in accordance with the specifications set by the supervisory authority.

Article 3

Provision of information

1. The supervisory authority may request the insurance or reinsurance undertaking to provide information necessary for taking a decision on setting a capital add-on by a deadline set by the supervisory authority.

2. When determining the deadline referred to in paragraph 1, the supervisory authority shall pay particular attention to the likelihood and severity of any adverse impact on policyholders and beneficiaries.

3. The insurance or reinsurance undertaking shall immediately notify the supervisory authority if it cannot meet the deadline referred to in paragraph 1.

Article 4

Decision to set a capital add-on

1. The supervisory authority shall notify in writing its decision to set a capital add-on to the insurance or reinsurance undertaking.

2. The decision of the supervisory authority shall be sufficiently detailed to enable the insurance or reinsurance undertaking to understand what measures it needs to take or what deficiencies it needs to remedy in order to have the capital add-on removed.

3. The decision referred to in paragraph 2 shall include:

(a) the reasons for setting the capital add-on;

(b) the methodology for calculating the capital add-on and the amount of the capital add-on;

(c) the date from which the capital add-on is applicable;

(d) where relevant, the deadline by which the insurance or reinsurance undertaking is to remedy the deficiencies that led to setting the capital add-on;

(e) where relevant, the content and frequency of any progress report to be provided in accordance with Article 5.

Article 5

Progress report

In the cases set out in Article 37(1)(b) and (c) of Directive 2009/138/EC and if requested by the supervisory authority, the insurance or reinsurance undertaking shall inform the supervisory authority about the progress it has made in remedying the deficiencies that led to the setting of the capital add-on and what relevant actions it has taken.

Article 6

Review of the capital add-on

1. The supervisory authority shall review the imposed capital add-on if there is a material change in the circumstances that led to the setting of the capital add-on.

2. Following the review of the imposed capital add-on the supervisory authority shall maintain, change or remove the capital add-on.

Article 7

Maintaining, changing or removing the capital add-on

When considering whether to maintain, change or remove the capital add-on the supervisory authority shall take into account any of the following:

(a) information submitted by the insurance or reinsurance undertaking during the process of setting and calculating the capital add-on;

(b) information obtained by the supervisory authority through the supervisory review process and through any subsequent supervisory activity;

(c) information provided in the progress report if requested by the supervisory authority in accordance with Article 5;

(d) any other relevant information indicating a material change in the circumstances that led to the setting of the capital add-on.

Article 8

Decision to change or remove the capital add-on

1. The supervisory authority shall notify in writing without delay its decision to change or remove the capital add-on and the effective date of that decision to the insurance or reinsurance undertaking.

2. Where the supervisory authority decides to change the capital add-on, it shall adopt a new decision in accordance with Article 4(2) and (3).

Article 9

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, 11 November 2015.

For the Commission
The President
Jean-Claude JUNCKER

COMMISSION IMPLEMENTING REGULATION (EU) 2015/2013

of 11 November 2015

laying down implementing technical standards with regard to standard deviations in relation to health risk equalisation systems in accordance with Directive 2009/138/EC 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 Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) ([1]), and in particular the third subparagraph of Article 109a(4) thereof,

Whereas:

(1) For the purpose of the calculation of the health underwriting risk module of the standard formula for the Solvency Capital Requirement, standard deviations for premium and reserve risk should be laid down in relation to specific national legislative measures which permit the sharing of claims payments in respect of health risk amongst insurance and reinsurance undertakings.

(2) Such standard deviations should be laid down only in relation to the *Zorgverzekeringswet* (Health Care Insurance Act) providing for a mandatory basic health insurance (*basisverzekering*) in the Netherlands (hereinafter the 'health risk equalisation system in the Netherlands'). According to a survey of the European Insurance and Occupational Pensions Authority, the health risk equalisation system in the Netherlands is the only such system within the Union that meets the criteria set out in Articles 109a(4) and (5) of Directive 2009/138/EC.

(3) The standard deviations laid down in this Regulation have been determined by taking into account the calculations provided by De Nederlandsche Bank.

(4) This Regulation is based on the draft implementing technical standards submitted by the European Insurance and Occupational Pensions Authority to the Commission.

(5) The European Insurance and Occupational Pensions Authority has conducted open public consultations on the draft implementing technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Insurance and Reinsurance Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1094/2010 of the European Parliament and of the Council ([2]),

HAS ADOPTED THIS REGULATION:

Article 1

Standard deviations

For medical expense insurance and proportional reinsurance subject to the health risk equalisation system in the Netherlands, insurance and reinsurance undertakings shall use in the calculation of the health underwriting risk module the following standard deviations:

(a) 2,7 % for the NSLT health insurance premium risk;

(b) 5 % for the NSLT health insurance reserve risk.

([1]) OJ L 335, 17.12.2009, p. 1.

([2]) Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48).

Article 2

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, 11 November 2015.

For the Commission
The President
Jean-Claude JUNCKER

COMMISSION IMPLEMENTING REGULATION (EU) 2015/2014

of 11 November 2015

laying down implementing technical standards with regard to the procedures and templates for the submission of information to the group supervisor and for the exchange of information between supervisory authorities in accordance with Directive 2009/138/EC 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 Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) ([1]), and in particular Article 249(4) thereof,

Whereas:

(1) Without prejudice to other forms of cooperation and exchange of information that may occur bilaterally or multilaterally between supervisory authorities, procedures and templates are particularly necessary to facilitate an efficient and convergent exchange of information between the supervisory authorities in the college of supervisors since the college of supervisors should be the main platform for exchanging information among the supervisory authorities of a group.

(2) Those procedures and templates are addressed to the supervisory authorities in the college of supervisors who decide as part of a coordination arrangement on the information needed for the activities of the college of supervisors and the modalities under which it should be exchanged pursuant to Article 357 of Commission Delegated Regulation (EU) 2015/35 ([2]).

(3) Effective and efficient supervision requires that the exchange of information and the cooperation between supervisory authorities take into account the nature, scale and complexity of the group, the availability and type of information and the most recent and relevant data.

(4) This Regulation is based on the draft implementing technical standards submitted by the European Insurance and Occupational Pensions Authority to the Commission.

(5) The European Insurance and Occupational Pensions Authority has conducted open public consultations on the draft implementing technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Insurance Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1094/2010 of the European Parliament and of the Council ([3]),

HAS ADOPTED THIS REGULATION:

Article 1

Exchange of information between the supervisory authorities in the college of supervisors

The supervisory authorities in the college of supervisors shall exchange information on a systematic basis, at least annually, and, where appropriate, on an *ad hoc* basis.

([1]) OJ L 335, 17.12.2009, p. 1.

([2]) Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 12, 17.1.2015, p. 1).

([3]) Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48).

Article 2

Time-limit for information exchange

1. For any information exchange either on a systematic or on an *ad hoc* basis the supervisory authorities in the college of supervisors shall agree upon a time limit.

2. Deviations from the agreed time limit shall be communicated to the supervisory authorities concerned in advance with appropriate justification.

Article 3

Means of information exchange

The supervisory authorities in the college of supervisors shall agree on a secured electronic form to exchange information as well as on the data format in which that information is to be exchanged.

Article 4

Currency

Unless otherwise decided by the supervisory authorities in the college of supervisors as part of the coordination arrangement concluded in accordance with Article 248(4) of Directive 2009/138/EC, the supervisory authorities shall express amounts as part of an exchange of information within the college of supervisors in the currency in which the information was reported.

Article 5

Language

Unless otherwise decided by the supervisory authorities in the college of supervisors as part of the coordination arrangement concluded in accordance with Article 248(4) of Directive 2009/138/EC, the supervisory authorities shall exchange information in the language most commonly understood in the college of supervisors.

Article 6

Overview of the information to be exchanged in the college of supervisors

The group supervisor shall submit to the other supervisory authorities in the college of supervisors an overview of the information to be exchanged pursuant to Article 357 of Delegated Regulation (EU) 2015/35, using the template set out in Annex I to this Regulation.

Article 7

Submission of the main conclusions following the supervisory review process

1. The other supervisory authorities in the college of supervisors shall submit to the group supervisor the main conclusions drawn following the supervisory review process carried out at the level of the individual undertaking pursuant to Article 357(2)(c) of Delegated Regulation (EU) 2015/35, using the template set out in Annex II to this Regulation.

2. The group supervisor shall submit to the other supervisory authorities in the college of supervisors the main conclusions drawn following the supervisory review process carried out at group level pursuant to point (iii) of Article 357(3)(a) of Delegated Regulation (EU) 2015/35, using the template set out in Annex II to this Regulation.

Article 8

Cooperation and exchange of information between supervisory authorities outside the college of supervisors

1. Where a supervisory authority in the college of supervisors shares information which is relevant to the supervision of the group on a bilateral or multilateral basis with some of the other supervisory authorities in the college of supervisors, it shall report the information to the group supervisor within a reasonable time. The group supervisor shall ensure that the information is disseminated to all the other supervisory authorities concerned within the college of supervisors at or before the next meeting thereof.

2. Where a supervisory authority in the college of supervisors receives information from a third party which is relevant to the supervision of the group and shares this information with some of the other supervisory authorities in the college of supervisors, it shall, to the fullest extent possible, subject to any confidentiality restrictions imposed by the third party or by law, report the information to the group supervisor within a reasonable time. The group supervisor shall ensure that the information is disseminated to all the other supervisory authorities concerned within the college of supervisors at or before the next meeting thereof.

Article 9

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, 11 November 2015.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX I

Overview of the information to be exchanged in the college of supervisors

Name of the undertaking / Type of information		Solvency and financial condition report	Regular supervisory report	Quantitative reporting templates	Main conclusions of the supervisory review process	Other selected data
Participating undertaking	Element					
	Frequency					
	Deadline					
Subsidiary	Element					
	Frequency					
	Deadline					
Other related undertaking	Element					
	Frequency					
	Deadline					

Elements of information to be exchanged including relevant parts of narrative reports, relevant quantitative reporting templates, the main conclusions following the supervisory review process and other selected data as well as deadlines and frequency, as agreed in the college of supervisors, shall be specified in the overview.

ANNEX II

Submission of the main conclusions of the supervisory review process

Name of the individual undertaking or the group	
Outcome of the risk assessment and the relevant planned supervisory activities	
Description	
Findings of on-site examinations/inspections and off-site activities	
Description	
Relevant supervisory measures	
Description	

The main conclusions following the supervisory review process shall include the outcome of the risk assessment, the relevant planned supervisory activities, the findings from on-site examinations, on-site inspections and off-site activities and the relevant supervisory measures as agreed in the college of supervisors.

COMMISSION IMPLEMENTING REGULATION (EU) 2015/2015

of 11 November 2015

laying down implementing technical standards on the procedures for assessing external credit assessments in accordance with Directive 2009/138/EC 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 Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) ([1]), and in particular the fourth subparagraph of Article 44(4a) thereof,

Whereas:

(1) Additional assessments of the appropriateness of the external credit assessments referred to in Article 44(4a) of Directive 2009/138/EC should constitute a critical and important activity as part of the risk-management system as they mitigate risks related to the calculation of the technical provisions and the Solvency Capital Requirement.

(2) The procedural aspects of additional assessments are to be reflected in the policy on risk management of the insurance and reinsurance undertakings referred to in Article 41(3) of Directive 2009/138/EC as additional assessments are part of the risk-management system.

(3) The nature, scale and complexity of the business of insurance and reinsurance undertakings should be taken into account when these undertakings include the procedural aspects of additional assessments into their policy on risk management and document the results of the additional assessments and the way in which those assessments are carried out.

(4) This Regulation is based on the draft implementing technical standards submitted by the European Insurance and Occupational Pensions Authority to the Commission.

(5) The European Insurance and Occupational Pensions Authority has conducted open public consultations on the draft implementing technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Insurance and Reinsurance Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1094/2010 of the European Parliament and of the Council ([2]),

HAS ADOPTED THIS REGULATION:

Article 1

Policy on risk management

For the purpose of assessing the appropriateness of external credit assessments used in the calculation of technical provisions and the Solvency Capital Requirement by way of additional assessments referred to in Article 44(4a) of Directive 2009/138/EC, insurance and reinsurance undertakings shall include in their policy on risk management the following:

(a) the scope and frequency of the additional assessments;

(b) the manner in which the additional assessments are carried out, including the assumptions on which they are based;

(c) the frequency of the regular review of the additional assessments and the conditions requiring an *ad hoc* review of the additional assessments.

([1]) OJ L 335, 17.12.2009, p. 1.

([2]) Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48).

Article 2

Tasks of the risk-management function

Insurance and reinsurance undertakings shall ensure that the risk-management function covers the additional assessments in accordance with the risk management policy referred to in Article 1 and duly considers the results of the additional assessments in the calculation of technical provisions and the Solvency Capital Requirement.

Article 3

Information used for the additional assessments

When carrying out the additional assessments the insurance and reinsurance undertakings shall use information that is derived from reliable sources that are up to date.

Article 4

Review of additional assessments

1. In accordance with Article 41(3) of Directive 2009/138/EC, insurance and reinsurance undertakings shall at least annually review their additional assessments.

2. Insurance and reinsurance undertakings shall also review the additional assessments on an *ad hoc* basis, whenever any of the conditions under Article 1(c) take place or if the assumptions on which those assessments are based are no longer valid.

Article 5

Documentation

Insurance and reinsurance undertakings shall document the following:

(a) the manner in which the additional assessments are carried out and the results of those assessments;

(b) the extent to which the results of the additional assessments are taken into account in the calculation of technical provisions and the Solvency Capital Requirement.

Article 6

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, 11 November 2015.

For the Commission
The President
Jean-Claude JUNCKER

COMMISSION IMPLEMENTING REGULATION (EU) 2015/2016

of 11 November 2015

laying down the implementing technical standards with regard to the equity index for the symmetric adjustment of the standard equity capital charge in accordance with Directive 2009/138/EC 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 Directive 2009/138/EC of 25 November 2009 of the European Parliament and of the Council on the taking up and pursuit of the business of Insurance and Reinsurance (Solvency II) ([1]), and in particular Article 109a(2)(b) thereof,

Whereas:

(1) In order to ensure that the equity index measures the market price of a diversified portfolio of equities which is representative of the nature of equities typically held by insurance and reinsurance undertakings, as required by Article 172 of Commission Delegated Regulation (EU) 2015/35 ([2]), it should be composed of several existing equity indices for relevant markets. In order to make the levels of those equity indices comparable, the level of each index at the beginning of the appropriate period of time referred to in Article 106(2) of Directive 2009/138/EC should be set at 100 percentage points.

(2) The value of an equity index fluctuates during the day. It is therefore necessary to clarify which value shall be used for a given day. As stock exchanges are not open every day for trading it is also necessary to specify for which days the levels of the equity index have to be calculated. For this reason the terms 'last level' and 'working day' should be defined.

