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II

(Non-legislative acts)

REGULATIONS

COUNCIL REGULATION (EU) No 407/2010

of 11 May 2010

establishing a European financial stabilisation mechanism

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union (TFEU), and in particular Article 122(2) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) Article 122(2) of the Treaty foresees the possibility of granting Union financial assistance to a Member State in difficulties or seriously threatened with severe difficulties caused by exceptional occurrences beyond its control.

(2) Such difficulties may be caused by a serious deterioration in the international economic and financial environment.

(3) The unprecedented global financial crisis and economic downturn that have hit the world over the last two years have seriously damaged economic growth and financial stability and provoked a strong deterioration in the deficit and debt positions of the Member States.

(4) The deepening of the financial crisis has led to a severe deterioration of the borrowing conditions of several Member States beyond what can be explained by economic fundamentals. At this point, this situation, if not addressed as a matter of urgency, could present a serious threat to the financial stability of the European Union as a whole.

(5) In order to address this exceptional situation beyond the control of the Member States, it appears necessary to put in place immediately a Union stabilisation mechanism to preserve financial stability in the European Union. Such a mechanism should allow the Union to respond in a coordinated, rapid and effective manner to acute difficulties in

a particular Member State. Its activation will be in the context of a joint EU/International Monetary Fund (IMF) support.

(6) Given their particular financial implications, the decisions to grant Union financial assistance pursuant to this Regulation require the exercise of implementing powers, which should be conferred on the Council.

(7) Strong economic policy conditions should be imposed in case of activation of this mechanism with a view to preserving the sustainability of the public finances of the beneficiary Member State and restoring its capacity to finance itself on the financial markets.

(8) The Commission should regularly review whether the exceptional circumstances threatening the financial stability of the European Union as a whole still exist.

(9) The existing facility providing medium-term financial assistance for non-euro-area Member States, as established by Council Regulation (EC) No 332/2002 ⁽¹⁾, should remain in place,

HAS ADOPTED THIS REGULATION:

*Article 1***Aim and scope**

With a view to preserving the financial stability of the European Union, this Regulation establishes the conditions and procedures under which Union financial assistance may be granted to a Member State which is experiencing, or is seriously threatened with, a severe economic or financial disturbance caused by exceptional occurrences beyond its control, taking into account the possible application of the existing facility providing medium-term financial assistance for non-euro-area Member States' balances of payments, as established by Regulation (EC) No 332/2002.

⁽¹⁾ Council Regulation (EC) No 332/2002 of 18 February 2002 establishing a facility providing medium-term financial assistance for Member States' balances of payments (OJ L 53, 23.2.2002, p. 1).

*Article 2***Form of the Union financial assistance**

1. Union financial assistance for the purposes of this Regulation shall take the form of a loan or of a credit line granted to the Member State concerned.

To this end, in accordance with a Council decision pursuant to Article 3, the Commission shall be empowered on behalf of the European Union to contract borrowings on the capital markets or with financial institutions.

2. The outstanding amount of loans or credit lines to be granted to Member States under this Regulation shall be limited to the margin available under the own resources ceiling for payment appropriations.

*Article 3***Procedure**

1. The Member State seeking Union financial assistance shall discuss with the Commission, in liaison with the European Central Bank (ECB), an assessment of its financial needs and submit a draft economic and financial adjustment programme to the Commission and the Economic and Financial Committee.

2. Union financial assistance shall be granted by a decision adopted by the Council, acting by a qualified majority on a proposal from the Commission.

3. The decision to grant a loan shall contain:

- (a) the amount, the average maturity, the pricing formula, the maximum number of instalments, the availability period of the Union financial assistance and the other detailed rules needed for the implementation of the assistance;
- (b) the general economic policy conditions which are attached to the Union financial assistance with a view to re-establishing a sound economic or financial situation in the beneficiary Member State and to restoring its capacity to finance itself on the financial markets; these conditions will be defined by the Commission, in consultation with the ECB; and
- (c) an approval of the adjustment programme prepared by the beneficiary Member State to meet the economic conditions attached to the Union financial assistance.

4. The decision to grant a credit line shall contain:

(a) the amount, the fee for the availability of the credit line, the pricing formula applicable for the release of funds and the availability period of the Union financial assistance and the other detailed rules needed for the implementation of the assistance;

(b) the general economic policy conditions which are attached to the Union financial assistance with a view to re-establishing a sound economic or financial situation in the beneficiary Member State; these conditions will be defined by the Commission, in consultation with the ECB; and

(c) an approval of the adjustment programme prepared by the beneficiary Member State to meet the economic conditions attached to the Union financial assistance.

5. The Commission and the beneficiary Member State shall conclude a Memorandum of Understanding detailing the general economic policy conditions laid down by the Council. The Commission shall communicate the Memorandum of Understanding to the European Parliament and to the Council.

6. The Commission shall re-examine, in consultation with the ECB, the general economic policy conditions referred to in paragraphs 3(b) and 4(b) at least every six months and discuss with the beneficiary Member State the changes that may be needed to its adjustment programme.

7. The Council, acting by a qualified majority on a proposal from the Commission, shall decide on any adjustments to be made to the initial general economic policy conditions and shall approve the revised adjustment programme as prepared by the beneficiary Member State.

8. If a financing outside the Union subject to economic policy conditions is envisaged, notably from the IMF, the Member State concerned shall first consult the Commission. The Commission shall examine the possibilities available under the Union financial assistance facility and the compatibility of the envisaged economic policy conditions with the commitments taken by the Member State concerned for the implementation of the Council recommendations and Council decisions adopted on the basis of Article 121, Article 126 and Article 136 of the TFEU. The Commission shall inform the Economic and Financial Committee.

*Article 4***Disbursement of the loan**

1. The loan shall, as a rule, be disbursed in instalments.

2. The Commission shall verify at regular intervals whether the economic policy of the beneficiary Member State accords with its adjustment programme and with the conditions laid down by the Council pursuant to Article 3(3)(b). To this end, that Member State shall provide all the necessary information to the Commission and give the latter its full cooperation.

3. On the basis of the findings of such verification, the Commission shall decide on the release of further instalments.

Article 5

Release of funds

1. The beneficiary Member State shall inform the Commission in advance of its intention to draw down funds from its credit line. Detailed rules shall be laid down in the decision referred to in Article 3(4).

2. The Commission shall verify at regular intervals whether the economic policy of the beneficiary Member State accords with its adjustment programme and with the conditions laid down by the Council pursuant to Article 3(4)(b). To this end, that Member State shall provide all the necessary information to the Commission and give the latter its full cooperation.

3. On the basis of the findings of such verification, the Commission shall decide on the release of the funds.

Article 6

Borrowing and lending operations

1. The borrowing and lending operations referred to in Article 2 shall be carried out in euro.

2. The characteristics of the successive instalments released by the Union under the financial assistance facility shall be negotiated between the beneficiary Member State and the Commission.

3. Once the decision on a loan has been made by the Council, the Commission shall be authorised to borrow on the capital markets or from financial institutions at the most appropriate time in between planned disbursements so as to optimise the cost of funding and preserve its reputation as the Union's issuer in the markets. Funds raised but not yet disbursed shall be kept at all times on dedicated cash or securities account which are handled in accordance with rules applying to off-budget operations and cannot be used for any other goal than to provide financial assistance to Member States under the present mechanism.

4. Where a Member State receives a loan carrying an early repayment clause and decides to exercise this option, the Commission shall take the necessary steps.

5. At the request of the beneficiary Member State and where circumstances permit an improvement in the interest rate on the loan, the Commission may refinance all or part of its initial borrowing or restructure the corresponding financial conditions.

6. The Economic and Financial Committee shall be kept informed of the developments in the operations referred to in paragraph 5.

Article 7

Costs

The costs incurred by the Union in concluding and carrying out each operation shall be borne by the beneficiary Member State.

Article 8

Administration of the loans

1. The Commission shall establish the necessary arrangements for the administration of the loans with the ECB.

2. The beneficiary Member State shall open a special account with its National Central Bank for the management of the Union financial assistance received. It shall also transfer the principal and the interest due under the loan to an account with the ECB fourteen TARGET2 business days prior to the corresponding due date.

3. Without prejudice to Article 27 of the Statute of the European System of Central Banks and of the European Central Bank, the European Court of Auditors shall have the right to carry out in the beneficiary Member State any financial controls or audits that it considers necessary in relation to the management of that assistance. The Commission, including the European Anti-Fraud office, shall in particular have the right to send its officials or duly authorised representatives to carry out in the beneficiary Member State any technical or financial controls or audits that it considers necessary in relation to that assistance.

Article 9

Review and adaptation

1. The Commission shall forward to the Economic and Financial Committee and to the Council, within six months following the entry into force of this Regulation and where appropriate every six months thereafter, a report on the implementation of this Regulation and on the continuation of the exceptional occurrences that justify the adoption of this Regulation.

2. Where appropriate, the report shall be accompanied by a proposal for amendments to this Regulation with a view to adapting the possibility of granting financial assistance without affecting the validity of decisions already adopted.

*Article 10***Entry into force**

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

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

Done at Brussels, 11 May 2010.

For the Council

The President

Á. GONZÁLEZ-SINDE REIG

COUNCIL REGULATION (EU) No 408/2010**of 11 May 2010****amending Council Regulation (EC) No 194/2008 renewing and strengthening the restrictive measures in respect of Burma/Myanmar**

THE COUNCIL OF THE EUROPEAN UNION,

HAS ADOPTED THIS REGULATION:

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 215(1) thereof,

Having regard to Council Decision 2010/232/CFSP of 26 April 2010 renewing restrictive measures against Burma/Myanmar⁽¹⁾,

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

Whereas:

- (1) Article 4 of Decision 2010/232/CFSP provides that the purchase, import and transport from Burma/Myanmar into the Union of certain specified categories of goods are to be prohibited.
- (2) Article 8 of Decision 2010/232/CFSP provides that non-humanitarian aid or development programmes are to be suspended, but that exceptions are to be made for projects and programmes in support of certain specified objectives.
- (3) Regulation (EC) No 194/2008⁽²⁾ gives effect to the prohibition on the purchase, import and transport of the categories of goods specified in Article 2(2) thereof. It should, however, be clarified that the prohibition on the purchase of those goods in Burma/Myanmar should not apply where that purchase is made as part of a humanitarian aid project or programme, or a non-humanitarian development project or programme which supports the objectives described in Article 8(a), (b) and (c) of Decision 2010/232/CFSP.
- (4) Regulation (EC) No 194/2008 should therefore be amended accordingly,

Article 1

In Article 2 of Regulation (EC) No 194/2008, the following paragraph is added:

‘5. The prohibition on the purchase of restricted goods in paragraph (2)(b) shall not apply to humanitarian aid projects or programmes, or to non-humanitarian development projects and programmes, conducted in Burma/Myanmar, in support of:

- (a) human rights, democracy, good governance, conflict prevention and building the capacity of civil society;
- (b) health and education, poverty alleviation and in particular the provision of basic needs and livelihoods for the poorest and most vulnerable populations; or
- (c) environmental protection and, in particular, programmes addressing the problem of non-sustainable, excessive logging resulting in deforestation.