(3) The equity index should comply with the requirements laid down in Article 172 of Delegated Regulation (EU) 2015/35.

(4) This Regulation is based on the draft implementing technical standards submitted by the European Insurance and Occupational Pensions Authority to the Commission.

(5) The European Insurance and Occupational Pensions Authority has conducted open public consultations on the draft implementing technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Insurance and Reinsurance Stakeholder Group established by Article 37 of Regulation (EU) No 1094/2010 of the European Parliament and of the Council ([3]),

HAS ADOPTED THIS REGULATION:

Article 1

Definitions

For the purpose of this Regulation the following definitions shall apply:

(1) 'last level' means the last value of the equity index for the day of reference published by the provider of the equity index;

(2) 'working day' means every day other than Saturdays and Sundays.

([1]) OJ L 335, 17.12.2009, p. 1.

([2]) Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 12, 17.1.2015, p. 1).

([3]) Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48).

Article 2

Calculation of the equity index

1. The level of the equity index referred to in Article 106(2) of Directive 2009/138/EC shall be determined for each working day.

The level of the equity index for a particular working day shall be the sum of the contributions of all equity indices included in the Annex on that working day.

For each of the equity indices set out in the Annex, its contribution for a particular working day shall be the product of its normalised level for the working day and the respective weight for the equity index as set out in the Annex.

2. For each of the equity indices set out in the Annex, its normalised level for a particular working day shall be its last level on that working day divided by its last level on the first day of the 36 month period ending on the working day for which the level of the equity index as defined in Article 172(1) of Delegated Regulation (EU) 2015/35 is being calculated. Where, for a specific day, the last level of an equity index is not available, the most recent last level before that day shall be used.

Article 3

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, 11 November 2015.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX

Equity indices and weights

Equity indices (Price indices)	Weights
AEX	0,14
CAC 40	0,14
DAX	0,14
FTSE All-Share Index	0,14
FTSE MIB Index	0,08
IBEX 35	0,08
Nikkei 225	0,02
OMX Stockholm 30 Index	0,08
S&P 500	0,08
SMI	0,02
WIG30	0,08

COMMISSION IMPLEMENTING REGULATION (EU) 2015/2017

of 11 November 2015

laying down implementing technical standards with regard to the adjusted factors to calculate the capital requirement for currency risk for currencies pegged to the euro in accordance with Directive 2009/138/EC 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 Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking up and pursuit of the business of Insurance and Reinsurance (Solvency II) ([1]), and in particular Article 109a(2)(c) thereof,

Whereas:

(1) The adjustments laid down in this Regulation take into account the detailed criteria set out in Article 188(5) of Commission Delegated Regulation (EU) 2015/35 ([2]).

(2) In order to ensure a consistent treatment of currencies pegged to the euro in the calculation of the capital requirement for currency risk, adjusted factors should be provided for the currency risk relating to the exchange rates between the euro and currencies pegged to the euro as well as in relation to the exchange rates between two currencies pegged to the euro.

(3) This Regulation is based on the draft implementing technical standards submitted by the European Insurance and Occupational Pensions Authority to the Commission.

(4) The European Insurance and Occupational Pensions Authority has conducted open public consultations on the draft implementing technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Insurance and Reinsurance Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1094/2010 of the European Parliament and of the Council ([3]),

HAS ADOPTED THIS REGULATION:

Article 1

Adjusted factors for currency risk where the local or foreign currency is the euro

Where the local or foreign currency is the euro, for the purposes of Article 188(3) and (4) of Delegated Regulation (EU) 2015/35, the 25 % factor is replaced by:

(a) 0,39 % where the other currency is the Danish krone (DKK);

(b) 1,81 % where the other currency is the lev (BGN);

(c) 2,18 % where the other currency is the West African CFA franc (BCEAO) (XOF);

(d) 1,96 % where the other currency is the Central African CFA franc (BEAC) (XAF);

(e) 2,00 % where the other currency is the Comorian franc (KMF).

([1]) OJ L 335, 17.12.2009, p. 1.

([2]) Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 12, 17.1.2015, p. 1).

([3]) Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48).

Article 2

Adjusted factors for currency risk where the local and the foreign currency are pegged to the euro

For the purposes of Article 188(3) and (4) of Delegated Regulation (EU) 2015/35, the 25 % factor is replaced by:

(a) 2,24 % where the two currencies are the DKK and the BGN;

(b) 2,62 % where the two currencies are the DKK and the XOF;

(c) 2,40 % where the two currencies are the DKK and the XAF;

(d) 2,44 % where the two currencies are the DKK and the KMF;

(e) 4,06 % where the two currencies are the BGN and the XOF;

(f) 3,85 % where the two currencies are the BGN and the XAF;

(g) 3,89 % where the two currencies are the BGN and the KMF;

(h) 4,23 % where the two currencies are the XOF and the XAF;

(i) 4,27 % where the two currencies are the XOF and the KMF;

(j) 4,04 % where the two currencies are the XAF and the KMF.

Article 3

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, 11 November 2015.

For the Commission
The President
Jean-Claude JUNCKER

COMMISSION IMPLEMENTING REGULATION (EU) 2015/2018

of 11 November 2015

withdrawing the acceptance of the undertaking for two exporting producers under Implementing Decision 2013/707/EU confirming the acceptance of an undertaking offered in connection with the anti-dumping and anti-subsidy proceedings concerning imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China for the period of application of definitive measures

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union ('the Treaty'),

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community ([1]) ('the basic anti-dumping Regulation'), and in particular Article 8 thereof,

Having regard to Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community ([2]) ('the basic anti-subsidy Regulation'), and in particular Article 13 thereof,

Informing the Member States,

Whereas:

A. UNDERTAKING AND OTHER EXISTING MEASURES

(1) By Regulation (EU) No 513/2013 ([3]), the European Commission ('the Commission') imposed a provisional anti-dumping duty on imports into the European Union ('the Union') of crystalline silicon photovoltaic modules ('modules') and key components (i.e. cells and wafers) originating in or consigned from the People's Republic of China ('the PRC').

(2) A group of exporting producers gave a mandate to the China Chamber of Commerce for Import and Export of Machinery and Electronic Products ('CCCME') to submit a price undertaking on their behalf to the Commission, which they did. It is clear from the terms of that price undertaking that it constitutes a bundle of individual price undertakings for each exporting producer, which is, for reasons of practicality of administration, coordinated by the CCCME.

(3) By Decision 2013/423/EU ([4]), the Commission accepted that price undertaking with regard to the provisional anti-dumping duty. By Regulation (EU) No 748/2013 ([5]), the Commission amended Regulation (EU) No 513/2013 to introduce the technical changes necessary due to the acceptance of the undertaking with regard to the provisional anti-dumping duty.

(4) By Implementing Regulation (EU) No 1238/2013 ([6]), the Council imposed a definitive anti-dumping duty on imports into the Union of modules and cells originating in or consigned from the PRC ('the products concerned'). By Implementing Regulation (EU) No 1239/2013 ([7]), the Council also imposed a definitive countervailing duty on imports into the Union of the product concerned.

([1]) OJ L 343, 22.12.2009, p. 51.
([2]) OJ L 188, 18.7.2009, p. 93.
([3]) OJ L 152, 5.6.2013, p. 5.
([4]) OJ L 209, 3.8.2013, p. 26.
([5]) OJ L 209, 3.8.2013, p. 1.
([6]) OJ L 325, 5.12.2013, p. 1.
([7]) OJ L 325, 5.12.2013, p. 66.

(5) Following the notification of an amended version of the price undertaking by a group of exporting producers ('the exporting producers') together with the CCCME, the Commission confirmed by Implementing Decision 2013/707/EU ([1]) the acceptance of the price undertaking as amended ('the undertaking') for the period of application of definitive measures. The Annex to this Decision lists the exporting producers for whom the undertaking was accepted, *inter alia*:

(a) Chint Solar (Zhejiang) Co. Ltd together with its related companies in the European Union, jointly covered by the TARIC additional code: B810 ('Chint Solar'); and

(b) Hangzhou Zhejiang University Sunny Energy Science and Technology Co. Ltd and Zhejiang Jinbest Energy Science and Technology Co. Ltd, jointly covered by the TARIC additional code: B825 ('Sunny Energy').

(6) By Implementing Decision 2014/657/EU ([2]) the Commission accepted a proposal by the group of the exporting producers together with the CCCME for clarifications concerning the implementation of the undertaking for the product concerned covered by the undertaking, that is modules and cells originating in or consigned from the PRC, currently falling within CN codes ex 8541 40 90 (TARIC codes 8541 40 90 21, 8541 40 90 29, 8541 40 90 31 and 8541 40 90 39) produced by the exporting producers ('product covered'). The anti-dumping and countervailing duties referred to in recital 4 above, together with the undertaking, are jointly referred to as 'measures'.

(7) By Implementing Regulation (EU) 2015/866 ([3]) the Commission withdrew the acceptance of the undertaking for three exporting producers.

(8) By Implementing Regulation (EU) 2015/1403 ([4]) the Commission withdrew the acceptance of the undertaking for another exporting producer.

B. **TERMS OF THE UNDERTAKING THAT HAVE BEEN BREACHED**

(9) Each company from whom the undertaking was accepted undertook to sell only the product covered manufactured by this company. Sales of products manufactured by another company are not allowed.

(10) The exporting producers agreed, *inter alia*, not to sell the product covered to the first independent customer in the Union below a certain minimum import price ('the MIP') within the associated annual level of imports to the Union laid down in the undertaking.

(11) The undertaking also clarifies, in a non-exhaustive list, what constitutes a breach of the undertaking. That list includes, in particular, making compensatory arrangements with customers, making misleading declarations regarding the origin of the product concerned or the identity of the exporter. Taking part in a trading system leading to a risk of circumvention also constitutes a breach. The list also includes that issuing a commercial invoice, as defined in the undertaking, for which the underlying financial transaction is not in conformity with its face value is a breach.

(12) Moreover, the exporting producers undertook not to sell any product other than the product covered produced or traded by them in excess of a given small percentage limit of the total sales value of the product covered to the same customers to which they sell the product covered ('the parallel sales limit').

(13) Furthermore, the undertaking obliges the exporting producers to provide the Commission on a quarterly basis and within specific deadlines, with detailed information on all their export sales to and resales in the Union ('the quarterly reports'). This implies that the data submitted in these quarterly reports must be complete and correct and that the reported transactions fully comply with the terms of the undertaking. Sales of products other than the product covered to the same customers also have to be reported.

([1]) OJ L 325, 5.12.2013, p. 214.
([2]) OJ L 270, 11.9.2014, p. 6.
([3]) OJ L 139, 5.6.2015, p. 30.
([4]) OJ L 218, 19.8.2015, p. 1.

(14) For the purpose of ensuring compliance with the undertaking, the exporting producers also undertook to allow verification visits at their premises in order to verify the accuracy and completeness of data submitted to the Commission in the quarterly reports and to provide all information considered necessary by the Commission.

C. **TERMS OF THE UNDERTAKING THAT ALLOW FOR WITHDRAWAL BY THE COMMISSION IN THE ABSENCE OF A BREACH**

(15) The undertaking stipulates that the Commission may withdraw the acceptance of the undertaking at any time during its period of application if monitoring and enforcement prove to be impracticable.

D. **MONITORING OF THE EXPORTING PRODUCERS**

(16) While monitoring compliance with the undertaking, the Commission verified information submitted by the two exporting producers referred to in recital 5 above that was relevant to the undertaking. The Commission also carried out verification visits at the premises of these exporting producers. The findings listed in recitals 17 to 27 address the problems identified for Chint Solar and Sunny Energy which oblige the Commission to withdraw acceptance of the undertaking for those two exporting producers.

E. **GROUNDS TO WITHDRAW THE ACCEPTANCE OF THE UNDERTAKING**

(i) **Chint Solar**

(17) Chint Solar's related companies in the Union referred to in recital 5(a) sold the product covered to independent customers in the Union in 2013 and in 2014. These sales were not reported to the Commission within the deadline provided in the undertaking. An incomplete report was only submitted at the beginning of the verification visit. The Commission therefore concluded that Chint Solar breached its reporting obligations.

(18) Chint Solar also sold modules to the Union which were manufactured by a related company not party to the undertaking. The Commission analysed this practice and concluded that Chint Solar breached the obligation to sell only those modules which were produced by the company which is party to the undertaking.

(19) In addition, a related producer of modules in the Union sold these products, *inter alia*, either to one of Chint Solar's customers or to customers related to a Chint Solar customer. A substantial part of these sales was carried out at prices below the MIP. The Commission analysed this business model. The Commission concluded that by selling at prices below the MIP to a Chint Solar customer or to a related customer of a Chint Solar customer, a compensatory arrangement took place and that Chint Solar breached the obligation under the undertaking not to enter into a compensatory arrangement.

(20) Moreover, Chint Solar partially produces modules under original equipment manufacturer ('OEM') agreements. For one group of its OEM customers, the contractual arrangement allows sales to this group of customers to the Union and non-Union destinations. Chint Solar did not provide all information considered necessary by the Commission for the monitoring of the undertaking. For another group of its OEM customers, the verification established that at least in one instance modules were delivered to both Union and non-Union members of this group.

(21) This business model leads to a risk of circumvention in the form of cross-compensation of the MIP. More specifically, this would be the case if modules are sold to OEM customer groups via Chint Solar's related company which is not party to the undertaking.

(22) The Commission concluded that the identified pattern of trade renders the monitoring of Chint Solar's undertaking impracticable.

(ii) **Sunny Energy**

(23) Sunny Energy issued several commercial invoices for solar modules for which the face value was in accordance with the MIP. However, an inspection of the relevant invoices which Sunny Energy submitted to the Chinese VAT authorities revealed that these sales transactions also included products not covered by the undertaking, e.g. inverters and cables defined in the undertaking as 'other products', which were not reported to the Commission. In addition, the sales of such 'other products' to the same customers exceeded the parallel sales limit authorised by the undertaking. These are breaches of reporting obligations and of the limit for sales of 'other products' to the same customers.

(24) Furthermore, the verification visit established that the sales price of solar modules on the invoices which Sunny Energy submitted to the Chinese VAT authorities was lower than the price on the undertaking invoices. The Commission analysed this practice and concluded that Sunny Energy breached the undertaking by issuing commercial invoices for which the underlying financial transactions were not in conformity with their face value.

(25) Sunny Energy has also been exporting 'other products' over a substantial period of time into a bonded warehouse in the Union. The customs clearance of those products takes place once the customer orders those products. These sales fall outside the scope of the monitoring by the Commission.

(26) The Commission analysed the implications of this pattern of trade and concluded that there is a high risk of cross-compensation of the MIP, namely if products covered and products not covered are sold from the bonded warehouse to the same customers. The Commission concluded that the identified pattern of trade renders the monitoring of Sunny Energy's undertaking impracticable.

(27) In addition, the transaction records inspected on spot revealed that one customer had not paid the entire amount for the sales transaction in question. Further analysis established that this partial payment lead to sales price below the MIP. Selling at a price below the MIP constitutes a breach of the undertaking.

(iii) **Conclusions**

(28) The findings of breaches of the undertaking and its impracticability established for Chint Solar and Sunny Energy justify the withdrawal of the acceptance of the undertaking for these two exporting producers pursuant to Articles 8(7) and 8(9) of the basic anti-dumping Regulation, Articles 13(7) and 13(9) of the basic anti-subsidy Regulation, and pursuant to the terms of the undertaking.

F. **ASSESSMENT OF PRACTICABILITY OF THE OVERALL UNDERTAKING**

(29) The undertaking stipulates that a breach by an individual exporting producer does not automatically lead to the withdrawal of the acceptance of the undertaking for all exporting producers. In such a case, the Commission shall assess the impact of that particular breach on the practicability of the undertaking with the effect for all exporting producers and the CCCME.

(30) The Commission has accordingly assessed the impact of the breaches by Chint Solar and Sunny Energy on the practicability of the undertaking with the effect for all exporting producers and the CCCME.

(31) The responsibility for the breaches lies alone with the exporting producers in question; the monitoring has not revealed any systematic breaches by a major number of exporting producers or the CCCME.

(32) The Commission therefore concludes that the overall functioning of the undertaking is not affected and that there are no grounds for withdrawal of the acceptance of the undertaking for all exporting producers and the CCCME.

G. **WRITTEN SUBMISSIONS AND HEARINGS**

(33) Interested parties were granted the opportunity to be heard and to comment under Article 8(9) of the basic anti-dumping Regulation and Article 13(9) of the basic anti-subsidy Regulation. Both Chint Solar and Sunny Energy submitted comments and have been heard. Another interested party also submitted comments.

(34) During the hearings, both Chint Solar and Sunny Energy confirmed that certain breaches had occurred, but committed to respect the undertaking in the future and stressed that they considered the breaches as minor.

(i) **Chint Solar**

Sales of modules to the Union manufactured by a related company not party to the undertaking

(35) Chint Solar claimed that despite the replies submitted during the original investigation by the related producer referred to in recital 18 above, the Commission neither included this producer in the sampling proposal nor in the list of cooperating producers subject to the final determination of the original investigation. In their view, due to these omissions, Chint Solar was not in a position to understand the different statuses of its producers.

(36) The Commission rejects this argument. First, the sampling proposal referred to both individual producers and company groups. It is clear from the wording and the list of companies attached to the sampling proposal that one company per company group was listed. In fact, most of the companies proposed for sampling had several related companies in the PRC but only one company per company group was listed in the sampling proposal.

(37) Second, contrary to the sampling proposal, the list of cooperating exporting producers referred to in the Implementing Regulations imposing provisional and definitive anti-dumping and countervailing duties on the product concerned contains all companies within the company group. The Commission considers that Chint Solar was granted sufficient time to point out any inaccuracy in the list of cooperating exporting producers following the disclosures at the provisional and the final stages of the original investigations. No comment was received from Chint Solar.

Reporting obligations by the related importers in the Union

(38) Chint Solar also claimed that it had not been aware of the reporting obligations on its related companies in the Union referred to in recital 5(a) above, as Chint Solar was not notified about the acceptance of the undertaking offered by these related companies. In addition, Chint Solar argued that no independent access to the reporting system was provided to these related companies in the Union which rendered the submission of their quarterly reports impracticable.

(39) The Commission rejects these arguments as Chint Solar was obliged to report the resale transactions to independent customers in the Union and failed to do so. This is for the following reasons:

(a) the undertaking offer including one of the related companies in the Union referred to in recital 5(a) above was already accepted with the provisional anti-dumping duty ([1]). The provisions of the undertaking text clearly stipulate that resales to independent customers in the Union have to be reported,

(b) the undertaking offer including the other related company in the Union referred to in recital 5(a) above was accepted for the period of application of definitive measures ([2]). However, no sales took place to this related company following the acceptance of the undertaking. Therefore, Chint Solar's arguments are irrelevant regarding this company,

([1]) Decision 2013/423/EU.
([2]) Implementing Decision 2013/707/EU.

(c) the CCCME coordinates the submission of all quarterly reports by the companies subject to the undertaking, including the quarterly reports on resale transactions. Chint Solar was in a position to obtain any further information on their reporting obligations under the undertaking,

(d) Chint Solar submitted an incomplete quarterly report at the beginning of the verification visit. This substantiates that Chint Solar was aware of the reporting obligations of its related companies in the Union.

No substantial breach

(40) Chint Solar also claimed that no substantial breach occurred as the non-reported transactions were marginal compared to the total number of sales transactions.

(41) The Commission cannot accept this argument. Chint Solar has not submitted any quarterly report on the resale transactions of its related company referred to in recital 5(a) since the entry into force of the undertaking. This is irrespective of the number of non-reported transactions. Therefore, the Commission upholds its conclusion that Chint Solar breached their reporting obligation under the undertaking.

Sales by the related producer in the Union

(42) Chint Solar also contested that it had breached the obligation under the undertaking not to enter into a compensatory arrangement for the following reasons:

(a) Chint Solar notified the Commission on the acquisition of the module producer in the Union referred to in recital 19 above and the Commission has not reacted,

(b) the complexity of the undertaking in general led the Commission to issue different replies for the same scenario over the time. Therefore, it is reasonable that Chint Solar did not consider the risk of compensatory arrangements until the disclosure on the intention to withdraw the undertaking by the Commission,

(c) the sales of the related producer in the Union should not be subject to the terms of the undertaking which only covers modules and cells originating in or consigned from the PRC,

(d) Chint Solar had no intention for any cross-compensation by selling to the same Chint Solar customer from PRC and the related producer in the Union. The difference in the product specifications and the trading habit of the particular Chint Solar customer justifies these parallel sales. Chint Solar also claimed that the sales price of the related producer in the Union was in line with the market price. In addition, Chint Solar committed to stop selling the product concerned to that Chint Solar customer from the PRC, to provide quarterly reports on the sales of its related producer in the Union and to allow for verifying the accuracy of these reports.

(43) The Commission cannot accept these arguments. First, the Commission did not criticise Chint Solar for not notifying the acquisition, but for the parallel sales described in recital 19 above.

(44) Second, Chint Solar quotes the replies of the Commission services, which in any event have been qualified as non-binding, out of context. The replies referred to are irrelevant to the obligation not to enter into a compensatory arrangement.

(45) Third, it is clear that the sales of a Union producer cannot be subject to the undertaking. However, the compensatory arrangements found by the Commission occurred due to the parallel sales by this related Union producer to a Chint Solar customer or to customers related to a Chint Solar customer. The difference in product specifications is irrelevant from the cross-compensation point of view. In addition, it is also irrelevant if sales were made at market prices as these prices were below the MIP.

(46) The Commission also analysed the additional commitments made by Chint Solar and concluded that they only address the risk of compensatory arrangements in relation to one particular customer. In addition, they pose an additional burden on the monitoring of the undertaking, namely further checks of extra quarterly reports.

Therefore, the Commission upholds its assessment that Chint Solar breached its obligation under the undertaking not to enter into a compensatory arrangement.

OEM sales

(47) Chint Solar also submitted that it did not sell any modules to non-Union destinations of the OEM customer referred to in recital 20 above. In addition, Chint Solar reiterated that they provided all information concerning the particular OEM contractual arrangement to the Commission.

(48) Chint Solar also clarified that it accidentally delivered in one instance to Union and non-Union members of the other OEM customer group referred to in recital 20 under special circumstances. Chint Solar also offered commitments that no similar accidents will occur in the future.

(49) The Commission rejects these arguments. First, the Commission considers that the existence of such a business model leads to a risk of circumvention in the form of cross-compensation of the MIP. The fact that no sales took place does not alleviate the identified risk of cross-compensation. In addition, Chint Solar did not provide any detail on how to ensure that no such accidental sales will occur in the future.

Non-discriminatory treatment and changes in the Union solar market

(50) Chint Solar also submitted that it shall be granted timely instructions and equal opportunity to make corrections during the implementation of the undertaking. To their knowledge, the Commission has found issues of non-reporting and other breaches by other companies subject to the undertaking which was not followed by withdrawal from the undertaking.

(51) The Commission rejects this argument as no other company was found to breach the undertaking for the same reasons as Chint Solar.

(52) The Commission therefore dismisses these allegations of Chint Solar as unsubstantiated.

(53) Chint Solar also submitted that the Commission shall evaluate the changes on the Union solar market, in particular the alleged negative impact of the anti-dumping and countervailing measures on the Union solar sector in deciding on the withdrawal of the undertaking from Chint Solar.

(54) The Commission rejects this argument as it is irrelevant to the assessment of the breaches of the undertaking by Chint Solar.

(ii) **Sunny Energy**

Non-reporting

(55) Sunny Energy contested that it breached their reporting obligation since at least some sales of 'other products' were reported to the Commission in one of the quarterly reports and at least another report was prepared without submission to the Commission.

(56) The Commission cannot accept this argument. Sunny Energy did submit the quarterly report of 'other products' in the first quarter following the entry into force of the undertaking. However, Sunny Energy failed to submit further quarterly reports of 'other products' or to rectify the omitted transactions in the subsequent quarterly reports.

Sales limit

(57) Sunny Energy also claimed that no substantive breach of the undertaking occurred in most cases and the sales value of the 'other products' exceeded the parallel sales limit by a marginal amount.

(58) The Commission rejects this argument. The excess of the parallel sales limit is irrespective of the amount in question, even if it is marginal. Therefore, the Commission upholds its conclusion that Sunny Energy breached their reporting obligation under the undertaking.

Double invoicing system

(59) Sunny Energy submitted that the values of the undertaking invoice supplied to Sunny Energy's customers are accurate and are used to book the transactions in Sunny Energy's accounts. The payment for a given transaction is also based on the undertaking invoice. In their view, only the total value of the VAT invoice is relevant for the compliance with the terms of the undertaking, not the breakdown of how that total was arrived at. Hence the underlying financial transactions were in conformity with their face value. In addition, the difference in the values on the undertaking invoices and the VAT invoices are marginal.

(60) The Commission rejects this argument. First, the VAT invoice included the price of the product concerned and of the non-reported 'other products' for which the sales price was different from those indicated on the undertaking invoice. Second, Sunny Energy did not provide any convincing argument for the difference between the various financial and administrative documents.

Partial payment

(61) Sunny Energy also submitted that it had contacted the customer referred to in recital 27 above and received the full payment of that invoice.

(62) The Commission notes these steps taken by Sunny Energy, which, however, took place after the problem was spotted by the Commission.

Sales from a warehouse in the Union

(63) Sunny Energy also submitted that it is ready to stop sales of 'other products' from the bonded warehouse in the Union referred to in recital 25 above to avoid the potential risk of cross-compensation.

(64) The Commission concluded that although this commitment would address the risk of cross-compensation, it would not be possible to monitor such a commitment. Moreover, these commitments do not address the identified pattern of trade which took place over a substantial period of time.

(iii) **Comments by the other interested party**

(65) One interested party submitted that Chint Solar and Sunny Energy have been systematically selling the product concerned below the MIP or otherwise circumventing it. The interested party urged for the withdrawal of these companies from the undertaking.

(66) In addition, the interested party submitted that the number of companies withdrawn from the undertaking confirms the market experience that the undertaking has been violated on a broad scale.

(67) The Commission points out that the interested party made unsubstantiated assumptions in its submission. The monitoring of the Commission has not revealed any systematic breaches by a major number of exporting producers or the CCCME.

(iv) **Conclusion**

(68) The Commission therefore upholds its findings on breaches of the undertaking for Chint Solar and Sunny Energy.

H. **WITHDRAWAL OF THE ACCEPTANCE OF THE UNDERTAKING AND IMPOSITION OF DEFINITIVE DUTIES**

(69) Therefore, in accordance with Article 8(7) and 8(9) of the basic anti-dumping Regulation, Article 13(7) and 13(9) of the basic anti-subsidy Regulation and also in accordance with the terms of the undertaking, the Commission has concluded that the acceptance of the undertaking for Chint Solar and Sunny Energy shall be withdrawn.

(70) Accordingly, under Article 8(9) of the basic anti-dumping Regulation and Article 13(9) of the basic anti-subsidy Regulation, the definitive anti-dumping duty imposed by Article 1 of Implementing Regulation (EU) No 1238/2013 and the definitive countervailing duty imposed by Article 1 of Implementing Regulation (EU) No 1239/2013 automatically apply to imports originating in or consigned from the PRC of the product concerned and produced by Chint Solar (TARIC additional code: B810) and Sunny Energy (TARIC additional code: B825) as of the day of entry into force of this Regulation.

(71) For information purposes the table in the Annex to this Regulation lists the exporting producers for whom the acceptance of the undertaking by Implementing Decision 2014/657/EU is not affected,

HAS ADOPTED THIS REGULATION:

Article 1

Acceptance of the undertaking by Implementing Decision 2013/707/EU in relation to (i) Chint Solar (Zhejiang) Co. Ltd together with its related companies in the European Union, jointly covered by the TARIC additional code: B810, (ii) Hangzhou Zhejiang University Sunny Energy Science and Technology Co. Ltd and Zhejiang Jinbest Energy Science and Technology Co. Ltd, jointly covered by the TARIC additional code: B825 is hereby withdrawn.