The relevant competent authority, as indicated in the websites listed in Annex IV, shall authorise in advance the purchase of the restricted goods in question. The relevant Member State shall inform the other Member States and the Commission of any authorisation granted under this paragraph.’

Article 2

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

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

Done at Brussels, 11 May 2010.

For the Council

The President

Á. GONZÁLEZ-SINDE REIG

⁽¹⁾ OJ L 105, 27.4.2010, p. 22.

⁽²⁾ OJ L 66, 10.3.2008, p. 1.

COMMISSION REGULATION (EU) No 409/2010**of 11 May 2010****entering a name in the register of protected designations of origin and protected geographical indications (Castaña de Galicia (PGI))**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs ⁽¹⁾, and in particular the first subparagraph of Article 7(4) thereof,

Whereas:

- (1) Pursuant to the first subparagraph of Article 6(2) of Regulation (EC) No 510/2006, Spain's application to register the name 'Castaña de Galicia' was published in the *Official Journal of the European Union* ⁽²⁾.

- (2) As no statement of objection pursuant to Article 7 of Regulation (EC) No 510/2006 has been received by the Commission, that name should therefore be entered in the register,

HAS ADOPTED THIS REGULATION:

Article 1

The name contained in the Annex to this Regulation is hereby entered in the register.

Article 2

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

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

Done at Brussels, 11 May 2010.

For the Commission

The President

José Manuel BARROSO

⁽¹⁾ OJ L 93, 31.3.2006, p. 12.

⁽²⁾ OJ C 232, 26.9.2009, p. 22.

ANNEX

Agricultural products intended for human consumption listed in Annex I to the Treaty:

Class 1.6. Fruit, vegetables and cereals, fresh or processed

SPAIN

Castaña de Galicia (PGI)

COMMISSION REGULATION (EU) No 410/2010

of 11 May 2010

entering a name in the register of protected designations of origin and protected geographical indications (Εξαιρετικό Παρθένο Ελαιόλαδο Σέλινο Κρήτης (Exeretiko partheno eleolado Selino Kritis) (PDO))

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs ⁽¹⁾, and in particular the first subparagraph of Article 7(4) thereof,

Whereas:

- (1) Pursuant to the first subparagraph of Article 6(2) and in accordance with Article 17(2) of Regulation (EC) No 510/2006, Greece's application to register the name 'Εξαιρετικό Παρθένο Ελαιόλαδο Σέλινο Κρήτης' (Exeretiko partheno eleolado Selino Kritis) was published in the *Official Journal of the European Union* ⁽²⁾.

- (2) As no statement of objection pursuant to Article 7 of Regulation (EC) No 510/2006 has been received by the Commission, that name should therefore be entered in the register,

HAS ADOPTED THIS REGULATION:

Article 1

The name contained in the Annex to this Regulation is hereby entered in the register.

*Article 2*This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

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

Done at Brussels, 11 May 2010.

*For the Commission**The President*

José Manuel BARROSO

⁽¹⁾ OJ L 93, 31.3.2006, p. 12.

⁽²⁾ OJ C 232, 26.9.2009, p. 27.

ANNEX

Agricultural products intended for human consumption listed in Annex I to the Treaty:

Class 1.5. Oils and fats (butter, margarine, oils, etc.)

GREECE

Εξαιρετικό Παρθένο Ελαιόλαδο Σέλινου Κρήτης (Exeretiko partheno eleolado Selino Kritis) (PDO)

COMMISSION REGULATION (EU) No 411/2010**of 10 May 2010****amending Council Regulation (EC) No 194/2008 renewing and strengthening the restrictive measures in respect of Burma/Myanmar**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 194/2008 of 25 February 2008 renewing and strengthening the restrictive measures in respect of Burma/Myanmar and repealing Regulation (EC) No 817/2006 ⁽¹⁾ and in particular Article 18(1)(b) thereof,

Whereas:

- (1) Annex VI to Regulation (EC) No 194/2008 lists the persons, groups and entities covered by the freezing of funds and economic resources under that Regulation.
- (2) Annex VII to Regulation (EC) No 194/2008 lists the enterprises owned or controlled by the Government of Burma/Myanmar or its members or persons associated with them, subject to restrictions on investment under that Regulation.
- (3) Council Decision 2010/232/CFSP of 26 April 2010 ⁽²⁾ identifies, in its Annexes II and III, the natural and

legal persons to whom restrictions are to apply as provided for in Article 10 of that Decision, and Regulation (EC) No 194/2008 gives effect to that Decision to the extent that action at Union level is required. Annexes VI and VII to Regulation (EC) No 194/2008 should therefore be amended accordingly.

- (4) In order to ensure that the measures provided for in this Regulation are effective, this Regulation should enter into force on the day of its publication,

HAS ADOPTED THIS REGULATION:

Article 1

1. Annex VI to Regulation (EC) No 194/2008 is replaced by the text of Annex I to this Regulation.
2. Annex VII to Regulation (EC) No 194/2008 is replaced by the text of Annex II 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, 10 May 2010.

*For the Commission,
On behalf of the President,
João VALE DE ALMEIDA
Director General for External Relations*

⁽¹⁾ OJ L 66, 10.3.2008, p. 1.

⁽²⁾ OJ L 105, 27.4.2010, p. 22.

ANNEX I

‘ANNEX VI

List of members of the Government of Burma/Myanmar and persons, entities and bodies associated with them referred to in Article 11

Notes

- (1) Aliases or variations in spelling are denoted by “a.k.a.”;
- (2) “D.o.b” means date of birth;
- (3) “P.o.b.” means place of birth;
- (4) If not stated otherwise, all passport and ID cards are those of Burma/Myanmar.

A. STATE PEACE AND DEVELOPMENT COUNCIL (SPDC)

#	Name (and possible aliases)	Identifying information (function/title, date and place of birth, passport/id number, spouse or son/daughter of ...)	Sex (M/F)
A1a	Senior General Than Shwe	Chairman, d.o.b. 2.2.1933	M
A1b	Kyaing Kyaing	Wife of Senior General Than Shwe	F
A1c	Thandar Shwe	Daughter of Senior General Than Shwe	F
A1d	Major Zaw Phyto Win	Husband of Thandar Shwe, Deputy Director Export Section, Ministry of Trade	M
A1e	Khin Pyone Shwe	Daughter of Senior General Than Shwe	F
A1f	Aye Aye Thit Shwe	Daughter of Senior General Than Shwe	F
A1g	Tun Naing Shwe a.k.a. Tun Tun Naing	Son of Senior General Than Shwe. Owner of J and J Company	M
A1h	Khin Thanda	Wife of Tun Naing Shwe	F
A1i	Kyaing San Shwe	Son of Senior General Than Shwe, Owner of J's Donuts	M
A1j	Dr. Khin Win Sein	Wife of Kyaing San Shwe	F
A1k	Thant Zaw Shwe a.k.a. Maung Maung	Son of Senior General Than Shwe	M
A1l	Dewar Shwe	Daughter of Senior General Than Shwe	F
A1m	Kyi Kyi Shwe a.k.a. Ma Aw	Daughter of Senior General Than Shwe	F
A1n	Lt. Col. Nay Soe Maung	Husband of Kyi Kyi Shwe	M
A1o	Pho La Pyae (Full Moon) a.k.a. Nay Shwe Thway Aung	Son of Kyi Kyi Shwe and Nay Soe Maung, Director Yadanabon Cybercity	M
A2a	Vice-Senior General Maung Aye	Vice-Chairman, d.o.b. 25.12.1937	M
A2b	Mya Mya San	Wife of Vice-Senior General Maung Aye	F
A2c	Nandar Aye	Daughter of Vice-Senior General Maung Aye, wife of Major Pye Aung (D15g). Owner of Queen Star Computer Co.	F

#	Name (and possible aliases)	Identifying information (function/title, date and place of birth, passport/id number, spouse or son/daughter of ...)	Sex (M/F)
A3a	General Thura Shwe Mann	Chief of Staff, Coordinator of Special Operations (Army, Navy and Air Force) d.o.b. 11.7.1947	M
A3b	Khin Lay Thet	Wife of General Thura Shwe Mann, d.o.b. 19.6.1947	F
A3c	Aung Thet Mann a.k.a. Shwe Mann Ko Ko	Son of General Thura Shwe Mann, Ayeya Shwe War (Wah) Company, 5, Pyay Road, Hlaing Township, Yangon and Co-owner of RedLink Communications Co. Ltd, No. 20, Building B, Mya Yeik Nyo Royal Hotel, Pa-Le Road, Bahan Township, Yangon, d.o.b. 19.6.1977	M
A3d	Khin Hnin Thandar	Wife of Aung Thet Mann	F
A3e	Toe Naing Mann	Son of General Thura Shwe Mann, d.o.b. 29.6.1978 Owner of Global Net and Red Link Communications Co. Ltd, No. 20, Building B, Mya Yeik Nyo Royal Hotel, Pa-Le Road, Bahan Township, Yangon, Internet Service Providers	M
A3f	Zay Zin Latt	Wife of Toe Naing Mann, Daughter of Khin Shwe (J5a), d.o.b. 24.3.1981	F
A4a	Lt-Gen Thein Sein	"Prime Minister", d.o.b. 20.4.1945, Patheingyi	M
A4b	Khin Khin Win	Wife of Lt-Gen Thein Sein	F
A5a	Gen (Thiha Thura) Tin Aung Myint Oo	(Thiha Thura is a title) "Secretary 1", d.o.b. 29.5.1950, Chairman of the Myanmar National Olympic Council and Chairman of Myanmar Economic Corporation	M
A5b	Khin Saw Hnin	Wife of Lt-Gen Thiha Thura Tin Aung Myint Oo	F
A5c	Captain Naing Lin Oo	Son of Lt-Gen Thiha Thura Tin Aung Myint Oo	M
A5d	Hnin Yee Mon	Wife of Capt. Naing Lin Oo	F
A6a	Maj. Gen. Min Aung Hlaing	Chief of Bureau of Special Operations 2 (Kayah, Shan States). Since 23.6.2008	M
A6b	Kyu Kyu Hla	Wife of Maj-Gen Min Aung Hlaing	F
A7a	Lt-Gen Tin Aye	Chief of Military Ordnance, Head of UMEHL	M
A7b	Kyi Kyi Ohn	Wife of Lt-Gen Tin Aye	F
A7c	Zaw Min Aye	Son of Lt-Gen Tin Aye	M
A8a	Maj-Gen Thar Aye a.k.a. Tha Aye	Chief of Bureau of Special Operations 1 (Kachin, Chin, Sagaing) since May 2009, d.o.b. 16.2.1945 (previously A11a)	M
A8b	Wai Wai Khaing a.k.a. Wei Wei Khaing	Wife of Maj-Gen Thar Aye (Previously A11b)	F
A8c	See Thu Aye	Son of Maj-Gen Thar Aye (Previously A11c)	M
A9a	Maj-Gen Hla Htay Win	Chief of Armed Forces Training, Since 23.6.2008. (Previously B1a). Owner of Htay Co. (logging and timber)	M
A9b	Mar Mar Wai	Wife of Maj-Gen Hla Htay Win	F
A10a	Maj-Gen Ko Ko	Chief of Bureau of Special Operations 3 (Pegu, Irrawaddy, Arakan). Since 23.6.2008	M