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, 11 November 2015.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX

List of companies:

Name of the company	TARIC additional code
Jiangsu Aide Solar Energy Technology Co. Ltd	B798
Alternative Energy (AE) Solar Co. Ltd	B799
Anhui Chaoqun Power Co. Ltd	B800
Anji DaSol Solar Energy Science & Technology Co. Ltd	B802
Anhui Schutten Solar Energy Co. Ltd Quanjiao Jingkun Trade Co. Ltd	B801
Anhui Titan PV Co. Ltd	B803
Xi'an SunOasis (Prime) Company Limited TBEA SOLAR CO. LTD XINJIANG SANG'O SOLAR EQUIPMENT	B804
Changzhou NESL Solartech Co. Ltd	B806
Changzhou Shangyou Lianyi Electronic Co. Ltd	B807
Changzhou Trina Solar Energy Co. Ltd Trina Solar (Changzhou) Science & Technology Co. Ltd Changzhou Youze Technology Co. Ltd Trina Solar Energy (Shanghai) Co. Ltd Yancheng Trina Solar Energy Technology Co. Ltd	B791
CHINALAND SOLAR ENERGY CO. LTD	B808
ChangZhou EGing Photovoltaic Technology Co. Ltd	B811
CIXI CITY RIXING ELECTRONICS CO. LTD ANHUI RINENG ZHONGTIAN SEMICONDUCTOR DEVELOPMENT CO. LTD HUOSHAN KEBO ENERGY & TECHNOLOGY CO. LTD	B812
CNPV Dongying Solar Power Co. Ltd	B813
CSG PVtech Co. Ltd	B814
China Sunergy (Nanjing) Co. Ltd CEEG Nanjing Renewable Energy Co. Ltd CEEG (Shanghai) Solar Science Technology Co. Ltd China Sunergy (Yangzhou) Co. Ltd China Sunergy (Shanghai) Co. Ltd	B809

Name of the company	TARIC additional code
Delsolar (Wujiang) Ltd	B792
Dongfang Electric (Yixing) MAGI Solar Power Technology Co. Ltd	B816
EOPLLY New Energy Technology Co. Ltd SHANGHAI EBEST SOLAR ENERGY TECHNOLOGY CO. LTD JIANGSU EOPLLY IMPORT & EXPORT CO. LTD	B817
Era Solar Co. Ltd	B818
GD Solar Co. Ltd	B820
Greenway Solar-Tech (Shanghai) Co. Ltd Greenway Solar-Tech (Huaian) Co. Ltd	B821
Konca Solar Cell Co. Ltd Suzhou GCL Photovoltaic Technology Co. Ltd Jiangsu GCL Silicon Material Technology Development Co. Ltd Jiangsu Zhongneng Polysilicon Technology Development Co. Ltd GCL-Poly (Suzhou) Energy Limited GCL-Poly Solar Power System Integration (Taicang) Co. Ltd GCL SOLAR POWER (SUZHOU) LIMITED	B850
Guodian Jintech Solar Energy Co. Ltd	B822
Hangzhou Bluesun New Material Co. Ltd	B824
Hanwha SolarOne (Qidong) Co. Ltd	B826
Hengdian Group DMEGC Magnetics Co. Ltd	B827
HENGJI PV-TECH ENERGY CO. LTD	B828
Himin Clean Energy Holdings Co. Ltd	B829
Jetion Solar (China) Co. Ltd Junfeng Solar (Jiangsu) Co. Ltd Jetion Solar (Jiangyin) Co. Ltd	B830
Jiangsu Green Power PV Co. Ltd	B831
Jiangsu Hosun Solar Power Co. Ltd	B832
Jiangsu Jiasheng Photovoltaic Technology Co. Ltd	B833
Jiangsu Runda PV Co. Ltd	B834
Jiangsu Sainty Photovoltaic Systems Co. Ltd Jiangsu Sainty Machinery Imp. And Exp. Corp. Ltd	B835

Name of the company	TARIC additional code
Jiangsu Seraphim Solar System Co. Ltd	B836
Jiangsu Shunfeng Photovoltaic Technology Co. Ltd Changzhou Shunfeng Photovoltaic Materials Co. Ltd Jiangsu Shunfeng Photovoltaic Electronic Power Co. Ltd	B837
Jiangsu Sinski PV Co. Ltd	B838
Jiangsu Sunlink PV Technology Co. Ltd	B839
Jiangsu Zhongchao Solar Technology Co. Ltd	B840
Jiangxi Risun Solar Energy Co. Ltd	B841
Jiangxi LDK Solar Hi-Tech Co. Ltd LDK Solar Hi-Tech (Nanchang) Co. Ltd LDK Solar Hi-Tech (Suzhou) Co. Ltd	B793
Jiangyin Hareon Power Co. Ltd Hareon Solar Technology Co. Ltd Taicang Hareon Solar Co. Ltd Hefei Hareon Solar Technology Co. Ltd Jiangyin Xinhui Solar Energy Co. Ltd Altusvia Energy (Taicang) Co. Ltd	B842
Jiangyin Shine Science and Technology Co. Ltd	B843
JingAo Solar Co. Ltd Shanghai JA Solar Technology Co. Ltd JA Solar Technology Yangzhou Co. Ltd Hefei JA Solar Technology Co. Ltd Shanghai JA Solar PV Technology Co. Ltd	B794
Jinko Solar Co. Ltd Jinko Solar Import and Export Co. Ltd ZHEJIANG JINKO SOLAR CO. LTD ZHEJIANG JINKO SOLAR TRADING CO. LTD	B845
Jinzhou Yangguang Energy Co. Ltd Jinzhou Huachang Photovoltaic Technology Co. Ltd Jinzhou Jinmao Photovoltaic Technology Co. Ltd Jinzhou Rixin Silicon Materials Co. Ltd Jinzhou Youhua Silicon Materials Co. Ltd	B795
Juli New Energy Co. Ltd	B846

Name of the company	TARIC additional code
Jumao Photonic (Xiamen) Co. Ltd	B847
King-PV Technology Co. Ltd	B848
Kinve Solar Power Co. Ltd (Maanshan)	B849
Lightway Green New Energy Co. Ltd Lightway Green New Energy(Zhuozhou) Co. Ltd	B851
MOTECH (SUZHOU) RENEWABLE ENERGY CO. LTD	B852
Nanjing Daqo New Energy Co. Ltd	B853
NICE SUN PV CO. LTD LEVO SOLAR TECHNOLOGY CO. LTD	B854
Ningbo Huashun Solar Energy Technology Co. Ltd	B856
Ningbo Jinshi Solar Electrical Science & Technology Co. Ltd	B857
Ningbo Komaes Solar Technology Co. Ltd	B858
Ningbo Osda Solar Co. Ltd	B859
Ningbo Qixin Solar Electrical Appliance Co. Ltd	B860
Ningbo South New Energy Technology Co. Ltd	B861
Ningbo Sunbe Electric Ind Co. Ltd	B862
Ningbo Ulica Solar Science & Technology Co. Ltd	B863
Perfectenergy (Shanghai) Co. Ltd	B864
Perlight Solar Co. Ltd	B865
Phono Solar Technology Co. Ltd Sumec Hardware & Tools Co. Ltd	B866
RISEN ENERGY CO. LTD	B868
SHANDONG LINUO PHOTOVOLTAIC HI-TECH CO. LTD	B869
SHANGHAI ALEX SOLAR ENERGY SCIENCE & TECHNOLOGY CO. LTD SHANGHAI ALEX NEW ENERGY CO. LTD	B870
Shanghai BYD Co. Ltd BYD(Shangluo)Industrial Co. Ltd	B871

Name of the company	TARIC additional code
Shanghai Chaori Solar Energy Science & Technology Co. Ltd Shanghai Chaori International Trading Co. Ltd	B872
Propsolar (Zhejiang) New Energy Technology Co. Ltd Shanghai Propsolar New Energy Co. Ltd	B873
SHANGHAI SHANGHONG ENERGY TECHNOLOGY CO. LTD	B874
SHANGHAI SOLAR ENERGY S&T CO. LTD Shanghai Shenzhou New Energy Development Co. Ltd Lianyungang Shenzhou New Energy Co. Ltd	B875
Shanghai ST Solar Co. Ltd Jiangsu ST Solar Co. Ltd	B876
Shenzhen Sacred Industry Co.Ltd	B878
Shenzhen Topray Solar Co. Ltd Shanxi Topray Solar Co. Ltd Leshan Topray Cell Co. Ltd	B880
Sopray Energy Co. Ltd Shanghai Sopray New Energy Co. Ltd	B881
SUN EARTH SOLAR POWER CO. LTD NINGBO SUN EARTH SOLAR POWER CO. LTD Ningbo Sun Earth Solar Energy Co. Ltd	B882
SUZHOU SHENGLONG PV-TECH CO. LTD	B883
TDG Holding Co. Ltd	B884
Tianwei New Energy Holdings Co. Ltd Tianwei New Energy (Chengdu) PV Module Co. Ltd Tianwei New Energy (Yangzhou) Co. Ltd	B885
Wenzhou Jingri Electrical and Mechanical Co. Ltd	B886
Shanghai Topsolar Green Energy Co. Ltd	B877
Shenzhen Sungold Solar Co. Ltd	B879
Wuhu Zhongfu PV Co. Ltd	B889
Wuxi Saijing Solar Co. Ltd	B890
Wuxi Shangpin Solar Energy Science and Technology Co. Ltd	B891
Wuxi Solar Innova PV Co. Ltd	B892

Name of the company	TARIC additional code
Wuxi Suntech Power Co. Ltd Suntech Power Co. Ltd Wuxi Sunshine Power Co. Ltd Luoyang Suntech Power Co. Ltd Zhenjiang Rietech New Energy Science Technology Co. Ltd Zhenjiang Ren De New Energy Science Technology Co. Ltd	B796
Wuxi Taichang Electronic Co. Ltd Wuxi Machinery & Equipment Import & Export Co. Ltd Wuxi Taichen Machinery & Equipment Co. Ltd	B893
Xi'an Huanghe Photovoltaic Technology Co. Ltd State-run Huanghe Machine-Building Factory Import and Export Corporation Shanghai Huanghe Fengjia Photovoltaic Technology Co. Ltd	B896
Xi'an LONGi Silicon Materials Corp. Wuxi LONGi Silicon Materials Co. Ltd	B897
Years Solar Co. Ltd	B898
Yingli Energy (China) Co. Ltd Baoding Tianwei Yingli New Energy Resources Co. Ltd Hainan Yingli New Energy Resources Co. Ltd Hengshui Yingli New Energy Resources Co. Ltd Tianjin Yingli New Energy Resources Co. Ltd Lixian Yingli New Energy Resources Co. Ltd Baoding Jiasheng Photovoltaic Technology Co. Ltd Beijing Tianneng Yingli New Energy Resources Co. Ltd Yingli Energy (Beijing) Co. Ltd	B797
Yuhuan BLD Solar Technology Co. Ltd Zhejiang BLD Solar Technology Co. Ltd	B899
Yuhuan Sinosola Science & Technology Co.Ltd	B900
Zhangjiagang City SEG PV Co. Ltd	B902
Zhejiang Fengsheng Electrical Co. Ltd	B903
Zhejiang Global Photovoltaic Technology Co. Ltd	B904
Zhejiang Heda Solar Technology Co. Ltd	B905
Zhejiang Jiutai New Energy Co. Ltd Zhejiang Topoint Photovoltaic Co. Ltd	B906

Name of the company	TARIC additional code
Zhejiang Kingdom Solar Energy Technic Co. Ltd	B907
Zhejiang Koly Energy Co. Ltd	B908
Zhejiang Mega Solar Energy Co. Ltd Zhejiang Fortune Photovoltaic Co. Ltd	B910
Zhejiang Shuqimeng Photovoltaic Technology Co. Ltd	B911
Zhejiang Shinew Photoelectronic Technology Co. Ltd	B912
Zhejiang Sunflower Light Energy Science & Technology Limited Liability Company Zhejiang Yauchong Light Energy Science & Technology Co. Ltd	B914
Zhejiang Sunrupu New Energy Co. Ltd	B915
Zhejiang Tianming Solar Technology Co. Ltd	B916
Zhejiang Trunsun Solar Co. Ltd Zhejiang Beyondsun PV Co. Ltd	B917
Zhejiang Wanxiang Solar Co. Ltd WANXIANG IMPORT & EXPORT CO LTD	B918
Zhejiang Xiongtai Photovoltaic Technology Co. Ltd	B919
ZHEJIANG YUANZHONG SOLAR CO. LTD	B920
Zhongli Talesun Solar Co. Ltd	B922

COMMISSION IMPLEMENTING REGULATION (EU) 2015/2019

of 11 November 2015

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

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 ([1]),

Having regard to Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors ([2]), and in particular Article 136(1) thereof,

Whereas:

(1) Implementing Regulation (EU) No 543/2011 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in Annex XVI, Part A thereto.

(2) The standard import value is calculated each working day, in accordance with Article 136(1) of Implementing Regulation (EU) No 543/2011, taking into account variable daily data. Therefore this Regulation should enter into force on the day of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 136 of Implementing Regulation (EU) No 543/2011 are fixed in the Annex to this Regulation.

Article 2

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

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

Done at Brussels, 11 November 2015.

For the Commission,
On behalf of the President,
Jerzy PLEWA
Director-General for Agriculture and Rural Development

([1]) OJ L 347, 20.12.2013, p. 671.
([2]) OJ L 157, 15.6.2011, p. 1.

ANNEX

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

(EUR/100 kg)

CN code	Third country code (1)	Standard import value
0702 00 00	AL	50,7
	MA	68,0
	MK	50,7
	ZZ	56,5
0707 00 05	AL	80,9
	JO	229,9
	MA	183,4
	TR	153,7
	ZZ	162,0
0709 93 10	MA	103,9
	TR	148,5
	ZZ	126,2
0805 20 10	CL	170,3
	MA	76,8
	PE	166,7
	TR	83,5
	ZZ	124,3
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	CL	184,7
	PE	147,1
	TR	68,7
	ZA	95,1
	ZZ	123,9
0805 50 10	TR	99,9
	ZZ	99,9
0806 10 10	BR	306,7
	EG	224,2
	PE	300,3
	TR	171,8
	ZZ	250,8
0808 10 80	AR	145,7
	CA	163,3
	CL	81,2
	MK	29,8
	NZ	117,4
	US	146,9
	ZA	213,7
	ZZ	128,3

(EUR/100 kg)

CN code	Third country code (1)	Standard import value
0808 30 90	BA	73,9
	CN	83,9
	TR	126,3
	XS	80,0
	ZZ	91,0

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

DECISIONS

COUNCIL DECISION (EU) 2015/2020

of 26 October 2015

delegating to the Secretary-General of the Council the power to issue *laissez-passer* to members, officials and other servants of the European Council and of the Council, as well as to special applicants provided for in Annex II to Regulation (EU) No 1417/2013, and repealing Decision 2005/682/EC, Euratom

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the second subparagraph of Article 240(2) thereof,

Having regard to Protocol No 7 on the privileges and immunities of the European Union, annexed to the Treaty on European Union, the Treaty on the Functioning of the European Union and the Treaty establishing the European Atomic Energy Community, and in particular the first paragraph of Article 6 thereof,

Whereas:

(1) Pursuant to Articles 235(4) and the first subparagraph of 240(2) TFEU, both the European Council and the Council of the European Union are to be assisted by the General Secretariat of the Council.

(2) Pursuant to the first paragraph of Article 6 of Protocol No 7, it is for the President of the European Council and the President of the Council to issue *laissez-passer* to members of their institutions, and to officials and other servants of their institutions in accordance with the conditions laid down in the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Union, laid down in Council Regulation (EEC, Euratom, ECSC) No 259/68 ([1]).

(3) Council Regulation (EU) No 1417/2013 ([2]) sets out the form, scope and conditions for issuing a *laissez-passer* to members of the institutions of the Union, to officials and other servants of the Union, and to special applicants as provided for in Annex II thereto.