#	Name (and possible aliases)	Identifying information (function/title, date and place of birth, passport/id number, spouse or son/daughter of ...)	Sex (M/F)
A10b	Sao Nwan Khun Sum	Wife of Maj-Gen Ko Ko	F
A11a	Lt-Gen Khin Zaw	Chief of Bureau of Special Operations 4 (Karen, Mon, Tenas serim), Since May 2009, previously Chief of BSO 6 since June 2008 (previously G42a)	M
A11b	Khin Pyone Win	Wife of Lt-Gen Khin Zaw (Previously G42b)	F
A11c	Kyi Tha Khin Zaw	Son of Lt-Gen Khin Zaw (Previously G42c)	M
A11d	Su Khin Zaw	Daughter of Lt-Gen Khin Zaw (Previously G42d)	F
A12a	Lt-Gen Myint Swe	Chief of Bureau of Special Operations 5 (Rangoon/Yangon)	M
A12b	Khin Thet Htay	Wife of Lt-Gen Myint Swe	F
A13a	Arnt Maung	Retired Director General, Directorate of Religious Affairs	M
A14a	Lt-Gen Ohn Myint	Chief of Bureau of Special Operations 6 (Naypyidaw and Mandalay). Since May 2009. (Previously A8a)	M
A14b	Nu Nu Swe	Wife of Lt-Gen Ohn Myint	F
A14c	Kyaw Thiha a.k.a. Kyaw Thura	Son of Lt-Gen Ohn Myint	M
A14d	Nwe Ei Ei Zin	Wife of Kyaw Thiha	F

B. REGIONAL COMMANDERS

#	Name	Identifying information (inc. Command)	Sex (M/F)
B1a	Maj-Gen Win Myint	Rangoon (Yangon)	M
B1b	Kyin Myaing	Wife of Maj-Gen Win Myint	F
B2a	Maj-Gen Yar Pyae a.k.a. Ya Pyae, Ya Pye, Ya Pyrit, Yar Pye and Yar Pyrit	Eastern (Shan State (South))	M
B2b	Thinzar Win Sein	Wife of Maj-Gen Yar Pyae a.k.a. Ya Pyae, Ya Pye, Ya Pyrit, Yar Pye and Yar Pyrit	F
B3a	Maj-Gen Myint Soe	North Western (Sagaing Division) and Regional Minister without portfolio	M
B4a	Maj-Gen Khin Zaw Oo	Coastal (Tanintharyi Division), d.o.b. 24.6.1951	M
B5a	Maj-Gen Aung Than Htut	North Eastern (Shan State(North))	M
B5b	Cherry	Wife of Maj-Gen Aung Than Htut	F
B6a	Maj-Gen Tin Ngwe	Central (Mandalay Division)	M
B6b	Khin Thida	Wife of Maj-Gen Tin Ngwe	F
B7a	Maj-Gen Thaung Aye	Western (Rakhine State)	M
B7b	Thin Myo Myo Aung	Wife of Maj-Gen Thaung Aye	F
B8a	Maj-Gen Kyaw Swe	South Western (Irrawaddy Division) and Regional Minister without portfolio	M

#	Name	Identifying information (inc. Command)	Sex (M/F)
B8b	Win Win Maw	Wife of Maj-Gen Kyaw Swe	F
B9a	Maj-Gen Soe Win	North (Kachin State)	M
B9b	Than Than Nwe	Wife of Maj-Gen Soe Win	F
B10a	Maj-Gen Hla Min	South (Bago Division)	M
B11a	Maj-Gen Thet Naing Win	South Eastern (Mon State)	M
B12a	Maj-Gen Kyaw Phyo	Triangle (Shan State (East))	M
B13a	Maj-Gen Wai Lwin	Naypyidaw	M
B13b	Swe Swe Oo	Wife of Maj-Gen Wai Lwin	F
B13c	Wai Phyo Aung	Son of Maj-Gen Wai Lwin	M
B13d	Oanmar Kyaw Tun a.k.a Ohnmar Kyaw Tun	Wife of Wai Phyo Aung	F
B13e	Wai Phyo	Son of Maj-Gen Wai Lwin	M
B13f	Lwin Yamin	Daughter of Maj-Gen Wai Lwin	F

C. DEPUTY REGIONAL COMMANDERS

#	Name	Identifying information (inc. Command)	Sex (M/F)
C1a	Brig-Gen Kyaw Kyaw Tun	Rangoon (Yangon)	M
C1b	Khin May Latt	Wife of Brig-Gen Kyaw Kyaw Tun	F
C2a	Brig-Gen Than Htut Aung	Centre	M
C2b	Moe Moe Nwe	Wife of Brig-Gen Than Htut Aung	F
C3a	Brig-Gen Tin Maung Ohn	North-Western	M
C4a	Brig-Gen San Tun	Northern, d.o.b. 2.3.1951, Rangoon/Yangon	M
C4b	Tin Sein	Wife of Brig-Gen San Tun, d.o.b. 27.9.1950, Rangoon/Yangon	F
C4c	Ma Khin Ei Ei Tun	Daughter of Brig-Gen San Tun, d.o.b. 16.9.1979, Director of Ar Let Yone Co. Ltd	F
C4d	Min Thant	Son of Brig-Gen San Tun, d.o.b. 11.11.1982, Rangoon/Yangon, Director of Ar Let Yone Co. Ltd	M
C4e	Khin Mi Mi Tun	Daughter of Brig-Gen San Tun, d.o.b. 25.10.1984, Rangoon/Yangon, Director of Ar Let Yone Co. Ltd	F
C5a	Brig-Gen Hla Myint	North-Eastern	M
C5b	Su Su Hlaing	Wife of Brig-Gen Hla Myint	F
C6a	Brig-Gen Wai Lin	Triangle	M
C7a	Brig-Gen Chit Oo	Eastern	M

#	Name	Identifying information (inc. Command)	Sex (M/F)
C7b	Kyin Myaing	Wife of Brig-Gen Chit Oo	F
C8a	Brig-Gen Zaw Min	South-Eastern	M
C8b	Nyunt Nyunt Wai	Wife of Brig-Gen Zaw Min	F
C9a	Brig-Gen Hone Ngaing a.k.a. Hon Ngai	Coastal	M
C9b	Wah Wah	Wife of Brig-Gen Hone Ngaing a.k.a. Hon Ngai	F
C10a	Brig-Gen Win Myint	(previously C7a) Southern	M
C10b	Mya Mya Aye	Wife of Brig-Gen Win Myint	F
C11a	Brig-Gen Tint Swe	South-Western	M
C11b	Khin Thaug	Wife of Brig-Gen Tint Swe	F
C11c	Ye Min a.k.a. Ye Kyaw Swar Swe	Son of Brig-Gen Tint Swe	M
C11d	Su Mon Swe	Wife of Ye Min	F
C12a	Brig-Gen Tin Hlaing	Western	M
C12b	Hla Than Htay	Wife of Brig-Gen Tin Hlaing	F

D. MINISTERS

#	Name	Identifying information (inc. Ministry)	Sex (M/F)
D1a	Maj-Gen Htay Oo	Agriculture and Irrigation (since 18.9.2004) (formerly Cooperatives since 25.8.2003), Secretary-General of the USDA, d.o.b. 20.1.1950, p.o.b. Hintada, Passport No. DM 105413, ID No. 10/Khatana (N) 009325	M
D1b	Ni Ni Win	Wife of Maj-Gen Htay Oo	F
D1c	Thein Zaw Nyo	Cadet Son of Maj-Gen Htay Oo M	M
D2a	Brig-Gen Tin Naing Thein	Commerce (since 18.9.2004), formerly Deputy Minister of Forestry, d.o.b. 1955	M
D2b	Aye Aye	Wife of Brig-Gen Tin Naing Thein	F
D3a	Maj-Gen Khin Maung Myint	Construction, also Minister of Electric Power 2	M
D3b	Win Win Nu	Wife of Maj-Gen Khin Maung Myint	F
D4a	Maj-Gen Tin Htut	Cooperatives (since 15.5.2006)	M
D4b	Tin Tin Nyunt	Wife of Maj-Gen Tin Htut	F
D5a	Maj-Gen Khin Aung Myint	Culture (since 15.5.2006)	M
D5b	Khin Phylene	Wife of Maj-Gen Khin Aung Myint	F
D6a	Dr. Chan Nyein	Education (since 10.8.2005), formerly Deputy Minister of Science & Technology, Member of the Executive Committee of the USDA, d.o.b. 15.12.1944	M
D6b	Sandar Aung	Wife of Dr. Chan Nyein	F

#	Name	Identifying information (inc. Ministry)	Sex (M/F)
D7a	Col Zaw Min	Electric Power (1) (since 15.5.2006), d.o.b. 10.1.1949	M
D7b	Khin Mi Mi	Wife of Col Zaw Min	F
D8a	Brig-Gen Lun Thi	Energy (since 20.12.1997), d.o.b. 18.7.1940	M
D8b	Khin Mar Aye	Wife of Brig-Gen Lun Thi	F
D8c	Mya Sein Aye	Daughter of Brig-Gen Lun Thi	F
D8d	Zin Maung Lun	Son of Brig-Gen Lun Thi	M
D8e	Zar Chi Ko	Wife of Zin Maung Lun	F
D9a	Maj-Gen Hla Tun	Finance & Revenue (since 1.2.2003), d.o.b. 11.7.1951	M
D9b	Khin Than Win	Wife of Maj-Gen Hla Tun	F
D10a	Nyan Win	Foreign Affairs (since 18.9.2004), formerly Deputy Chief of Armed Forces Training, d.o.b. 22.1.1953	M
D10b	Myint Myint Soe	Wife of Nyan Win, d.o.b. 15.1.1953	F
D11a	Brig-Gen Thein Aung	Forestry (since 25.8.2003)	M
D11b	Khin Htay Myint	Wife of Brig-Gen Thein Aung	F
D12a	Prof. Dr. Kyaw Myint	Health (since 1.2.2003), d.o.b. 1940	M
D12b	Nilar Thaw	Wife of Prof. Dr. Kyaw Myint	F
D13a	Maj-Gen Maung Oo	Home Affairs (since 5.11.2004) and Minister for Immigration and Population from February 2009, d.o.b. 1952	M
D13b	Nyunt Nyunt Oo	Wife of Maj-Gen Maung Oo	F
D14a	Maj-Gen Maung Maung Swe	Social Welfare, Relief & Resettlement (since 15.5.2006)	M
D14b	Tin Tin Nwe	Wife of Maj-Gen Maung Maung Swe	F
D14c	Ei Thet Thet Swe	Daughter of Maj-Gen Maung Maung Swe	F
D14d	Kaung Kyaw Swe	Son of Maj-Gen Maung Maung Swe	M
D15a	Aung Thaung	Industry 1 (since 15.11.1997)	M
D15b	Khin Khin Yi	Wife of Aung Thaung	F
D15c	Major Moe Aung	Son of Aung Thaung	M
D15d	Dr. Aye Khaing Nyunt	Wife of Major Moe Aung	F
D15e	Nay Aung	Son of Aung Thaung, businessman, Managing Director, Aung Yee Phyoe Co. Ltd and Director IGE Co.Ltd	M
D15f	Khin Moe Nyunt	Wife of Nay Aung	F
D15g	Major Pyi Aung a.k.a. Pye Aung	Son of Aung Thaung (married to A2c). Director IGE Co.Ltd	M
D15h	Khin Ngu Yi Phyoo	Daughter of Aung Thaung	F
D15i	Dr Thu Nanda Aung	Daughter of Aung Thaung	F
D15j	Aye Myat Po Aung	Daughter of Aung Thaung	F
D16a	Vice Admiral Soe Thein	Industry 2 (since June 2008). (Previously G38a)	M

#	Name	Identifying information (inc. Ministry)	Sex (M/F)
D16b	Khin Aye Kyin a.k.a. Aye Aye	Wife of Vice Admiral Soe Thein	F
D16c	Yimon Aye	Daughter of Vice Admiral Soe Thein, d.o.b. 12.7.1980, currently in the USA	F
D16d	Aye Chan	Son of Vice Admiral Soe Thein, d.o.b. 23.9.1973	M
D16e	Thida Aye	Daughter of Vice Admiral Soe Thein, d.o.b. 23.3.1979	F
D17a	Brig-Gen Kyaw Hsan	Information (since 13.9.2002)	M
D17b	Kyi Kyi Win	Wife of Brig-Gen Kyaw Hsan. Head of Information Department of Myanmar Women's Affairs Federation.	F
D18a	Brig-Gen Maung Maung Thein	Livestock & Fisheries	M
D18b	Myint Myint Aye	Wife of Brig-Gen Maung Maung Thein	F
D18c	Min Thein a.k.a. Ko Pauk	Son of Brig-Gen Maung Maung Thein	M
D19a	Brig-Gen Ohn Myint	Mines (since 15.11.1997)	M
D19b	San San	Wife of Brig-Gen Ohn Myint	F
D19c	Thet Naing Oo	Son of Brig-Gen Ohn Myint	M
D19d	Min Thet Oo	Son of Brig-Gen Ohn Myint	M
D20a	Soe Tha	National Planning & Economic Development (since 20.12.1997), d.o.b. 7.11.1944	M
D20b	Kyu Kyu Win	Wife of Soe Tha, d.o.b. 3.11.1949	F
D20c	Kyaw Myat Soe aka Aung Myat Soe	Son of Soe Tha, d.o.b. 14.2.1973/7.10.1974, currently in Australia	M
D20d	Wei Wei Lay	Wife of Kyaw Myat Soe, d.o.b. 12.9.1978/18.8.1975, currently in Australia	F
D20e	Aung Soe Tha	Son of Soe Tha, d.o.b. 5.10.1980	M
D20f	Myat Myitzu Soe	Daughter of Soe Tha, d.o.b. 14.2.1973	F
D20g	San Thida Soe	Daughter of Soe Tha, d.o.b. 12.9.1978	F
D20h	Phone Myat Soe	Son of Soe Tha, d.o.b. 3.3.1983	M
D21a	Col Thein Nyunt	Progress of Border Areas & National Races & Development Affairs (since 15.11.1997), and Mayor of Naypyidaw	M
D21b	Kyin Khaing a.k.a. Kyin Khine	Wife of Col Thein Nyunt	F
D22a	Maj-Gen Aung Min	Rail Transportation (since 1.2.2003)	M
D22b	Wai Wai Thar a.k.a. Wai Wai Tha	Wife of Maj-Gen Aung Min	F
D22c	Aye Min Aung	Daughter of Maj-Gen Aung Min	F
D22d	Htoo Char Aung	Son of Maj-Gen Aung Min	M
D23a	Brig-Gen Thura Myint Maung	Religious Affairs (since 25.8.2003)	M
D23b	Aung Kyaw Soe	Son of Brig-Gen Thura Myint Maung	M
D23c	Su Su Sandi	Wife of Aung Kyaw Soe	F
D23d	Zin Myint Maung	Daughter of Brig-Gen Thura Myint Maung	F

#	Name	Identifying information (inc. Ministry)	Sex (M/F)
D24a	Thaung	Science & Technology (since 1.11.1998) , d.o.b. 6.7.1937, Kyaukse	M
D24b	May Kyi Sein	Wife of Thaung	F
D24c	Aung Kyi	Son of Thaung, d.o.b. 1971	M
D25a	Brig-Gen Thura Aye Myint	Sports (since 29.10.1999)	M
D25b	Aye Aye	Wife of Brig-Gen Thura Aye Myint	F
D25c	Nay Linn	Son of Brig-Gen Thura Aye Myint	M
D26a	Brig-Gen Thein Zaw	Minister of Telecommunications, Post & Telegraphs (since 10.5.2001)	M
D26b	Mu Mu Win	Wife of Brig-Gen Thein Zaw	F
D27a	Maj-Gen Thein Swe	Transport, since 18.9.2004 (formerly PM's Office from 25.8.2003)	M
D27b	Mya Theingi	Wife of Maj-Gen Thein Swe	F
D28a	Maj-Gen Soe Naing	Minister for Hotels and Tourism (since 15.5.2006)	M
D28b	Tin Tin Latt	Wife of Maj-Gen Soe Naing	F
D28c	Wut Yi Oo	Daughter of Maj-Gen Soe Naing	F
D28d	Captain Htun Zaw Win	Husband of Wut Yi Oo	M
D28e	Yin Thu Aye	Daughter of Maj-Gen Soe Naing	F
D28f	Yi Phone Zaw	Son of Maj-Gen Soe Naing	M
D29a	Aung Kyi	Employment/Labour (appointed Minister for Relations on 8.10.2007, in charge of relations with Aung San Suu Kyi)	M
D29b	Thet Thet Swe	Wife of Aung Kyi	F
D30a	Kyaw Thu	Chairman of Civil Service Selection and Training Board, d.o.b. 15.8.1949	M
D30b	Lei Lei Kyi	Wife of Kyaw Thu	F

E. DEPUTY MINISTERS

#	Name	Identifying information (inc. Ministry)	Sex (M/F)
E1a	Ohn Myint	Agriculture & Irrigation (since 15.11.1997)	M
E1b	Thet War	Wife of Ohn Myint	F
E2a	Brig-Gen Aung Tun	Commerce (since 13.9.2003)	M
E3a	Brig-Gen Myint Thein	Construction (since 5.1.2000)	M
E3b	Mya Than	Wife of Brig-Gen Myint Thein	F
E4a	Tint Swe	Construction d.o.b. 7.11.1936 (since 7.5.1998)	M
E5a	Maj-Gen Aye Myint	Defence (since 15.5.2006)	M
E6a	Brig-Gen Aung Myo Min	Education (since 19.11.2003)	M

#	Name	Identifying information (inc. Ministry)	Sex (M/F)
E6b	Thazin Nwe	Wife of Brig-Gen Aung Myo Min	F
E6c	Si Thun Aung	Son of Brig-Gen Aung Myo Min	M
E7a	Myo Myint	Electric Power 1 (since 29.10.1999)	M
E7b	Tin Tin Myint	Wife of Myo Myint	F
E8a	Brig-Gen Than Htay	Energy (since 25.8.2003)	M
E8b	Soe Wut Yi	Wife of Brig-Gen Than Htay	F
E9a	Col Hla Thein Swe	d.o.b. 8.3.1957 Finance & Revenue (since 25.8.2003)	M
E9b	Thida Win	Wife of Col Hla Thein Swe	F
E10a	Brig-Gen Win Myint	Electric Power (2)	M
E10b	Tin Ma Ma Than	Wife of Brig-Gen Win Myint	F
E11a	Maung Myint	Foreign Affairs d.o.b. 21.5.1958, Mandalay (since 18.9.2004)	M
E11b	Dr Khin Mya Win	d.o.b. 21.1.1956, wife of Maung Myint	F
E12a	Prof. Dr. Mya Oo	Health (since 16.11.1997), d.o.b. 25.1.1940	M
E12b	Tin Tin Mya	Wife of Prof. Dr. Mya Oo	F
E12c	Dr. Tun Tun Oo	Son of Prof. Dr. Mya Oo, d.o.b. 26.7.1965	M
E12d	Dr. Mya Thuzar	Daughter of Prof. Dr. Mya Oo, d.o.b. 23.9.1971	F
E12e	Mya Thidar	Daughter of Prof. Dr. Mya Oo, d.o.b. 10.6.1973	F
E12f	Mya Nandar	Daughter of Prof. Dr. Mya Oo, d.o.b. 29.5.1976	F
E13a	Brig-Gen Phone Swe	Home Affairs (since 25.8.2003)	M
E13b	San San Wai	Wife of Brig-Gen Phone Swe	F
E14a	Brig-Gen Aye Myint Kyu	Hotels & Tourism (since 16.11.1997)	M
E14b	Prof. Khin Swe Myint	Wife of Brig-Gen Aye Myint Kyu	F
E15a	Brig-Gen Win Sein	Immigration & Population (since November 2006)	M
E15b	Wai Wai Linn	Wife of Brig-Gen Win Sein	F
E16a	Brig-Gen Thein Tun	Industry 1 (Additional Deputy Minister)	M
E17a	Lt-Col Khin Maung Kyaw	Industry 2 (since 5.1.2000)	M
E17b	Mi Mi Wai	Wife of Lt-Col Khin Maung Kyaw	F
E18a	Maj-Gen Kyaw Swa Khine	Industry 2 (since 24.10.2007) (previously G29a), (Additional Deputy Minister)	M
E18b	Khin Phyu Mar	Wife of Maj-Gen Kyaw Swa Khine	F