(4) Pursuant to Article 1(1) of Regulation (EU) No 1417/2013, the *laissez-passer* may be issued to special applicants, pursuant to Annex II to that Regulation, solely in the interest of the Union, in exceptional cases and upon due motivation.

(5) The President of the European Council and the President of the Council should delegate their respective powers to the Secretary-General of the Council.

(6) Council Decision 2005/682/EC, Euratom ([3]) should be repealed,

HAS ADOPTED THIS DECISION:

Article 1

The powers conferred on the President of the European Council and on the President of the Council by the first paragraph of Article 6 of Protocol No 7 for the issuing of *laissez-passer* to members of their institutions, to officials and other servants of the European Council and of the Council, as well as to special applicants provided for in Annex II to Regulation (EU) No 1417/2013, shall be exercised by the Secretary-General of the Council.

([1]) Regulation (EEC, Euratom, ECSC) No 259/68 of the Council of 29 February 1968 laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities and instituting special measures temporarily applicable to officials of the Commission (OJ L 56, 4.3.1968, p. 1).

([2]) Council Regulation (EU) No 1417/2013 of 17 December 2013 laying down the form of the *laissez-passer* issued by the European Union (OJ L 353, 28.12.2013, p. 26).

([3]) Council Decision 2005/682/EC, Euratom of 20 September 2005 delegating to the Deputy Secretary-General the power to issue laissez-passer to officials of the General Secretariat of the Council (OJ L 258, 4.10.2005, p. 4).

The Secretary-General shall be authorised to delegate those powers to the Director-General of Administration.

Article 2

Decision 2005/682/EC, Euratom is repealed.

Article 3

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

Done at Luxembourg, 26 October 2015.

For the Council
The President
C. DIESCHBOURG

COUNCIL DECISION (EU) 2015/2021

of 10 November 2015

establishing the position to be taken on behalf of the European Union within the Ministerial Conference of the World Trade Organization on the accession of the Republic of Liberia to the World Trade Organization

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 91, Article 100(2) and the first subparagraph of Article 207(4), in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) On 13 June 2007, the Government of the Republic of Liberia applied for accession to the Marrakesh Agreement establishing the World Trade Organization ('the Marrakesh Agreement'), pursuant to Article XII of that Agreement.

(2) On 18 December 2007, a Working Party on the accession of the Republic of Liberia was established in order to reach agreement on terms of accession acceptable to the Republic of Liberia and all Members of the World Trade Organization (WTO).

(3) The Commission, on behalf of the Union, has negotiated a comprehensive series of market opening commitments on the part of the Republic of Liberia which are in line with the Guidelines For Accession of Least-Developed Countries set out by the WTO General Council and which satisfy the Union's requests, taking into account the bilateral trade relations with the Republic of Liberia in the context of the EU-ACP partnership.

(4) Those commitments are now embodied in the Protocol of Accession of the Republic of Liberia to the WTO ('the Protocol of Accession').

(5) Accession to the WTO is expected to make a positive and lasting contribution to the process of economic reform and sustainable development in the Republic of Liberia.

(6) The Protocol of Accession should therefore be approved.

(7) Article XII of the Marrakesh Agreement provides that the terms of accession are to be agreed between the acceding State and the WTO, and that the Ministerial Conference of the WTO approves the terms of accession on the WTO side. Article IV.2 of that Agreement provides that in the intervals between meetings of the Ministerial Conference, its functions shall be conducted by the General Council of the WTO.

(8) It is appropriate to establish the position to be taken on behalf of the Union within the Ministerial Conference of the WTO on the accession of the Republic of Liberia to the WTO,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on behalf of the European Union within the Ministerial Conference of the World Trade Organization on the accession of the Republic of Liberia to the World Trade Organization is to approve the accession.

Article 2

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

Done at Brussels, 10 November 2015.

For the Council
The President
P. GRAMEGNA

COMMISSION IMPLEMENTING DECISION (EU) 2015/2022

of 10 November 2015

amending Decision 2008/866/EC, on emergency measures suspending imports from Peru of certain bivalve molluscs intended for human consumption, as regards its period of application

(notified under document C(2015) 7669)

(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 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety ([1]), and in particular Article 53(1)(b)(i) thereof,

Whereas:

(1) Regulation (EC) No 178/2002 lays down the general principles governing food and feed in general, and food and feed safety in particular, at Union and national level. It provides for emergency measures where there is evidence that food or feed imported from a third country is likely to constitute a serious risk to human health, animal health or the environment, and that such risk cannot be contained satisfactorily by means of measures taken by the Member State(s) concerned.

(2) Commission Decision 2008/866/EC ([2]) was adopted following an outbreak of Hepatitis A in humans related to the consumption of bivalve molluscs imported from Peru that were contaminated with Hepatitis A virus (HAV). That Decision initially applied until 31 March 2009, but this period of application was last extended until 30 November 2015 by Commission Implementing Decision 2014/874/EU ([3]).

(3) The Peruvian competent authority was requested to provide satisfactory guarantees to ensure that the shortcomings identified in relation to the monitoring system for virus detection in live bivalve molluscs have been corrected. The protective measures need to be extended until the effectiveness of the corrective measures taken by the Peruvian competent authorities has been demonstrated. To date, in view of the monitoring programme results, the Commission cannot conclude that the control system and the monitoring plan currently in place in Peru for certain bivalve molluscs is able to deliver the guarantees required by Union law.

(4) The limit of application of Decision 2008/866/EC should therefore be amended accordingly.

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

HAS ADOPTED THIS DECISION:

Article 1

In Article 5 of Decision 2008/866/EC, the date '30 November 2015' is replaced by the date '30 November 2017'.

([1]) OJ L 31, 1.2.2002, p. 1.
([2]) Commission Decision 2008/866/EC of 12 November 2008 on emergency measures suspending imports from Peru of certain bivalve molluscs intended for human consumption (OJ L 307, 18.11.2008, p. 9).
([3]) Commission Implementing Decision 2014/874/EU of 3 December 2014 amending Decision 2008/866/EC, on emegency measures suspending imports from Peru of certain bivalve molluscs intended for human consumption, as regards its period of application (OJ L 349, 5.12.2014, p. 63).

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 10 November 2015.

For the Commission
Vytenis ANDRIUKAITIS
Member of the Commission

III

(Other acts)

EUROPEAN ECONOMIC AREA

EFTA SURVEILLANCE AUTHORITY DECISION

No 273/14/COL

of 9 July 2014

on the financing of Scandinavian Airlines through the new Revolving Credit Facility (Norway) [2015/2023]

THE EFTA SURVEILLANCE AUTHORITY ('the Authority'),

HAVING REGARD to the Agreement on the European Economic Area ('the EEA Agreement'), in particular to Articles 61, 109, and Protocols 26 and 27,

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

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

Whereas:

I. **FACTS**

1. PROCEDURE

(1) In late October 2012, the Authority and the European Commission ('the Commission') were informally contacted by Norway, Denmark and Sweden (jointly 'the States') in relation to their intention to participate in a new Revolving Credit Facility ('the new RCF') in favour of Scandinavian Airlines ('SAS' or 'the SAS Group' or 'the company'). On 12 November 2012, the States decided to participate in the new RCF without however formally notifying the measure to the Authority.

(2) On 5 February 2013, the Authority received a complaint from the European Low Fares Airline Association ('ELFAA') against the participation of the States in the RCF. With a letter dated 18 February 2013, the Authority invited the Norwegian authorities to submit their comments on the complaint and on the allegations of unlawful State aid.

(3) The Norwegian authorities replied with a letter dated 25 March 2013. They also provided additional information by way of a letter dated 6 June 2013.

(4) By Decision No 259/13/COL of 19 June 2013, the Authority opened the formal investigation into potentially unlawful aid to SAS through the new RCF ('the opening decision'). The opening decision was published in the *Official Journal of the European Union* and the EEA Supplement to it ([1]). The Norwegian authorities, the SAS Group and the Foundation Asset Management Sweden AB ('FAM') ([2]) submitted comments on the opening decision. On 6 November 2013, the Authority forwarded the observations received from the SAS Group and FAM to the Norwegian authorities which were given the opportunity to react. In a letter dated 6 December 2013, the Norwegian authorities noted that they had no comments on the observations of the SAS Group and FAM.

([1]) OJ C 290, 5.10.2013, p. 9 (corrigendum).
([2]) FAM is the company responsible for the management of the assets of the Knut and Alice Wallenberg Foundation.

(5) By letter dated 25 February 2014, the Authority requested further information from the Norwegian authorities. This information was sent by letter dated 27 March 2014.

(6) By letter dated 6 March 2014, the Norwegian authorities informed the Authority that SAS had decided to cancel the new RCF and investigate alternative possibilities to strengthen its capital base. The cancellation was effective from 4 March 2014.

(7) For this procedure, the Authority, pursuant to Article 109(1) of the Agreement on the European Economic Area ('EEA Agreement') in conjunction with Article 24 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, is competent to assess whether the provisions of the EEA Agreement have been complied with by Norway. On the other hand, the Commission is solely competent to assess whether the provisions of the Treaty on the Functioning of the European Union ('TFEU') have been respected by Denmark and Sweden. Also, on the basis of Article 109(2) and Protocol 27 to the EEA Agreement, in order to ensure a uniform application throughout the EEA, the Authority and the Commission shall cooperate, exchange information and consult each other on surveillance policy issues and individual cases.

(8) In the light of the above and given the parallel competence of both institutions in the present case, the Authority has cooperated and consulted with the Commission before adopting the present decision.

2. THE SCANDINAVIAN AIR TRANSPORT MARKET

(9) Between 2001 and 2011, the Scandinavian air transport market (encompassing Denmark, Sweden, Finland and Norway) reportedly grew by 126 % in ASK ([3]) terms. Almost all of the growth in the short-haul Scandinavian market came from low-cost carriers, in particular Norwegian Air Shuttle and Ryanair. Indeed, it is estimated that low-cost carriers generated 90 % of the growth in that period ([4]).

(10) Despite the increase in the importance of low-cost carriers, the largest player in the Scandinavian market is still SAS, with an estimated market share in 2011 of 35,6 %, far from the highs above 50 % enjoyed a decade ago. The market shares of Norwegian Air Shuttle and Ryanair reached 18,7 % and 6,8 % respectively in that year.

3. THE BENEFICIARY

(11) SAS is the flag carrier of the States, the largest airline in Scandinavia and the eighth-largest airline in Europe. It is also a founding member of the Star Alliance. The airline group, which includes Scandinavian Airlines, Widerøe ([5]) and Blue1, is headquartered in Stockholm with its main European and intercontinental hub at Copenhagen Airport. In 2013, SAS carried around 28 million passengers, achieving revenues of around SEK 42 billion.

(12) SAS is currently 50 % owned by the States: 21,4 % by Sweden, 14,3 % by Denmark, and 14,3 % by Norway. The main private shareholder is the Knut and Alice Wallenberg Foundation ('KAW') (7,6 %), while the remaining shareholders own stakes of 1,5 % or less.

Table 1

Principal shareholders in SAS AB on 31 March 2012 ([1])

Shareholder	Total (%)
The Swedish Government	21,4
The Danish Government	14,3

([3]) Available Seat Kilometre (ASK) is a measure of an airline flight's passenger carrying capacity. It is equal to the number of seats available multiplied by the number of kilometres flown.
([4]) Source: http://www.airlineleader.com/regional-focus/nordic-region-heats-up-as-all-major-players-overhaul-their-strategies
([5]) See footnote 11 and paragraph 29 below, concerning the sale of 80 % of the shares of Widerøe.

Shareholder	Total (%)
The Norwegian Government	14,3
Knut and Alice Wallenberg Foundation	7,6
Försäkringsaktiebolaget, Avanza Pension	1,5
A.H Värdepapper AB	1,4
Unionen	1,4
Denmark's National Bank	1,4
Robur Försäkring	0,9
Ponderus Försäkring	0,8
Andra AP-fonden	0,5
Tredje AP-fonden	0,5
SSB+TC Ledning Omnibus FD No OM79	0,5
Nordnet Pensionsförsäkring AB	0,4
Swedbank Robur Sverigefond	0,4
Swedbank Robur Sverigefond Mega	0,3
JPM Chase NA	0,3
AMF Aktiefond Småbolag	0,3
JP Morgan Bank	0,3
KPA Pensionsförsäkring AB	0,2
Nomura International	0,2

([1]) *Source:* http://www.sasgroup.net/SASGroup/default.asp

(13) The financial position of SAS has been weak for several years, with recurring losses between 2008 and 2013. In November 2012, Standard and Poor's ('S&P') downgraded its credit rating for the company from B– to CCC+ ([6]). These difficulties were heightened by the market environment of high fuel costs and uncertain demand.

(14) In particular, it results from the annual reports of the company that, between 2008 and 2012, SAS incurred substantial losses every year and registered significant amounts of financial net debt.

([6]) More recent developments in S&P's credit rating for SAS are discussed in footnote 24 below.

Table 2

SAS' key financial data 2007-12 (SEK million) [1]

	2007	2008	2009	2010	2011	2012 (Jan-Oct)
Revenue	50 958	52 870	44 918	41 070	41 412	35 986
Financial net debt	1 231	8 912	6 504	2 862	7 017	6 549
EBT	1 044	– 969	– 3 423	– 3 069	– 1 629	– 1 245
Net income	636	– 6 360	– 2 947	– 2 218	– 1 687	– 985
Cash flow for the year	– 1 839	– 3 084	– 1 741	868	– 1 243	– 1 018
Return on capital employed (ROCE) — %	6,7	– 19,6	– 11,7	– 7,6	– 2,2	– 8,1
Return on book equity after tax — %	3,8	– 47,6	– 26,8	– 17,0	– 12,0	– 24,8
Interest coverage ratio — %	1,8	– 5,3	– 4,4	– 1,9	– 0,6	– 1,6

[1] *Source: annual* reports of SAS for the period 2008-12, available at: http://www.sasgroup.net/SASGroup/default.asp

(15) As a result of its deteriorating financial position, SAS followed a substantial cost reduction program ('Core SAS') in 2009/10. In implementing that program, SAS had to raise equity from its shareholders by way of two rights issues: (i) SEK 6 billion in April 2009; and (ii) SEK 5 billion in May 2010 [7].

(16) The financial difficulties of SAS reached a peak in 2012, when the company presented the 4 Excellence Next Generation business plan ('4XNG plan'), perceived by the management of the airline as the 'final call' for SAS [8]. In addition, in November 2012 the press reported the possibility of SAS going into bankruptcy [9].

4. DESCRIPTION OF THE MEASURE: THE NEW RCF IN 2012

(17) As for other airlines globally, SAS has relied on external credit facilities to maintain a minimum level of liquidity. From 20 December 2006, SAS relied on a RCF that was due to expire in June 2013 ('the old RCF'). The old RCF amounted to EUR 366 million and was exclusively provided by a number of banks […]. It also included a number of financial covenants or conditions, […].