#	Name	Identifying information (inc. Ministry)	Sex (M/F)
E19a	Col Tin Ngwe	Progress of Border Areas & National Races & Development Affairs (since 25.8.2003)	M
E19b	Khin Mya Chit	Wife of Col Tin Ngwe	F
E20a	Thaung Lwin	Rail Transportation (since 16.11.1997)	M
E20b	Dr. Yi Yi Htwe	Wife of Thura Thaung Lwin	F
E21a	Brig-Gen Aung Ko	Religious Affairs, USDA, member of the Central Executive Committee (since 17.11.1997)	M
E21b	Myint Myint Yee aka Yi Yi Myint	Wife of Brig-Gen Thura Aung Ko	F
E22a	Kyaw Soe	Science and Technology d.o.b. 16.10.1944 (since 15.11.2004)	M
E23a	Col Thurein Zaw	National Planning and Economic Development (since 10.8.2005)	M
E23b	Tin Ohn Myint	Wife of Col Thurein Zaw	F
E24a	Brig-Gen Kyaw Myin	Social Welfare, Relief & Resettlement (since 25.8.2003)	M
E24b	Khin Nwe Nwe	Wife of Brig-Gen Kyaw Myin	F
E25a	Pe Than	Rail Transportation (since 14.11.1998)	M
E25b	Cho Cho Tun	Wife of Pe Than	F
E26a	Col Nyan Tun Aung	Transport (since 25.8.2003)	M
E26b	Wai Wai	Wife of Col Nyan Tun Aung	F
E27a	Dr. Paing Soe	Health (additional Deputy Minister) (since 15.5.2006)	M
E27b	Khin Mar Swe	Wife of Dr. Paing Soe	F
E28a	Maj-Gen Thein Tun	Deputy Minister for Posts and Telecommunications	M
E28b	Mya Mya Win	Wife of Thein Tun	F
E29a	Maj-Gen Kyaw Swa Khaing	Deputy Minister for Industry 2	M
E29b	Khin Phyu Mar	Wife of Kyaw Swa Khaing	F
E30a	Maj-Gen Thein Htay	Deputy Minister for Defence	M
E30b	Myint Myint Khine	Wife of Maj-Gen Thein Htay	F
E31a	Brig-Gen Tin Tun Aung	Deputy Minister for Labour (since 7.11.07)	M

F. OTHER TOURISM RELATED APPOINTMENTS

#	Name	Identifying information (inc. post held)	Sex (M/F)
F1a	Hla Htay	Director General at Hotels & Tourism Directorate (Managing Director, Myanmar Hotels and Tourism Services until August 2004)	M
F2a	Tin Maung Shwe	Deputy Director General, Hotels and Tourism Directorate	M

#	Name	Identifying information (inc. post held)	Sex (M/F)
F3a	Soe Thein	Managing Director, Myanmar Hotels and Tourism Services since October 2004 (Previously General Manager)	M
F4a	Khin Maung Soe	General Manager	M
F5a	Tint Swe	General Manager	M
F6a	Lt-Col Yan Naing	General Manager, Ministry of Hotels & Tourism	M
F7a	Kyi Kyi Aye	Director for Tourism Promotion, Ministry of Hotels & Tourism	F

G. SENIOR MILITARY OFFICERS

#	Name	Identifying information (inc. function)	Sex (M/F)
G1a	Maj-Gen Hla Shwe	Deputy Adjutant General	M
G2a	Maj-Gen Soe Maung	Judge Advocate General	M
G2b	Nang Phyu Phyu Aye	Wife of Maj-Gen Soe Maung	F
G3a	Maj-Gen Thein Htaik a.k.a. Hteik	Inspector General	M
G4a	Maj-Gen Saw Hla	Provost Marshal	M
G4b	Cho Cho Maw	Wife of Maj-Gen Saw Hla	F
G5a	Maj-Gen Htin Aung Kyaw	Vice Quarter Master General	M
G5b	Khin Khin Maw	Wife of Maj-Gen Htin Aung Kyaw	F
G6a	Lt-Gen Lun Maung	Auditor General	M
G6b	May Mya Sein	Wife of Lt-Gen Lun Maung	F
G7a	Maj-Gen Nay Win	Military Assistant to the SPDC Chairman	M
G8a	Maj-Gen Hsan Hsint	Military Appointments General, d.o.b. 1951	M
G8b	Khin Ma Lay	Wife of Maj-Gen Hsan Hsint	F
G8c	Okkar San Sint	Son of Maj-Gen Hsan Hsint	M
G9a	Maj-Gen Hla Aung Thein	Camp Commandant, Rangoon	M
G9b	Amy Khaing	Wife of Hla Aung Thein	F
G10a	Lt-Gen Ye Myint	Chief of Military Affairs Security	M
G10b	Myat Ngwe	Wife of Lt-Gen Ye Myint	F
G11a	Brig-Gen Mya Win	Commandant, National Defence College	M
G12a	Brig-Gen Maung Maung Aye	Commandant, General Staff College (since June 2008)	M
G12b	San San Yee	Wife of Brig-Gen Maung Maung Aye	F

#	Name	Identifying information (inc. function)	Sex (M/F)
G13a	Brig-Gen Tun Tun Oo	Director of Public Relations and Psychological Warfare	M
G14a	Maj-Gen Thein Tun	Director of Signals; member of National Convention Convening Management Committee	M
G15a	Maj-Gen Than Htay	Director of Supply & Transport	M
G15b	Nwe Nwe Win	Wife of Maj-Gen Than Htay	F
G16a	Maj-Gen Khin Maung Tint	Director of Security Printing Works	M
G17a	Maj-Gen Sein Lin	Director, MOD (Precise job not known. Formerly Director Ordnance)	M
G18a	Maj-Gen Kyi Win	Director of Artillery & Armour, Board member UMEHL	M
G18b	Khin Mya Mon	Wife of Maj-Gen Kyi Win	F
G19a	Maj-Gen Tin Tun	Director Military Engineers	M
G19b	Khin Myint Wai	Wife of Maj-Gen Tin Tun	F
G20a	Maj-Gen Aung Thein	Director Resettlement	M
G20b	Htwe Yi a.k.a. Htwe Htwe Yi	Wife of Maj-Gen Aung Thein	F
G21a	Brig-Gen Than Maung	Deputy Commandant of National Defence College	M
G22a	Brig-Gen Win Myint	Rector Defence Services Technological Academy	M
G23a	Brig-Gen Tun Nay Lin	Rector/Commandant, Defence Services Medical Academy	M
G24a	Brig-Gen Than Sein	Commandant, Defence Services Hospital, Mingaladon, d.o.b. 1.2.1946, p.o.b. Bago	M
G24b	Rosy Mya Than	Wife of Brig-Gen Than Sein	F
G25a	Brig-Gen Win Than	Director of Procurement and Managing Director Union of Myanmar Economic Holdings (prev. Maj-Gen Win Hlaing, K1a)	M
G26a	Brig-Gen Than Maung	Director of Peoples' Militia & Frontier Forces	M
G27a	Maj-Gen Khin Maung Win	Director Defence Industries	M
G28a	Brig-Gen Win Aung	Member of Civil Service Selection and Training Board	M
G29a	Brig-Gen Soe Oo	Member of Civil Service Selection and Training Board	M
G30a	Brig-Gen Nyi Tun aka Nyi Htun	Member of Civil Service Selection and Training Board	M
G31a	Brig-Gen Kyaw Aung	Member of Civil Service Selection and Training Board	M
G32a	Lt-Gen Myint Hlaing	Chief of Staff (Air Defence)	M
G32b	Khin Thant Sin	Wife of Lt-Gen Myint Hlaing	F
G32c	Hnin Nandar Hlaing	Daughter of Lt-Gen Myint Hlaing	F
G32d	Thant Sin Hlaing	Son of Lt-Gen Myint Hlaing	M
G33a	Maj-Gen Mya Win	Director of Artillery, Ministry of Defence	M

#	Name	Identifying information (inc. function)	Sex (M/F)
G34a	Maj-Gen Tin Soe	Director of Armoured Vehicles, Ministry of Defence	M
G35a	Maj-Gen Than Aung	Director, Ministry of Defence, Directorate of Medical Staff	M
G36a	Maj-Gen Ngwe Thein	Ministry of Defence	M
G37a	Col Thant Shin	Director General Prime Minister's Office	M
G38a	Lt-Gen Thura Myint Aung	Adjutant General (formerly B8a, promoted from South Western Regional Command)	M
G39a	Maj-Gen Maung Shein	Defence Services Inspection and Auditor General	M
G40a	Maj-Gen Tha Aye	Ministry of Defence	M
G41a	Colonel Myat Thu	Commander Rangoon Military Region 1 (northern Rangoon)	M
G42a	Colonel Nay Myo	Commander Military Region 2 (Eastern Rangoon)	M
G43a	Colonel Tin Hsan	Commander Military Region 3 (Western Rangoon)	M
G44a	Colonel Khin Maung Htun	Commander Military Region 4 (Southern Rangoon)	M
G45a	Colonel Tint Wai	Commander Operation Control Command No. 4 (Mawbi)	M
G46a	San Nyunt	Commander Military Support Unit No. 2 of Military Security Affairs	M
G47a	Lt. Col Zaw Win	Commander Lon Htein Battalion Base 3 Shwemyayar	M
G48a	Major Mya Thaung	Commander Lon Htein Battalion Base 5 Mawbi	M
G49a	Major Aung San Win	Commander Lon Htein Battalion Base 7 Thanlin Township	M

Navy

#	Name	Identifying information (inc. function)	Sex (M/F)
G50a	Rear Admiral Nyan Tun	Commander in Chief (Navy). Since June 2008. Board member UMEHL. (Previously G39a)	M
G50b	Khin Aye Myint	Wife of Nyan Tun	F
G51a	Commodore Win Shein	Commander, Naval Training Headquarters	M
G52a	Commodore Brig-Gen Thura Thet Swe	Commander Taninthayi Naval Region Command	M
G53a	Commodore Myint Lwin	Commander Irrawaddy Naval Region	M

Air Force

#	Name	Identifying information (inc. function)	Sex (M/F)
G54a	Lt-Gen Myat Hein	Commander-in-Chief (Air)	M
G54b	Htwe Htwe Nyunt	Wife of Lt-Gen Myat Hein	F
G55a	Maj-Gen Khin Aung Myint	Chief of Staff (Air)	M

#	Name	Identifying information (inc. function)	Sex (M/F)
G56a	Brig-Gen Ye Chit Pe	Staff of Commander in Chief Air, Mingaladon	M
G57a	Brig-Gen Khin Maung Tin	Commandant of Shande Air Training School, Meiktila	M
G58a	Brig-Gen Zin Yaw	Commander Pathein Air Base, Chief of Staff (Air), Member of UMEHL Board	M
G58b	Khin Thiri	Wife of Brig-Gen Zin Yaw	F
G58c	Zin Mon Aye	Daughter of Brig-Gen Zin Yaw, d.o.b. 26.3.1985	F
G58d	Htet Aung	Son of Brig-Gen Zin Yaw, d.o.b. 9.7.1988	M

Light Infantry Divisions (LID)

#	Name	Identifying information (inc. function)	Sex (M/F)
G59a	Brig-Gen Than Htut	11 LID	M
G60a	Brig-Gen Tun Nay Lin	22 LID	M
G61a	Brig-Gen Kyaw Htoo Lwin	33 LID, Sagaing	M
G62a	Brig-Gen Taut Tun	44 LID	M
G63a	Brig-Gen Aye Khin	55 LID, Lalaw	M
G64a	Brig-Gen San Myint	66 LID, Pyi	M
G65a	Brig-Gen Tun Than	77 LID, Bago	M
G66a	Brig-Gen Aung Kyaw Hla	88 LID, Magwe	M
G67a	Brig-Gen Tin Oo Lwin	99 LID, Meiktila	M
G68a	Brig Gen Sein Win	101 LID, Pakokku	M
G69a	Col Than Han	LID 66	M
G70a	Lt-Col Htwe Hla	LID 66	M
G71a	Lt-Col Han Nyunt	LID 66	M
G72a	Col Ohn Myint	LID 77	M
G73a	Lt-Col Aung Kyaw Zaw	LID 77	M
G74a	Major Hla Phyoo	LID 77	M
G75a	Colonel Myat Thu	Tactical Commander 11th LID	M
G76a	Colonel Htein Lin	Tactical Commander 11th LID	M
G77a	Lt. Col. Tun Hla Aung	Tactical Commander 11th LID	M
G78a	Col. Aung Tun	Brigade 66	M
G79a	Capt. Thein Han	Brigade 66	M
G79b	Hnin Wutyi Aung	Wife of Capt. Thein Han	F
G80a	Lt. Col Mya Win	Tactical Commander 77th LID	M

#	Name	Identifying information (inc. function)	Sex (M/F)
G81a	Colonel Win Te	Tactical Commander 77th LID	M
G82a	Colonel Soe Htway	Tactical Commander 77th LID	M
G83a	Lt. Col. Tun Aye	Commander 702nd Light Infantry Battalion	M
G84a	Nyan Myint Kyaw	Commander Infantry Battalion 281 (Mongyang Shan State East)	M

Other Brigadier-Generals

#	Name	Identifying information (inc. function)	Sex (M/F)
G85a	Brig-Gen Htein Win	Taikkyi Station	M
G86a	Brig-Gen Khin Maung Htay	Meiktila Station Commander	M
G87a	Brig-Gen Kyaw Oo Lwin	Kalay Station Commander	M
G88a	Brig-Gen Khin Zaw Win	Khamaukgyi Station	M
G89a	Brig-Gen Kyaw Aung	Southern MR, Toungoo Station Commander	M
G90a	Brig-Gen Myint Hein	Military Operations Command -3, Mogaung Station	M
G91a	Brig-Gen Tin Ngwe	Ministry of Defence	M
G92a	Brig-Gen Myo Lwin	Military Operations Command -7, Pekon Station	M
G93a	Brig-Gen Myint Soe	Military Operations Command -5, Taungup Station	M
G94a	Brig-Gen Myint Aye	Military Operations Command -9, Kyauktaw Station	M
G95a	Brig-Gen Nyunt Hlaing	Military Operations Command -17, Mong Pan Station	M
G96a	Brig-Gen Ohn Myint	Mon State USDA CEC member	M
G97a	Brig-Gen Soe Nwe	Military Operations Command -21 Bhamo Station	M
G98a	Brig-Gen Than Tun	Kyaukpadaung Station Commander	M
G99a	Brig-Gen Than Tun Aung	Regional Operations Command-Sittwe	M
G100a	Brig-Gen Thet Naing	Aungban Station Commander	M
G101a	Brig-Gen Thein Hteik	Military Operations Command -13, Bokpyin Station	M
G102a	Brig-Gen Thura Myint Thein	Namhsan Tactical Operations Command now Managing Director of Myanmar Economic Corporation (MEC)	M
G103a	Brig-Gen Win Aung	Mong Hsat Station Commander	M
G104a	Brig-Gen Myo Tint	Officer on Special Duty Ministry of Transport	M
G105a	Brig-Gen Thura Sein Thaung	Officer on Special Duty Ministry for Social Welfare	M

#	Name	Identifying information (inc. function)	Sex (M/F)
G106a	Brig-Gen Phone Zaw Han	Mayor of Mandalay since Feb 2005 and Chairman of Mandalay City Development Committee, formerly commander of Kyaukme	M
G106b	Moe Thidar	Wife of Brig-Gen Phone Zaw Han	F
G107a	Brig-Gen Win Myint	Pyinmana Station Commander	M
G108a	Brig-Gen Kyaw Swe	Pyin Oo Lwin Station Commander	M
G109a	Brig-Gen Soe Win	Bahtoo Station Commander	M
G110a	Brig-Gen Thein Htay	Vice Chief of Military Weapons Production, Ministry of Defence	M
G111a	Brig-Gen Myint Soe	Rangoon Station Commander	M
G112a	Brig-Gen Myo Myint Thein	Commandant, Defence Services Hospital Pyin Oo Lwin	M
G113a	Brig-Gen Sein Myint	Chairman of Bago (Pegu) Division Peace and Development Council	M
G114a	Brig-Gen Hong Ngai (Ngaing)	Chairman of Chin State Peace and Development Council	M
G115a	Brig-Gen Win Myint	Chairman of Kayah State Peace and Development Council	M

H. MILITARY OFFICERS RUNNING PRISONS AND POLICE

#	Name	Identifying information (inc. function)	Sex (M/F)
H1a	Brig-Gen Khin Yi	DG Myanmar Police Force d.o.b. 29.12.1952	M
H1b	Khin May Soe	Wife of Brig-Gen Khin Yi	F
H2a	Zaw Win	Director General of the Prisons Dept. (Ministry of Home Affairs) since August 2004, previously Deputy DG Myanmar Police Force, and former Brig-Gen. Former military	M
H2b	Nwe Ni San	Wife of Zaw Win	F
H3a	Aung Saw Win	Director General, Bureau of Special Investigation	M
H4a	Police Brig-Gen Khin Maung Si	Chief of Police Headquarters	M
H5a	Lt-Col Tin Thaw	Commander of Government Technical Institute	M
H6a	Maung Maung Oo	Head of Military Security Affairs interrogation team at Insein Prison	M
H7a	Myo Aung	Director of Rangoon Detention Facilities	M
H8a	Police Brig-Gen Zaw Win	Deputy Director of Police	M
H9a	Police Lt. Col. Zaw Min Aung	Special Branch	M

I. UNION SOLIDARITY AND DEVELOPMENT ASSOCIATION (USDA)

(senior USDA office-holders who have not been included elsewhere)

#	Name	Identifying information (inc. function)	Sex (M/F)
I1a	Brig-Gen Aung Thein Lin a.k.a Aung Thein Lynn	Mayor of Yangon & Chairman of the Yangon City Development Committee (Secretary) and USDA Central Executive Committee member, d.o.b. 1952	M
I1b	Khin San Nwe	Wife of Brig-Gen Aung Thein Lin	F
I1c	Thidar Myo	Daughter of Brig-Gen Aung Thein Lin	F
I2a	Col Maung Par a.k.a. Maung Pa	Vice Mayor of Yangon City Development I (Member of the Central Executive I)	M
I2b	Khin Nyunt Myaing	Wife of Col Maung Par	F
I2c	Naing Win Par	Son of Col Maung Par	M
I3a	Nyan Tun Aung	Member of the Central Executive Committee	M
I4a	Aye Myint	Member of Rangoon Executive Committee	M
I5a	Tin Hlaing	Member of Rangoon Executive Committee	M
I6a	Soe Nyunt	Staff Officer Yangon East	M
I7a	Chit Ko Ko	Chairman of the Peace and Development Council in Mingala Taungnyunt Township	M
I8a	Soe Hlaing Oo	Secretary of the Peace and Development Council in Mingala Taungnyunt Township	M
I9a	Captain Kan Win	Head of Mingala Taungnyunt Township Police Force	M
I10a	That Zin Thein	Head of Mingala Taungnyunt Development Affairs Committee	M
I11a	Khin Maung Myint	Head of Mingala Taungnyunt Immigration and Population Dept	M
I12a	Zaw Lin	Secretary Mingala Taungnyunt Township USDA	M
I13a	Win Hlaing	Joint Secretary Mingala Taungnyunt Township USDA	M
I14a	San San Kyaw	Staff Officer of the Information and Public Relations Department of the Ministry of Information in Mingala Taungnyunt Township	F
I15a	Lt-Gen Myint Hlaing	Ministry of Defence and USDA Member	M

J. PERSONS WHO BENEFIT FROM GOVERNMENT ECONOMIC POLICIES AND OTHER PERSONS ASSOCIATED WITH THE REGIME

#	Name	Identifying information (inc. company)	Sex (M/F)
J1a	Tay Za	Managing Director, Htoo Trading Co; Htoo Construction Co., d.o.b 18.7.1964; ID card MYGN 006415. Owner of Yangon United Football Club. Father: Myint Swe (6.11.1924) Mother: Ohn (12.8.1934)	M

#	Name	Identifying information (inc. company)	Sex (M/F)
J1b	Thidar Zaw	Wife of Tay Za; d.o.b. 24.2.1964, ID card KMYT 006865. Parents: Zaw Nyunt (deceased), Htoo (deceased)	F
J1c	Pye Phyo Tay Za	Son of Tay Za , d.o.b. 29.1.1987	M
J1d	Ohn	Mother of Tay Za, d.o.b. 12.8.1934	F
J2a	Thiha	Brother of Tay Za (J1a), d.o.b. 24.6.1960. Director Htoo Trading. Distributor of London cigarettes (Myawaddy Trading)	M
J2b	Shwe Shwe Lin	Wife of Thiha	F
J3a	Aung Ko Win a.k.a. Saya Kyaung	Kanbawza Bank also Myanmar Billion Group, Nilayoma Co. Ltd, East Yoma Co. Ltd and agent for London Ciga- rettes in Shan and Kayah States and owner of Kanbawza Football Club	M
J3b	Nan Than Htwe a.k.a. Nan Than Htay	Wife of Aung Ko Win	F
J3c	Nang Lang Kham a.k.a. Nan Lan Khan	Daughter of Aung Ko Win , d.o.b. 1.6.1988	F
J4a	Tun Myint Naing a.k.a. Steven Law, Htun Myint Naing, Htoon Myint Naing	Asia World Co., d.o.b. 15.5.1958 or 27.8.1960 owner of Magway Football Club	M
J4b	Ng Seng Hong, a.k.a. Seng Hong, Cecilia Ng or Ng Sor Hon	Wife of Tun Myint Naing. Chief Executive of Golden Aaron Pte Ltd (Singapore)	F
J4c	Lo Hsing-han	Father of Tun Myint Naing a.k.a. Steven Law of Asia World Co., d.o.b. 1938 or 1935	M
J5a	Khin Shwe	Zaykabar Co, d.o.b. 21.1.1952. See also A3f	M
J5b	San San Kywe	Wife of Khin Shwe	F
J5c	Zay Thiha	Son of Khin Shwe, d.o.b. 1.1.1977, Managing Director of Zaykabar Co. Ltd	M
J5d	Nandar Hlaing	Wife of Zay Thiha	F
J6a	Htay Myint	Yuzana Co., d.o.b. 6.2.1955, also Yuzana Supermarket, Yuzana Hotel, Yuzana Oil Palm Project and owner of Southern Myanmar United Football Club	M
J6b	Aye Aye Maw	Wife of Htay Myint, d.o.b. 17.11.1957	F
J6c	Win Myint	Brother of Htay Myint, d.o.b. 29.5.1952 Director Yuzana Co.	M
J6d	Lay Myint	Brother of Htay Myint, d.o.b. 6.2.1955 Director Yuzana Co.	M
J6e	Kyin Toe	Brother of Htay Myint, d.o.b. 29.4.1957 Director Yuzana Co.	M
J6f	Zar Chi Htay	Daughter of Htay Myint, Director of Yuzana Co., d.o.b. 17.2.1981	F
J6g	Khin Htay Lin	Director, Yuzana Co., d.o.b. 14.4.1969	M