(18) In December 2011, as a result of the deterioration in the company's business performance, SAS management decided to draw the old RCF in full. Following an application for bankruptcy by a subsidiary of SAS (namely

[7] The rights issues of 2009 and 2010 were the subject of a Commission Decision in case SA. 29785 (available at http://ec.europa.eu/competition/state_aid/cases/249053/249053_1461974_61_2.pdf), where the Commission concluded that they did not involve State aid.

[8] See in this sense the words of the CEO of SAS, quoted by Reuters on 12.11.2012: '"This *truly* is our "final call" if there is to be a SAS in the future," said Chief Executive […] after launching a new rescue plan for the airline […] which has not made a full-year profit since 2007', available at http://www.reuters.com/article/2012/11/12/uk-sas-idUSLNE8AB01O20121112. See as well the article entitled 'SAS tops European airline critical list' in the Financial Times of 13.11.2012, available at http://www.ft.com/intl/cms/s/0/fa1cbd88-2d87-11e2-9988-00144feabdc0.html#axzz2TSY5JHUh

[9] See for instance Reuters on 18.11.2012 (http://www.reuters.com/article/2012/11/19/sas-idUSL5E8MI6IY20121119) and the Financial Times of 19.11.2012 (http://www.ft.com/intl/cms/s/0/43e37eba-322f-11e2-b891-00144feabdc0.html#axzz2TSY5JHUh).

Spanair) in January 2012, SAS entered into negotiations with the banks and reached an agreement for a covenant reset on 15 March 2012. This covenant reset increased the cost of drawing the old RCF, tightened the drawdown conditions and required SAS to provide full and immediate repayment of the drawn amount. In addition, SAS had to provide the lenders with a Recapitalisation Plan that had to be endorsed by the Board and the main shareholders, i.e. the States and KAW.

(19) The Recapitalisation Plan was underpinned by the so-called 4XNG plan that was already under development in early 2012. The 4XNG plan also addressed concerns expressed by […] about the existing business plan of SAS called 4 Excellence ('4X plan'), in May 2012. According to SAS, the 4XNG business plan would enable it to position itself as a financially self-sufficient airline. It set out a number of financial targets that SAS had to meet in the financial year 2014/15. These included an EBIT margin of above 8 %, a financial preparedness ratio of above 20 % and an equity ratio (equity/assets) in excess of 35 %. The 4XNG plan was supposed to allow SAS to improve its EBT by approximately SEK 3 billion on an annual basis, while its implementation would require restructuring costs and one-off costs of approximately SEK 1,5 billion.

(20) A further objective of the 4XNG plan was to prepare the company for the introduction of new accounting rules for pensions from November 2013, which were anticipated to have a negative impact on the SAS Group's equity. In addition, the plan included a commitment to complete an asset disposal and financing plan, which totalled approximately SEK 3 billion in potential net cash proceeds. The asset disposal included ([10]): (i) the sale of Widerøe, a subsidiary regional airline in Norway ([11]), (ii) the sale of a minority interest investment in the […], (iii) the sale of airport-related real estate interests, (iv) the outsourcing of ground handling ([12]), (v) the sale of aircraft engines ([13]), (vi) the sale and lease back or other financing transaction in respect of the […], (vii) the outsourcing of management systems and call centres ([14]), and (viii) the sale or secured financing of three Q400 aircraft.

(21) Norway insists that the 4XNG plan was self-financing, which means that SAS would generate enough cash from operations and non-core disposals to fund the upfront cost of implementing the 4XNG plan. However, SAS was concerned about investor perception of a weak liquidity position as a result of the significant upfront costs of implementing the 4XNG plan. SAS thus requested an extension of the old RCF together with the introduction of the new RCF supported by the States and KAW. However, SAS argued that neither the old RCF (as extended) nor the new RCF would be drawn.

(22) Discussions on the new RCF commenced on 4 June 2012 ([15]). Initially, in line with the Recapitalisation Plan (see paragraph 18 above), the banks that were lenders of the old RCF required that the States provide another round of equity, e.g. a rights issue, since they were unwilling to support a new RCF on their own. However, the States rejected this idea.

(23) After some negotiations, the banks accepted a new RCF that would be set up jointly with the States and KAW and would be structured strictly on equal terms without subordination or disproportionate rights to security. It must be noted that the new RCF was initially targeted to be SEK [3-6] billion in size, while only SEK [1-4] billion of available security existed. On 22 October 2012, the size of the new RCF was finally reduced to SEK 3,5 billion (approximately EUR 400 million).

(24) The new RCF was provided by the same banks that provided the old RCF (except one) ([16]) together with the States and KAW. In this regard, 50 % of the new RCF was provided by the States in proportion to their shareholding in SAS, and the remaining 50 % was provided by the banks and KAW. The States and KAW participated in the new RCF on the same terms (fees, interest rates, covenants) as the banks.

([10]) According to information provided by the Norwegian authorities, the sale of […] was removed from the final list of planned disposals, given the high uncertainty as regards the timing of the sale and revenue generation.

([11]) On 20 May 2013, SAS reported that it had signed an agreement to sell 80 % of its shares in Widerøe to an investor group. SAS will retain a 20 % share in Widerøe but will have an option to transfer full ownership in 2016. See http://mb.cision.com/Main/290/9410155/119539.pdf

([12]) SAS has sold 10 % of the shares in its ground-handling company to Swissport. This acquisition was effective as of 1 November 2013. The negotiations are currently on hold until Swissport has concluded the acquisition and integration of Servisair.

([13]) This has been completed having a liquidity effect of around SEK 1,7 billion.

([14]) These measures have largely been implemented and will amount to savings of around SEK 1 billion.

([15]) […].

([16]) […], one of the lenders under the old RCF, indicated that it would not be prepared to participate in the new RCF. As a result, […] and […] increased their participation in the new RCF proportionally.

(25) The main characteristics of the new RCF were the following:

— It was divided into two sub-facilities of SEK 2 billion (Facility A) and SEK 1,5 billion (Facility B), in respect of which the States contributed 50 % of the value. The pricing conditions for both facilities included an up-front fee, a commitment fee, a utilisation fee, a margin and an exit fee.

— SAS needed to satisfy certain conditions to be able to draw on the RCF, and these conditions were tighter for Facility B than for Facility A ([17]).

— The new RCF continued the security package of the old RCF and in addition the lenders were granted security over all shares in Widerøe and all other unencumbered fixed assets of the SAS Group as of December 2012. The new RCF thus had first-ranking security on a number of SAS assets, including 100 % of the shares of its subsidiaries Widerøe and SAS Spare Engine, 18 aircrafts and a number of properties. These securities were valued with a book value of approximately SEK 2,7 billion (i.e. approximately 75 % of the new RCF) and were shared *pro rata* between Facility A and Facility B.

— Facility B could only be drawn once Facility A had been drawn in full. After 1 January 2014, SAS would only have been able to draw down from it if the sale of Widerøe assets or shares had been completed.

— The maturity of the new RCF was 31 March 2015.

(26) The terms of the new RCF were agreed upon on 25 October 2012. It was, however, subject, inter alia, to parliamentary approvals for each of the States and the signing of union agreements with flight deck and cabin crew.

(27) The States submitted a report prepared by CITI dated 7 November 2012 ('the CITI report') which sought to assess whether a private investor in a situation as close as possible to that of the States may have entered into the new RCF on similar terms and conditions. Assuming a successful implementation of the 4XNG plan in its base case, the CITI report concluded that the States' participation in the new RCF would generate an internal rate of return ('IRR') of [90-140 %], a cash-on-cash multiple of circa [4-9 x], and an increase in equity value of close to [700-1 200 %] (from November 2012 until March 2015). The CITI report concluded that the return required by the States would thus be at least equal to that required by private investors in a similar position. However, the CITI report did not assess the probability of SAS successfully executing the 'base case' of the 4XNG plan, nor did it assess the impact of deviations from the 'base case' such as, for example, a failure to monetise non-core assets.

(28) SAS announced on 19 December 2012 that all the necessary conditions for the new RCF to enter into force (see paragraph 26 above) were in place, including parliamentary approval in the States. As of this date and until 3 March 2014, the new RCF was effective, replacing the old RCF ([18]).

(29) By letter of 6 June 2013, Norway explained that, as a result of the sale of 80 % of Widerøe's shares (paragraph 20 above), the States and the lending banks had agreed with SAS to a modification of the terms and conditions of the new RCF, although the amendment agreement had not yet been formally signed. In its comments submitted during the formal investigation, the Norwegian authorities informed the Authority that the modification of the new RCF was signed by all parties and would enter into force when the Widerøe transaction was closed, i.e. on 30 September 2013. These modifications included the following:

— Facility A would be reduced from SEK 1,173 billion to SEK 0,8 billion and its maturity would be extended for five months until 1 June 2014.

— SAS would pledge SEK [0,5-0,8] billion in cash as security for Facility A. The remaining SEK [0,1-0,4] billion would be secured by the securities already listed in the new RCF agreement.

— SEK 0,2 billion of Facility A would be cancelled once the ground handling section was partly disposed of. By the time the new RCF was cancelled on 4 March 2014, SAS had entered into a letter of intent with a potential buyer ([19]).

— Facility B would be reduced from SEK 1,5 billion to SEK 1,2 billion.

([17]) See footnote 33 below.
([18]) See http://www.reuters.com/finance/stocks/SAS.ST/key-developments/article/2662973
([19]) The commitment under Facility A was reduced from SEK 0,8 billion to SEK 0,6 billion on 31 October 2013 as a consequence of SAS selling a stake in SAS Ground Handling to Swissport.

5. GROUNDS FOR OPENING THE FORMAL INVESTIGATION

(30) In its opening decision, the Authority expressed doubts as regards the *pari passu* participation of the States, KAW and the banks in the new RCF mainly because of the following:

— The banks' previous exposure to SAS through their participation in the old RCF. Indeed, the banks had roughly halved their contribution to the new RCF and therefore reduced their overall exposure to SAS by approximately 50 % in terms of RCF, while the States — which had received no return as regards the 2009 and 2010 rights issues in view of the persistently negative results of SAS — had increased their exposure to SAS.

— The fact that SAS had drawn the old RCF completely in January 2012 which could have influenced the decision of the lending banks to participate in the new RCF, so as to avoid any further drawdown and ensure that their RCF contributions were not completely lost in view of the difficulties of the company. It was unclear to the Authority whether the banks' decision to participate in the new RCF was influenced by the States' continuous financial support to SAS in previous years. The Authority also noted that the involvement of the States was a strict requirement for the private operators to participate in the new RCF.

— The Authority questioned whether KAW's participation in the new RCF could be compared to that of a private investor, given KAW's exposure to SAS not only through its shareholding but also *via* the bank SEB.

(31) The Authority further questioned whether or not the participation of the States in the new RCF could be considered rational from a shareholder perspective and would fulfil the market economy investor ('MEI') test outside the *pari passu* line of reasoning. In this respect, the Authority assessed whether or not the 4XNG plan relied on sufficiently robust assumptions to induce a private investor to participate in the new RCF, and whether the sensitivity analyses carried out in the plan were overly optimistic.

(32) For example, the Authority pointed, inter alia, towards the optimistic figures in the plan concerning market growth in ASK and GDP, as well as the 0 % inflation rate for the period 2015-17. Likewise, it doubted whether the successful implementation of all of the cost-savings and asset disposal initiatives could have been predicted at the time of signing the new RCF.

(33) As regards the terms and conditions of the new RCF and CITI's assessment of the anticipated return from the States' participation in the new RCF, the Authority underlined the fact that the CITI report did not assess the 4XNG plan nor did it perform a sensitivity analysis of the financial model, but it merely relied on the information provided to it. The Authority also highlighted that the CITI report did not value the new RCF security from a private market investor perspective and that it did not consider the impact of possible alternative scenarios with less favourable assumptions (including default) on the return analysis. In this respect, the Authority noted that the CITI report assigned a zero probability to the likelihood that SAS would default in the next three years, which seemed an underestimation of the risk.

(34) In view of the above, the Authority could not exclude that the States' participation in the new RCF could entail an advantage in favour of SAS within the meaning of Article 61(1) of the EEA Agreement.

(35) Finally, if the new RCF was to entail State aid within the meaning of the EEA Agreement, the Authority doubted whether the new RCF could be regarded as compatible with the EEA Agreement. In this respect, the Authority assessed whether any of the possible compatibility grounds laid down in the EEA Agreement would be applicable. In view of the nature of the measure and of the difficulties of SAS, the Authority noted that the only relevant criteria appeared to be those concerning aid for rescuing and restructuring firms in difficulty under Article 61(3)(c) of the EEA Agreement on the basis of the Authority's guidelines on State aid for rescuing and restructuring firms in difficulty ([20]) ('the R&R Guidelines'). However, the Authority came to the preliminary conclusion that the conditions for rescue and restructuring aid laid down in the R&R Guidelines did not seem to be met.

([20]) OJ L 97, 15.4.2005, p. 41, and EEA Supplement No 18, 14.4.2005, p. 1.

6. COMMENTS ON THE OPENING DECISION

6.1. **Comments by the Norwegian authorities**

(36) Norway maintains that its participation in the new RCF was on market terms since it participated in it *pari passu* with the banks and KAW, thereby excluding the presence of State aid.

(37) Norway argues that SAS did not draw on the old RCF at any time during the period in which negotiations on the new RCF took place. It notes the amendments to the old RCF in March 2012 introducing even more stringent drawdown conditions and argues that the banks were thus in a position from the end of June 2012 to reject any drawdown request from SAS. The amount drawn from the RCF was fully repaid by SAS in March 2012 and SAS did not draw on the old RCF after that date. As a result, those banks could be reasonably considered as 'outside' investors participating in the new RCF on equal terms with the States ([21]), without having any material unsecured exposure to SAS ([22]).

(38) Concerning KAW's participation in the new RCF together with the banks, the Norwegian authorities are of the opinion that KAW had limited economic exposure to SEB and that this could not have affected its decision to participate in the new RCF.

(39) Moreover, Norway holds that the 4XNG plan was realistic and that it could be successfully implemented. It maintains that all aspects and assumptions, including those concerning revenue projections ('RASK') ([23]), cost-saving measures and planned disposals, were carefully examined to satisfy the financial targets in the 4XNG plan for 2014-15. Further, the 4XNG plan — together with all of the assumptions it relied upon — was closely scrutinised by the external financial advisers of both the States (Goldman Sachs) and the banks […] and was adapted in view of their comments and recommendations. It also stresses that the expectation of a successful implementation of the plan when deciding to participate in the new RCF was supported by the fact that the conclusion of new union agreements was a condition precedent for the new RCF. Furthermore, according to Norway, the developments between December 2012 and the cancellation of the new RCF on 4 March 2014 showed that the plan was on track to deliver the expected results ([24]).