#	Name	Identifying information (inc. company)	Sex (M/F)
J7a	Kyaw Win	Shwe Thanlwin Trading Co. (sole distributors of Thaton Tires under Ministry of Industry 2)	M
J7b	Nan Mauk Loung Sai a.k.a. Nang Mauk Lao Hsai	Wife of Kyaw Win	F
J8a	Maj-Gen (Retired) Nyunt Tin	Former Minister of Agriculture & Irrigation, retired September 2004	M
J8b	Khin Myo Oo	Wife of Maj-Gen (Retired) Nyunt Tin	F
J8c	Kyaw Myo Nyunt	Son of Maj-Gen (Retired) Nyunt Tin	M
J8d	Thu Thu Ei Han	Daughter of Maj-Gen (Retired) Nyunt Tin	F
J9a	Than Than Nwe	Wife of Gen Soe Win, former Prime Minister (deceased)	F
J9b	Nay Soe	Son of Gen Soe Win, former Prime Minister (deceased)	M
J9c	Theint Theint Soe	Daughter of Gen Soe Win, former Prime Minister (deceased)	F
J9d	Sabai Myaing	Wife of Nay Soe	F
J9e	Htin Htut	Husband of Theint Theint Soe	M
J10a	Maung Maung Myint	Managing Director of Myangon Myint Co. Ltd	M
J11a	Maung Ko	Manager, Htarwara mining company	M
J12a	Zaw Zaw a.k.a. Phoe Zaw	Managing Director of Max Myanmar, d.o.b. 22.10.1966	M
J12b	Htay Htay Khine (Khaing)	Wife of Zaw Zaw	F
J13a	Chit Khaing aka Chit Khine	Managing Director Eden group of companies and owner of Delta United Football Club	M
J14a	Maung Weik	Maung Weik & Co Ltd	M
J15a	Aung Htwe	Managing Director, Golden Flower Construction Company	M
J16a	Kyaw Thein	Director and Partner of Htoo Trading, d.o.b. 25.10.1947	M
J17a	Kyaw Myint	Owner, Golden Flower Co. Ltd., 214 Wardan Street, Lamadaw, Yangon	M
J18a	Nay Win Tun	Ruby Dragon Jade and Gems Co. Ltd	M
J19a	Win Myint	President of the Union of Myanmar Federation of Chambers of Commerce and Industry (UMFCCI) and owner of Shwe Nagar Min Co and owner of Zeya Shwe Myay Football Club	M
J20a	Eike (Eik) Htun a.k.a. Ayke Htun a.k.a. Aik Tun a.k.a. Patric Linn	d.o.b. 21.10.1948, p.o.b. Mongkai Managing Director of Olympic Construction Co. and Shwe Taung Development Co. Ltd (584, 5F High Tech Tower Corner 7th Street and Strand Road, Lanmadaw Township, Yangon) and Asia Wealth Bank	M
J20b	Sandar Tun	Daughter of Eike Htun d.o.b. 23.8.1974 Yangon	F

#	Name	Identifying information (inc. company)	Sex (M/F)
J20c	Aung Zaw Naing	Son of Eike Htun	M
J20d	Mi Mi Khaing	Son of Eike Htun	M
J21a	"Dagon" Win Aung	Dagon International Co. Ltd, d.o.b. 30.9.1953, p.o.b. Pyay, ID Card No: PRE 127435	M
J21b	Moe Mya Mya	Wife of "Dagon" Win Aung, d.o.b. 28.8.1958, ID Card: B/ RGN 021998	F
J21c	Ei Hnin Pwint aka Christabelle Aung	Daughter of "Dagon" Win Aung, d.o.b. 22.2.1981, Director of Palm Beach Resort Ngwe Saung	F
J21d	Thurane Aung aka Christopher Aung, Thurein Aung	Son of "Dagon" Win Aung, d.o.b 23.7.1982	M
J21e	Ei Hnin Khine aka Christina Aung	Daughter of "Dagon" Win Aung, d.o.b 18.12.1983, currently in the UK	F
J22a	Aung Myat a.k.a. Aung Myint	Mother Trading	M
J23a	Win Lwin	Kyaw Tha Company	M
J24a	Dr. Sai Sam Tun	Loi Hein Co. working in collaboration with Ministry of Industry No. 1 owner of Yadanabon Football Club)	M
J25a	San San Yee (Yi)	Super One Group of Companies	F
J26a	Aung Zaw Ye Myint	Owner of Yetagun Construction Co	M

Members of the Judiciary

#	Name	Identifying information (inc. company)	Sex (M/F)
J27a	Aung Toe	Chief Justice	M
J28a	Aye Maung	Attorney General	M
J29a	Thaung Nyunt	Legal Adviser	M
J30a	Dr Tun Shin	d.o.b. 2.10.1948, Deputy Attorney General	M
J31a	Tun Tun Oo a.k.a. Htun Htun Oo	Deputy Attorney General	M
J32a	Tun Tun Oo	Deputy Chief Justice	M
J33a	Thein Soe	Deputy Chief Justice	M
J34a	Tin Aung Aye	Supreme Court Judge	M
J35a	Tin Aye	Supreme Court Judge	M
J36a	Myint Thein	Supreme Court Judge	M
J37a	Chit Lwin	Supreme Court Judge	M
J38a	Judge Thaung Lwin	Kyauktada Township Court	M

#	Name	Identifying information (inc. company)	Sex (M/F)
J39a	Thaung Nyunt	Judge, Northern District Court; Also National Convention Convening Work Committee Secretary	M
J40a	Nyi Nyi Soe	Judge, Western District Court Address: No. (39) Ni-Gyaw-Da Street, (corner of Sake-Ta-Thu-Kha Street), Kyar-Kwet-Thit Ward, Tamway Township, Rangoon, Burma	M
J41a	Myint Kyine	Government Prosecutor, Northern District Court	M

K. MILITARY OWNED ENTERPRISES

Individuals

#	Name	Identifying information (inc. company)	Sex (M/F)
K1a	Maj-Gen (Retired) Win Hlaing	Formerly Managing Director, Union of Myanmar Economic Holdings, Myawaddy Bank	M
K1b	Ma Ngeh	Daughter of Maj-Gen (Retired) Win Hlaing	F
K1c	Zaw Win Naing	Managing Director of Kambawza (Kanbawza) Bank. Husband of Ma Ngeh (K1b), and nephew of Aung Ko Win (J3a)	M
K1d	Win Htway Hlaing	Son of Maj-Gen (Retired) Win Hlaing, representative for KESCO company	M
K2a	Col Myo Myint	Managing Director Union of Myanmar Economic Holding LTD (UMEHL)	M
K2b	Khin Htay Htay	Wife of Col Myo Myint	F
K3a	Col Ye Htut	Myanmar Economic Corporation	M
K4a	Col Myint Aung	Managing Director at Myawaddy Trading Co. d.o.b. 11.8.1949	M
K4b	Nu Nu Yee	Wife of Myint Aung, lab technician, d.o.b. 11.11.1954	F
K4c	Thiha Aung	Son of Myint Aung, employed by Schlumberger, d.o.b. 11.6.1982	M
K4d	Nay Linn Aung	Son of Myint Aung, seaman, d.o.b. 11.4.1981	M
K5a	Col Myo Myint	Managing Director at Bandoola Transportation Co.	M
K6a	Col (Retired) Thant Zin	Managing Director at Myanmar Land and Development	M
K7a	Lt-Col (Retired) Maung Maung Aye	Managing Director – Union of Myanmar Economic Holdings Ltd (UMEHL)	M
K8a	Col Aung San	Managing Director at Hsinmin Cement Plant Construction Project	M
K9a	Maj-Gen Maung Nyo	Board of Directors, Union of Myanmar economic holdings Ltd	M

#	Name	Identifying information (inc. company)	Sex (M/F)
K10a	Maj-Gen Kyaw Win	Board of Directors, Union of Myanmar economic holdings Ltd	M
K11a	Brig-Gen Khin Aung Myint	Board of Directors, Union of Myanmar economic holdings Ltd	M
K12a	Col Nyun Tun (marines)	Board of Directors, Union of Myanmar economic holdings Ltd	M
K13a	Col Thein Htay (Retired)	Board of Directors, Union of Myanmar economic holdings Ltd	M
K14a	Lt-Col Chit Swe (Retired)	Board of Directors, Union of Myanmar economic holdings Ltd	M
K15a	Myo Nyunt	Board of Directors, Union of Myanmar economic holdings Ltd	M
K16a	Myint Kyine	Board of Directors, Union of Myanmar economic holdings Ltd	M
K17a	Lt-Col Nay Wynn	Departmental Managing Director, Myawaddy trading	M

Government financial institutions

#	Name	Identifying information (inc. company)	Sex (M/F)
K18a	Than Nyein	Governor of Central Bank of Myanmar (under Ministry of Finance)	M
K19a	Maung Maung Win	Vice Governor of Central Bank of Myanmar (under Ministry of Finance)	M
K20a	Mya Than	Acting Managing Director of Myanmar Investment and Commercial Bank (MICB)	M
K21a	Soe Min	General Manager of MICB	M

Enterprises

#	Name	Address	Director/Owner/additional information	Date of listing
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I. UNION OF MYANMAR ECONOMIC HOLDINGS LTD. (UMEHL) aka UNION OF MYANMA ECONOMIC HOLDINGS LTD.