(40) In relation to the terms and conditions of the new RCF, Norway argues that these were in conformity with normal market conditions, as they were similar to those of comparable deals and the new RCF also had higher upfront fees and more stringent conditions for drawdown than most deals analysed. As far as the security package was concerned, Norway states that the actual financial risks of the lending banks were negligible because the securities had an estimated value that clearly exceeded the size of Facility A. As a result, in a liquidation scenario all of the lending banks' claims would be satisfied by the security package, or by other SAS assets that could be sold, such as […], its shareholding in […], etc. The above is also supported by the actual cancellation of a significant part of the commitments under Facility A during the first half of 2013. According to Norway, this shows that the banks acted commercially and prudently when deciding to participate with the States and KAW in the new RCF.

(41) Finally, Norway reports that the participation in the new RCF has generated a significant return for the RCF lenders without SAS having to draw on the facility. This should support the view that the States' participation in the new RCF together with KAW and the banks was fully compliant with the MEI principle.

([21]) The alternative would be to simply allow the old RCF to expire on 20 June 2013, while at the same time preventing any utilization in that period as long as SAS could not satisfy the drawdown conditions.

([22]) The Norwegian authorities provided information concerning some of the banks' other exposures to SAS in the form of bilateral facilities, various hedging arrangements, credit cards, aircraft financing facilities, overdraft facilities and real estate transactions. The Norwegian authorities maintain that, with the possible exception of […] exposure related to credit card payments, the banks did not have any material unsecured exposure to SAS. The various forms of exposure mentioned were either limited in size or were secured and consequently appeared insignificant in relation to the banks' decision to participate in the new RCF.

([23]) Revenue per Available Seat Kilometre (RASK) is a commonly-used measure of revenue for airlines.

([24]) Norway and SAS also emphasise in this regard that S&P upgraded its credit rating of SAS from CCC+ to B– with a stable outlook on 5 August 2013.

6.2. **Comments by the SAS Group**

(42) The SAS Group argues that the States participated in the new RCF in their capacity as shareholders, not as public authorities. From that perspective, participating in such an instrument was preferable to an equity contribution, given the significant revenue generation for the shareholders/lenders in terms of fees, as well as the prospective increase in the share value.

(43) As regards the *pari passu* test, the SAS Group states that this was fulfilled given that the banks had no exposure to SAS and, as a result, they should be treated as 'outside' investors. In addition, the States' participation in the new RCF did not influence the banks' behaviour, as it was SAS and not the banks, which requested that the shareholders join the new RCF. Furthermore, the SAS Group maintains that the banks decided to participate in the new RCF on equal terms with the States and KAW based on the very positive results of the risk/revenue analysis.

(44) The SAS Group further supports Norway's claim that the assumptions underlying the 4XNG plan were robust with very realistic forecasts as regards the three main drivers, namely market growth in ASK, GDP growth for 2015-17 and assumed inflation of 0 %. Also, the risks associated with the implementation of the plan were closely scrutinised by all lending banks with a particular focus on RASK as a key indicator of the company's profitability.

(45) At the same time, the SAS Group argues that the security package was sufficiently assessed and that the risk of SAS defaulting on the implementation of the 4XNG plan was mitigated. This is supported by the fact that the delivery of cost savings was a condition precedent to the lenders entering into the new RCF and that the conclusion of new collective agreements in November 2012 was key to the successful implementation of the plan.

(46) The SAS Group further criticises the Authority for having failed to take into consideration the bankruptcy alternative and the fact that the States would have lost the value of their combined shareholding had the new RCF not been made available. In this context, the SAS Group stresses that the States participated in the new RCF in their capacity as core shareholders in SAS aiming to obtain an appropriate return on their investment.

(47) Finally, the SAS Group reports that the implementation of the 4XNG plan has achieved earnings before tax of SEK 3 billion, leading to a positive outcome for SAS for the period November 2012-July 2013.

6.3. **Comments by FAM**

(48) According to FAM, the company responsible for the management of KAW's assets, the latter's decision to participate in the new RCF was taken irrespective of its interest in SEB and SEB's exposure to SAS. FAM argues that KAW neither had a majority shareholding in SEB, nor could it be said that it controls SEB.

(49) FAM examined the 4XNG plan, the associated financial risks and the security package, and considered it to be in KAW's interest to participate in the new RCF. In this respect, it compared the prospect of protecting KAW's long-term investment in SAS and future possible returns on that investment, as well as the high fees which would be paid by SAS under the new RCF, against the winding up of SAS, which it did not consider to be an economically interesting option.

(50) FAM also agrees with Norway and the SAS Group that all stakeholders participated in the new RCF on equal terms, without any form of subordination, disproportionate rights to securities, or otherwise asymmetrical terms. The decision to participate in the new RCF was based on a thorough analysis of the prospects of profitability resulting from a strong and competitive SAS in the future.

(51) Finally, FAM shares Norway's view that the lending banks' decision to participate in the new RCF was based on commercial considerations, as their existing exposure under the old RCF was only theoretical. It argues that the banks had even less incentive to participate in the new RCF than the States and KAW, as the latter could count on a share price increase. It therefore maintains that the conditions of the *pari passu* test must be considered to be fulfilled.

II. **ASSESSMENT**

1. PRESENCE OF STATE AID

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

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

(53) The concept of State aid thus applies to any advantage granted directly or indirectly, financed out of state resources, by the State itself or by any intermediary body acting by virtue of powers conferred on it.

(54) To constitute State aid, a measure must stem from state resources and must be imputable to the State. In principle, state resources are the resources of a Member State and of its public authorities, as well as the resources of public undertakings on which the public authorities can exercise, directly or indirectly, a controlling influence.

(55) It cannot be disputed that the measure in question entailed state resources, since it was financed by resources coming from the States' budgets, and that it was imputable to the State. In particular, it may be noted that Norway's parliament approved the Government's participation in the new RCF (paragraph 28 above).

(56) The measure in question must distort or threaten to distort competition and be liable to affect trade between the Contracting Parties.

(57) According to established case law, when the financial support granted by a Member State strengthens the position of an undertaking compared to other undertakings competing in intra-Union trade, then there is at least a potential effect on trade between Member States and on competition ([25]). In this regard, the Authority is of the view that any potential economic advantage granted to SAS through state resources would fulfil this condition. SAS is in competition with other airlines in the European Union and the EEA, in particular since the third stage of air transport liberalisation ('the third package') entered into force on 1 January 1993 ([26]). In addition, for journeys of relatively shorter distances within the EEA, air travel is in competition with road and rail transport, and therefore road and rail carriers might also be affected.

(58) The only criterion of the notion of State aid that is thus in question is whether the measure conferred a selective undue economic advantage on SAS.

(59) In the light of the cancellation of the new RCF as from 4 March 2014, the Authority has assessed whether or not the new RCF conferred a selective undue economic advantage on SAS from the time of its establishment in 2012 until its cancellation in 2014.

2. ECONOMIC ADVANTAGE IN FAVOUR OF SAS

(60) In order to determine whether or not State aid was granted in favour of SAS within the meaning of Article 61(1) of the EEA Agreement, the Authority will assess whether the airline received an economic advantage which it

([25]) See Case 730/79 *Philip Morris Holland BV* v *Commission* [1980] EC-2671, paragraph 11; Case T-288/97 *Regione Friuli Venezia Giulia* v *Commission* [2001] ECR 2001 II-1169, paragraph 41; and Case C-280/00 *Altmark Trans GmbH and Regierungspräsidium Magdeburg* v *Nahverkehrsgesellschaft Altmark GmbH (Altmark)* [2003] ECR I-7747, paragraph 75.

([26]) The 'third package' included three legislative measures: (i) Council Regulation (EEC) No 2407/92 of 23 July 1992 on licensing of air carriers (OJ L 240, 24.8.1992, p. 1); (ii) Council Regulation (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes (OJ L 240, 24.8.1992, p. 8); and (iii) Council Regulation (EEC) No 2409/92 of 23 July 1992 on fares and rates for air services (OJ L 240, 24.8.1992, p. 15). These Regulations were incorporated in the EEA Agreement until the time they were repealed by Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (Recast), as incorporated in Annex XIII to the EEA Agreement.

would not have obtained under normal market conditions. To examine this question the Authority applies the MEI test, according to which no State aid would be involved where, in similar circumstances, a private investor of a comparable size to the relevant bodies in the public sector, and operating in normal market conditions in a market economy, could have been prompted to provide the measure in question to the beneficiary.

(61) According to the MEI test, the Authority therefore has to assess whether a private investor would have entered into the transaction under assessment on the same terms. The attitude of the hypothetical private investor is that of a prudent investor whose goal of profit maximisation is tempered with caution about the level of risk acceptable for a given rate of return ([27]).

(62) In principle, a contribution from public funds does not involve State aid if it takes place at the same time as a significant capital contribution by a private investor made in comparable circumstances and on comparable terms (*pari passu*) ([28]).

2.1. **Pari passu participation of the States, KAW and the banks in the new RCF**

(63) The Authority notes that the lending banks involved in the new RCF also participated in the old RCF. In the new RCF, however, the States increased their exposure to SAS, whereas the banks roughly halved their contribution (from EUR 366 million to approximately EUR 200 million) and therefore reduced their overall existing RCF exposure to SAS by approximately 50 %. In view of this, the Authority expressed doubts in the opening decision that the *pari passu* argument could be met as the States and the banks did not seem to be in comparable positions.

(64) Norway and the SAS Group argued in the course of the formal investigative procedure that the lending banks did not have any exposure under the old RCF when negotiating their participation in the new RCF. The banks should therefore have been considered as 'outside' investors in a comparable position to the States and KAW.

(65) The Authority notes that SAS had drawn completely on the old RCF in January 2012 (paragraph 18 above). Indeed, the amendments to the old RCF in March 2012 included, inter alia, a condition of full and immediate repayment of the amount drawn. The amounts were fully repaid in March 2012 and the amendments to the old RCF enacted in the same month made it extremely difficult for SAS to draw on the facility thereafter ([29]). Also, SAS was required to provide a Recapitalisation Plan by June 2012, which had to be endorsed by the Board, as well as by the States and KAW as the main shareholders. This plan was initially rejected by the banks. It was not until November 2012 that the States, having carefully examined the revised 4XNG plan, decided to participate in the new RCF, followed by the banks.

(66) As a result, the Norwegian authorities and the SAS Group claimed during the formal investigation that SAS was effectively prevented from requesting a drawdown of the old RCF. Cognisant of that situation, the banks had to decide whether to continue with the old RCF until its expiry in June 2013, or to participate in the new RCF on equal terms with the States and KAW, despite the fact that the States and KAW, as shareholders, had greater incentives to participate with a view to potentially achieving higher value on their shares following the implementation of the 4XNG plan.

(67) Although the Authority considers it likely that the banks, at least those with no other unsecured bilateral exposures to SAS, were not materially exposed to the old RCF at the time of taking a decision to participate in the new RCF, it is also of the opinion that there was still a risk that SAS could have met the drawdown conditions before the new RCF was in place. The fact that this did not happen and that the old RCF was not used after it was fully repaid in March 2012 is irrelevant in that respect. On this basis, it appears that the banks had a certain degree of exposure to SAS under the old RCF which the States (and KAW) did not have. Therefore, the Authority cannot accept the argument of the Norwegian authorities that the banks participated in the new RCF as 'outside' investors, notwithstanding their exposure under the old RCF.

([27]) Joined Cases T-228/99 and T-233/99 *Westdeutsche Landesbank Girozentrale and Land Nordrhein-Westfalen* v *Commission* [2003] ECR-II435, paragraph 255.
([28]) Case T-296/97 *Alitalia* [2000] ECR II-3871, paragraph 81.
([29]) […].

(68) Furthermore, the Authority cannot agree with Norway that the exposure of some of the banks in the form of bilateral facilities linked to the old RCF ([30]) did not comprise any financial risk for the banks during the period of negotiating the new RCF, on the basis that these facilities could not have been drawn unless the old RCF was drawn in full. As mentioned above, there was a risk, even if admittedly small, that the drawdown conditions could have been met despite the fact that, following the amendments in March 2012 and the stringent conditions introduced, the probability of SAS drawing on the old RCF was very low.

(69) Moreover, it appears that some banks had other exposure to SAS. For example, in addition to participating in the old RCF, […] had (as of 30 September 2012) an unsecured (and undrawn) bilateral exposure to SAS of SEK [200-600] million, as well as an unsecured credit card exposure of SEK [500-900] million. It could therefore have been responsible for covering any costs of reimbursing customers should SAS have cancelled the corresponding flights. While this unsecured credit card exposure represented [0-2 %] of […] total credit portfolio of around SEK [1 000-3 000] billion, it nonetheless constituted a financial risk and it therefore cannot be accepted that […] was in a comparable position vis-à-vis the States when deciding to participate in the new RCF.

(70) In addition, three other banks had exposure in terms of outstanding aircraft financing facilities (e.g. […]). Although the States argue that the financings were secured by the aircraft and did not represent a financial risk for the banks, because they could be easily sold on the market, this has not been factually proven. It remains unclear whether, in case of fire-sale of the aircraft, the total amount would indeed have been recovered.

(71) Further, in the opening decision the Authority questioned whether the banks' behaviour could have been influenced by the States' conduct, given the States' continuous financial support to the airline in previous years (e.g. the 2009 and 2010 rights issues). In addition, the banks were willing to participate in the new RCF only on condition that the States participated in it, as explained in paragraphs 21 and 22 above.

(72) In principle, the Authority considers that the *pari passu* condition cannot be applicable in cases where the States' involvement constitutes a strict requirement for the private operators to participate in the transaction.

(73) In the course of the formal investigation, Norway and the SAS Group argued that at no stage during the negotiations for the new RCF did the banks feel 'contaminated' by the States' past conduct and their continued willingness to support SAS, despite the fact that the States' revenue forecasts on the rights issues of 2009 and 2010 fell short.

(74) The Authority cannot exclude the possibility that private operators would not have been willing to invest in a business with such a track record and unpredictable projections, unless with the participation of the States. At the same time, it cannot exclude either that the States, which had refused to provide new equity and to enter into a subordinated RCF, were no longer willing to put additional funds into SAS. Notwithstanding these considerations, the Authority remains unconvinced that the participation of the States in the new RCF was made on *pari passu* terms with the lending banks, taking into account that the States' participation resulted in the banks reducing their overall RCF exposure to SAS by approximately 50 %, whereas at the same time the States increased their exposure to SAS.

(75) In relation to whether or not KAW's behaviour could be considered a reference point to establish the conduct of a private investor, the formal investigation showed that KAW's exposure to SAS through its shareholding in SEB was smaller than that indicated in the opening decision. Taking into account that KAW is no more than a minority shareholder in SEB and that SEB's exposure to SAS was limited, it could be argued that KAW's participation in the new RCF was motivated by prospects of profitability of the investment.

(76) Further to the above, the formal investigation has not enabled the Authority to conclude with certainty that the transaction at issue took place on *pari passu* terms.

([30]) Apart from the old RCF, three banks had by 30 September 2012 exposures in the form of bilateral facilities linked to the old RCF which could not be drawn unless the old RCF was drawn in full. The amounts of the individual bilateral facilities were EUR [400-800] million for […], EUR [200-400] million for […] and EUR [400-800] million for […].

(77) Irrespective of the *pari passu* assessment, the Authority has also examined whether or not the States' participation in the new RCF could be considered rational from a shareholder perspective and would fulfil the MEI test outside of the *pari passu* line of reasoning.

2.2. **Assessment of the States' participation in the new RCF under the MEI test**

(78) The question to be addressed is whether or not a private investor in the same position as the States, i.e. as existing shareholders in SAS and facing a similar set of circumstances as the States in 2012, would have entered into the new RCF on similar terms and conditions ([31]).

(79) The independent analyses undertaken by external financial advisers (namely Goldman Sachs International and CITI as advisers to the States and […] as adviser to the lenders) prior to the conclusion of the new RCF are instructive in this regard. According to Norway in its reply to the opening decision, the States only decided to participate in the new RCF after close scrutiny of the 4XNG plan by its external advisors and following adjustment of the terms and conditions of the new RCF.

(80) While the Authority expressed some reservations in its opening decision regarding the scope of the report prepared by CITI, Norway has clarified that its decision to participate in the new RCF drew on all of the analyses prepared by its financial advisers and that the CITI report should therefore not be assessed in isolation.

(81) The financial advisers were tasked, inter alia, with providing a critical analysis of the 4XNG plan and the new RCF and of relevant sensitivities and vulnerabilities in that regard. This analysis was conducted over successive reports with reference to the historical performance of SAS and to other industry benchmarks. The advisers issued a range of recommendations regarding risk-mitigating strategies for both the 4XNG plan and the new RCF. In line with this advice, the States requested a number of adjustments to the 4XNG plan (to accelerate cost-saving measures and accommodate additional initiatives), as well as adjustments to the terms of the new RCF to reduce the likelihood of a drawdown.

(82) In analysing the 4XNG plan, the external advisers identified and paid particular attention to key areas of possible risk, including cost savings targets, disposals and RASK pressure. This risk assessment resulted, inter alia, in the following considerations:

— *Cost-savings targets*

Further to the external advice received, the 4XNG plan was modified and strengthened to include cost-saving initiatives of approximately SEK [1-4] billion p.a. (increased from the original target of SEK [1-4] billion p.a.). While non-delivery of cost-savings targets was identified as a concern, a key move to de-risk the 4XNG plan in advance of finalising the new RCF was the conclusion of new union agreements with employee compensation and benefit cuts, as well as pension plan changes in November 2012. This resulted in direct cost savings of just under SEK […] which, at the request of the States, had to be successfully executed before the new RCF could enter into effect.

— *Disposals*

Further to the initial assumptions on asset disposals being challenged by the external financial adviser, and also due to new information which materialised during the process, the final list of planned disposals in the 4XNG plan deviated from the list initially put forward by SAS ([32]). The States' financial adviser ultimately concluded that the disposals (with an estimated disposal value of approximately SEK 3,0 billion) included in the final 4XNG plan were feasible within the estimated timeframe. Furthermore, the new RCF contained provisions for the timing of the Widerøe sale, as well as for the strict application of disposal proceeds towards repayment of the new RCF.

— *RASK pressure*

The underlying yield and RASK pressure assumptions were assessed and deemed reasonable taking into account relevant data on historical trends, third-party forecasts and known changes in the competitive environment at that time. These assumptions were therefore not considered to pose a significant downside risk to the execution of the 4XNG plan.

([31]) Case C-305/89 *Italy* v *Commission* [1991] ECR I-1603, paragraph 20.
([32]) For example, […] was removed from the final list of planned disposals […].

(83) In relation to the Authority's doubts in the opening decision concerning the optimistic nature of specific drivers in the 4XNG plan (e.g. market growth in ASK, GDP forecasts and 0 % inflation for the period 2015-17), the information submitted by Norway and the SAS Group during the formal investigation indicates that these estimates took particular account of the main markets in which SAS is active. This included the company's more pronounced exposure to northern rather than to southern Europe, as well as its exposure to the US and Asian markets. The submissions further indicate that the estimated cost inflation of 0 % p.a. for the period 2015-17 is the net effect of an underlying rate of inflation of 2 % p.a. (in line with the estimated EU inflation level) and the assumption that it would be possible to neutralise this via new cost-savings measures.

(84) As regards the lack of sensitivity testing on the IRR analysis presented in the CITI report (see paragraph 33 above), as well as the Authority's initial concerns regarding the potential impact of less optimistic scenarios, the Authority has received additional information from Norway in its submission on the opening decision concerning the extent of sensitivity analysis undertaken. In this regard, Goldman Sachs presented a range of sensitivity tests during the development of the 4XNG plan over the period June to September 2012. A revised analysis in September 2012 indicated that SAS would not run out of cash even under the downside scenarios presented, i.e. in all cases analysed the SAS cash position would remain above the bottom end of the RCF corridor. However, to maintain market confidence, it was considered that a liquidity backstop was needed and that the RCF remained the most realistic option for such back-up liquidity.

(85) The Authority thus notes the successive financial reviews conducted on the 4XNG plan (including extensive analysis and testing of various iterations of the plan). The Authority also notes the States' resulting demands to lower the implementation risks and achieve a consolidated restructuring plan in advance of entering into the new RCF. Such actions would appear to be in accordance with those of a prudent private market investor. Notwithstanding this, it still needs to be considered whether or not the terms and conditions of the new RCF were in line with what a private market investor, in the same position as the States, i.e. as existing shareholders in the company, would have accepted.

(86) Norway and the SAS Group have explained that a specific characteristic of the airline sector is the need to maintain a high level of financial preparedness to preserve customer and stakeholder confidence in the ability of the business to continue operations. Given the financial difficulties facing SAS in 2012 and the prevailing liquidity situation at that time, a likely motivation for the States' participation in the new RCF, as shareholders in SAS, was the avoidance of higher losses or bankruptcy in the event of a liquidity run on the company.

(87) In this respect, the States appear to have drawn notably on recommendations from the independent financial advisers when finalising the terms and conditions of the new RCF. Indeed, it appears that the terms and conditions of the new RCF were collectively aimed at mitigating the main commercial risks identified. For example, as noted in paragraph 82 above, a key condition precedent to the implementation of the new RCF was the successful execution of new collective agreements with flight crews. Furthermore, the drawdown conditions applicable to Facility B appeared to render it very unlikely that it could have been drawn before March 2015 ([33]). The financial covenants attached to the new RCF were also structured in such a way that, unless SAS was able to execute the key financial projections contained in the 4XNG plan, it would not have had access to the RCF or it would have had to repay any amount drawn on the RCF at the time ([34]).

(88) In addition to the above observations, the Authority has received additional information concerning the adequacy of the underlying collateral for the new RCF. In a report dated May 2012, […] provided an independent valuation of Widerøe and certain tangible assets (including spare engines, relevant aircraft, a number of smaller properties and some equipment) which were subsequently used as security for the new RCF. While the focus was on Widerøe, as the most important asset in the security package, and the assessment of the other assets was based on more limited information, the overall valuation implied a total asset value of approximately SEK [1-4]-[3-6] billion. The total estimated value of the assets subject to security thus exceeded the size of Facility A.

([33]) For example, one of the drawdown conditions for Facility B was that SAS should have an EBITDAR of at least SEK [5-9] billion on a 12-month rolling basis. Since this exceeded the EBITDAR projected for each year of the period 2012-15, it was considered unlikely that SAS would be in a position to draw on Facility B during the time horizon of the new RCF.

([34]) The financial covenants related to […]. The latter two financial covenants were adjusted on a quarterly basis based on the financial model underlying the 4XNG plan, implying that SAS was required to meet its own financial targets.

According to Norway, this was considered sufficient comfort for the new RCF lenders since, as noted above, the likelihood that SAS would ever draw on Facility B was considered negligible.

(89) The actual financial risks associated with the new RCF were further mitigated by provisions on mandatory prepayment and/or cancellation of the commitments under the new RCF, if SAS disposed of certain assets or engaged in other financing options. Such prepayment and cancellation provisions had the effect of reducing the potential loss over time. Indeed, as a result of the Widerøe sale, and pursuant to an agreement which entered into force upon that sale in September 2013 (see paragraph 29 above), the overall size of the new RCF was reduced from SEK 3,5 billion to SEK 2 billion.

(90) It therefore appears that a comprehensive and coherent set of measures were taken, specifically aimed at ensuring the ongoing viability of SAS over the period 2012-15 and limiting the key financial risks associated with the new RCF.

(91) Furthermore, the Authority recognises the need to consider whether a comparable private investor, facing similar market circumstances to the States (i.e. as existing shareholders in SAS), could have been prompted to provide the measure in question to the beneficiary. To this end, it is also useful to consider possible counterfactual situations arising in the absence of the measure being provided.

(92) In this respect, Norway and the SAS Group claim in their submissions on the opening decision that bankruptcy would have been likely if the new RCF had not been made available in 2012. According to Norway, this would have corresponded to a combined loss of SEK 1 044,6 million for the States, i.e. the value of their aggregate shareholding. A further consideration also related to the prospect of forgoing future possible capital gains if the 4XNG plan was successfully implemented. By comparison, Norway estimates in its submission that if SAS defaulted on the new RCF, the possible combined loss resulting from the States' collective shareholding and their RCF contributions would, in the most extreme scenario, have been in the region of SEK [1 000-3 000] million ([35]).

(93) Consequently, in the event of bankruptcy of SAS, the possible additional loss associated with the States' participation in the new RCF (i.e. approximately SEK 447,5 million based on Norway's illustrative example) appears relatively contained compared to the loss which would have nonetheless accrued in respect of the States' shareholding. Comparing this relatively limited incremental change in the States' downside (bankruptcy) scenario to the potential upside for the States from a successful execution of the 4XNG plan, appears to provide further support for the States' decision to participate in the new RCF. In the most optimistic 'base case' scenario, the CITI report estimated potential capital gains for the States of SEK [7 000-12 000] million in total. However, while the Authority expressed some reservations in its opening decision regarding the optimistic nature of such growth projections, it recognises the possibility that, even under more conservative scenarios, the potential capital gains in the upside scenario may still have notably exceeded the potential losses in the downside scenario.

(94) The Authority thus notes the above risk-reward assessment, as well as the extensive review and testing of the 4XNG plan, the additional verifications provided on the underlying collateral ([36]), the cancellation and prepayment provisions which reduced the potential loss over time ([37]) and the various other risk-mitigating measures incorporated within the terms of the new RCF ([38]). Taking the above into account, the States' decision to participate in the new RCF would appear consistent with the actions of a private operator acting with a view to obtaining a normal market return given the company's specific situation at that time.

(95) Further to the above, the Authority concludes that the States, in their position as existing shareholders in SAS, were guided by reasonable and realistic prospects of profitability when they decided to participate in the new RCF together with KAW and the lending banks during the period December 2012 — March 2014. This participation thus did not entail any advantage to SAS within the meaning of Article 61(1) of the EEA Agreement.

([35]) For illustrative purposes, Norway estimates the States' combined loss on the new RCF assuming a full drawdown of Facility A (of which SEK [700-1 200] million was covered by the States) and further assuming that the security only covered 50 % of the Facility A commitment and that the States had already received the first instalment of the commitment fee. This would have implied an estimated loss of SEK [400-800] million on the new RCF together with an estimated loss on the combined shareholding of SEK [700-1 200] million, i.e. SEK [1 100-2 000] million in total.

([36]) See paragraph 88.

([37]) See paragraphs 82 and 89.

([38]) See paragraphs 82 and 87.

3. CONCLUSION ON THE PRESENCE OF STATE AID

(96) In view of the above, the Authority concludes that the participation of Norway in the new RCF does not constitute State aid within the meaning of Article 61(1) of the EEA Agreement.

HAS ADOPTED THIS DECISION:

Article 1

The financing of SAS through the new Revolving Credit Facility which Norway implemented in December 2012 does not constitute State aid pursuant to Article 61(1) of the EEA Agreement.

Article 2

This Decision is addressed to the Kingdom of Norway.

Article 3

Only the English language version of this decision is authentic.

Done at Brussels, 9 July 2014.

For the EFTA Surveillance Authority

Oda Helen SLETNES
President

Helga JÓNSDÓTTIR
College Member

DECISION OF THE STANDING COMMITTEE OF THE EFTA STATES

No 2/2015/SC

of 24 September 2015

establishing an EEA Financial Mechanism Interim Committee 2014-21 [2015/2024]

THE STANDING COMMITTEE OF THE EFTA STATES,

Having regard to the Agreement on the European Economic Area, hereinafter referred to as the EEA Agreement,

Having regard to the agreement to be concluded establishing a new EEA Financial Mechanism for the period 2014-21,

Having regard to the agreement to be concluded between the Kingdom of Norway and the European Union to establish a Norwegian Financial Mechanism for the period 2014-21,

HAS DECIDED AS FOLLOWS:

Article 1

1. An EEA Financial Mechanism Interim Committee 2014-21, hereinafter referred to as the Interim Committee, which should be operative as soon as possible, is hereby established.

2. The Interim Committee shall assist the EFTA States in preparing for the implementation of the EEA Financial Mechanism for 2014-21.

3. The Interim Committee shall report to the Standing Committee.

4. The Interim Committee may be assisted by the Missions of the EEA EFTA States to the EU.

5. The Interim Committee shall on the day of entering into force or on the day of provisional application of the agreement establishing the EEA Financial Mechanism 2014-21 be replaced by an EEA Financial Mechanism Committee 2014-21.

6. The Interim Committee shall discuss and assess possible coordination between the EEA Financial Mechanism and the Norwegian Financial Mechanism.

7. The Interim Committee shall agree upon a Chairman who shall be confirmed by the Standing Committee.

Article 2

This Decision shall take immediate effect.

Article 3

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Union*.

Done at Brussels, 24 September 2015.

For the Standing Committee

Acting Chair	*The Secretary-General*
Ingrid SCHULERUD	Kristinn F. ÁRNASON

ISSN 1977-0677 (electronic edition)
ISSN 1725-2555 (paper edition)

Publications Office of the European Union
2985 Luxembourg
LUXEMBOURG

EN