K22a	Union Of Myanmar Economic Holdings Ltd. aka Union Of Myanma Economic Holdings Ltd. (UMEHL)	189/191 Mahabandoola Road Corner of 50th Street Yangon	Chairman: Lt-Gen Tin Aye, Managing Director: Maj-Gen Win Than	13.8.2009
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A. MANUFACTURING

K22b	Myanmar Ruby Enterprise aka Mayanma Ruby Enterprise	24/26, 2ND fl, Sule Pagoda Road, Yangon (Midway Bank Building)		13.8.2009
K22c	Myanmar Imperial Jade Co. Ltd aka Myanma Imperial Jade Co.	Ltd 24/26, 2nd fl, Sule Pagoda Road, Yangon (Midway Bank Building)		13.8.2009

#	Name	Address	Director/Owner/additional information	Date of listing
K22d	Myanmar Rubber Wood Co. Ltd. aka Myanma Rubber Wood Co. Ltd.			13.8.2009
K22e	Myanmar Pineapple Juice Production aka Myanma Pineapple Juice Production			13.8.2009
K22f	Myawaddy Clean Drinking Water Service	4/A, No. 3 Main Road, Mingalardon Tsp Yangon		13.8.2009
K22g	Sin Min (King Elephants) Cement Factory (Kyaukse)	189/191 Mahabandoola Road Corner of 50th Street, Yangon	Col Maung Maung Aye, Managing Director	13.8.2009
K22h	Tailoring Shop Service			13.8.2009
K22i	Ngwe Pin Le (Silver Sea) Livestock Breeding And Fishery Co.	1093, Shwe Taung Gyar Street, Industrial Zone li, Ward 63, South Dagon Tsp, Yangon		13.8.2009
K22j	Granite Tile Factory (Kyaikto)	189/191 Mahabandoola Road, Corner of 50th Street Yangon		13.8.2009
K22k	Soap Factory (Paung)	189/191 Mahabandoola Road, Corner of 50th Street Yangon	Col Myint Aung, Managing Director	13.8.2009

B. TRADING

K22l	Myawaddy Trading Ltd	189/191 Mahabandoola Road, Corner of 50th Street Yangon	Col Myint Aung, Managing Director	13.8.2009
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C. SERVICES

K22m	Bandoola Transportation Co. Ltd.	399, Thiri Mingalar Road, Insein Tsp. Yangon and/or Parami Road, South Okkalapa, Yangon	Col. Myo Myint, Managing Director	13.8.2009
K22n	Myawaddy Travel Services	24-26 Sule Pagoda Road, Yangon		13.8.2009
K22o	Nawaday Hotel And Travel Services	335/357, Bogyoke Aung San Road, Pabedan Tsp. Yangon	Col. (Retired) Maung Thaug, Managing Director	13.8.2009
K22p	Myawaddy Agriculture Services	189/191 Mahabandoola Road, Corner of 50th Street, Yangon		13.8.2009
K22q	Myanmar Ar (Power) Construction Services aka Myanma Ar (Power) Construction Services	189/191 Mahabandoola Road, Corner of 50th Street, Yangon		13.8.2009

JOINT VENTURES

A. MANUFACTURING

#	Name	Address	Director/Owner/additional information	Date of listing
K22r	Myanmar Segal International Ltd. aka Myanma Segal International Ltd.	Pyay Road, Pyinmabin Industrial Zone, Mingalardon Tsp Yangon	Be Aung, Manager	13.8.2009

#	Name	Address	Director/Owner/additional information	Date of listing
K22s	Myanmar Daewoo International aka Myanma Daewoo International	Pyay Road, Pyinmabin Industrial Zone, Mingalardon Tsp Yangon		13.8.2009
K22t	Rothman Of Pall Mall Myanmar Private Ltd. aka Rothman Of Pall Mall Myanma Private Ltd.	No. 38, Virginia Park, No. 3, Trunk Road, Pyinmabin Industrial Zone, Yangon	CEO Lai Wei Chin	13.8.2009
K22u	Myanmar Brewery Ltd. aka Myanma Brewery Ltd.	No 45, No 3, Trunk Road Pyinmabin Industrial Zone, Mingalardon Tsp, Yangon	Lt-Col (Retired) Ne Win, Chairman a.k.a. Nay Win	13.8.2009
K22v	Myanmar Posco Steel Co. Ltd. aka Myanma Posco Steel Co. Ltd.	Plot 22, No. 3, Trunk Road, Pyinmabin Industrial Zone, Mingalardon Tsp Yangon		13.8.2009
K22w	Myanmar Nouveau Steel Co. Ltd. aka Myanma Nouveau Steel Co. Ltd.	No. 3, Trunk Road, Pyinmabin Industrial Zone, Mingalardon Tsp Yangon		13.8.2009
K22x	Berger Paint Manufacturing Co. Ltd.	Plot No. 34/A, Pyinmabin Industrial Zone, Mingalardon Tsp Yangon		13.8.2009
K22y	The First Automotive Co. Ltd.	Plot No. 47, Pyinmabin Industrial Zone, Mingalardon Tsp, Yangon	U Aye Cho and/or Lt-Col Tun Myint, Managing Director	13.8.2009

B. SERVICES

K22z	National Development Corp.	3/A, Thamthumar Street, 7 Mile, Mayangone Tsp, Yangon	Dr. Khin Shwe, Chairman	13.8.2009
K22aa	Hantha Waddy Golf Resort and Myodaw (City) Club Ltd.	No 1, Konemyinthta Street, 7 Mile, Mayangone Tsp, Yangon and Thiri Mingalar Road, Insein Tsp, Yangon		13.8.2009

II. MYANMAR ECONOMIC CORPORATION (MEC) aka MYANMA ECONOMIC CORPORATION (MEC)

K23a	Myanmar Economic Corporation (MEC) aka Myanma Economic Corporation (MEC)	Shwedagon Pagoda Road Dagon Tsp, Yangon	Chairman, Lt-Gen Tin Aung Myint Oo, Col Ye Htut or Brig-Gen Kyaw Win, Managing Director: Brig-Gen (Retd) Thura Myint Thein	13.8.2009
K23b	Myaing Galay (Rhino Brand Cement Factory)	Factories Dept. Mec Head Office, Shwedagon Pagoda Road, Dagon Tsp, Yangon	Col Khin Maung Soe	13.8.2009
K23c	Dagon Brewery	555/B, No 4, Highway Road, Hlaw Gar Ward, Shwe Pyi Thar Tsp, Yangon		13.8.2009
K23d	Mec Steel Mills (Hmaw Bi/Pyi/ Ywama)	Factories Dept. Mec Head Office, Shwedagon Pagoda Road, Dagon Tsp, Yangon	Col Khin Maung Soe	13.8.2009

#	Name	Address	Director/Owner/additional information	Date of listing
K23e	Mec Sugar Mill	Kant Balu		13.8.2009
K23f	Mec Oxygen and Gases Factory	Mindama Road, Mingalardon Tsp, Yangon		13.8.2009
K23g	Mec Marble Mine	Pyinmanar		13.8.2009
K23h	Mec Marble Tiles Factory	Loikaw		13.8.2009
K23i	Mec Myanmar Cable Wire Factory aka Mec Myanma Cable Wire Factory	No 48, Bamaw A Twin Wun Road, Zone (4), Hlaing Thar Yar Industrial Zone, Yangon		13.8.2009
K23j	Mec Ship Breaking Service	Thilawar, Than Nyin Tsp		13.8.2009
K23k	Mec Disposable Syringe Factory	Factories Dept, Mec Head Office, Shwedagon Pagoda Road, Dagon Tsp, Yangon		13.8.2009
K23l	Gypsum Mine	Thibaw		13.8.2009

III. GOVERNMENT-OWNED COMMERCIAL ENTERPRISES

K24a	Myanma Salt and Marine Chemicals Enterprise aka Myanmar Salt and Marine Chemicals Enterprise	Thakayta Township, Yangon	Managing Director: Win Htain (Ministry of Mines)	13.8.2009
K25a	Myanmar Defence Products Industry aka Myanma Defence Products Industry	Ngyaung Chay Dauk	(Ministry of Defence)	13.8.2009
K26a	Myanma Timber Enterprise aka Myanmar Timber Enterprise	Myanma Timber Enterprise Head Office, Ahlone, Yangon and 504-506, Merchant Road, Kyauktada, Yangon	Managing Director: Win Tun	13.8.2009
K27a	Myanmar Gems Enterprise aka Myanma Gems Enterprise	(Ministry of Mines), Head Office Building 19, Naypyitaw	Managing Director: Thein Swe	13.8.2009
K28a	Myanmar Pearls Enterprise aka Myanma Pearls Enterprise	(Ministry of Mines), Head Office Building 19, Naypyitaw	Managing Director: Maung Toe	13.8.2009
K29a	Myanmar Mining Enterprise Number 1 aka Myanma Mining Enterprise Number 1	(Ministry of Mines), Head Office Building 19, Naypyitaw	Managing Director: Saw Lwin	13.8.2009
K30a	Myanmar Mining Enterprise Number 2 aka Myanma Mining Enterprise Number 2	(Ministry of Mines), Head Office Building 19, Naypyitaw	Managing Director: Hla Theing	13.8.2009
K31a	Myanmar Mining Enterprise Number 3 aka Myanma Mining Enterprise Number 1	(Ministry of Mines), Head Office Building 19, Naypyitaw	Managing Director: San Tun	13.8.2009

#	Name	Address	Director/Owner/additional information	Date of listing
K32a	Myanma Machine Tool and Electrical Industries (MTEI) aka Myanmar Machine Tool and Electrical Industries (MTEI)	Block No. (12), Parami Road, Hlaing Township Yangon, Myanmar Telephone: 095-1-660437, 662324, 650822	Managing Director: Kyaw Win Director: Win Tint	13.8.2009
K33a	Myanmar Paper & Chemical Industries aka Myanma Paper & Chemical Industries		Managing Director: Nyunt Aung	13.8.2009
K34a	Myanma General and Maintenance Industries aka Myanmar General and Maintenance Industries		Managing Director: Aye Mauk	13.8.2009
K35a	Road Transport Enterprise	(Ministry of Transport)	Managing Director: Thein Swe	13.8.2009
K36a	Inland Water Transport	No.50, Pansodan Street, Kyauktada Township, Yangon, Union of Myanmar	Managing Director: Soe Tint	13.8.2009
K37a	Myanma Shipyards, aka Myanmar Shipyards, Sinmalike	Bayintnaung Road, Kamayut Township Yangon	Managing Director: Kyi Soe	13.8.2009
K38a	Myanma Five Star Line, aka Myanmar Five Star Line	132-136, Theinbyu Road, P.O. Box,1221,Yangon	Managing Director: Maung Maung Nyein	13.8.2009
K39a	Myanma Automobile and Diesel Engine Industries aka Myanmar Automobile and Diesel Engine Industries	56, Kaba Aye Pagoda Road, Yankin Township, Yangon	Managing Director: Hla Myint Thein	13.8.2009
K40a	Myanmar Infotech aka Myanma Infotech		(Ministry of Post and Telecommunications)	13.8.2009
K41a	Myanma Industrial Construction Services aka Myanmar Industrial Construction Services	No. (1), Thitsa Road, Yankin Township, Yangon, Myanmar	Managing Director: Soe Win	13.8.2009
K42a	Myanmar Machinery and Electric Appliances Enterprise aka Myanma Machinery and Electric Appliances Enterprise	Hlaing Township, Yangon		13.8.2009

IV. STATE-OWNED MEDIA COMPANIES INVOLVED IN PROMOTING THE REGIME'S POLICIES AND PROPAGANDA

K43a	Myanmar News and Periodicals Enterprise aka Myanma News and Periodicals Enterprise	212 Theinbyu Road, Botahtaung Township, Yangon (tel: +95-1-200810, +95-1-200809)	Managing Director: Soe Win (wife: Than Than Aye, member of MWAF)	13.8.2009
K44a	Myanmar Radio and Television (MRTV) aka Myanma Radio and Television (MRTV)	Pyay Road, Kamayut Township, Yangon (tel: +95-1-527122, +95-1-527119)	Director General: Khin Maung Htay (wife: Nwe New, member of MWAF)	13.8.2009

#	Name	Address	Director/Owner/additional information	Date of listing
K45a	Myawaddy Television, Tatmadaw Telecasting Unit	Hmawbi Township, Yangon (tel: +95-1-600294)		13.8.2009
K46a	Myanma Motion Picture Enterprise, aka Myanmar Motion Picture Enterprise		Managing Director: Aung Myo Myint (wife: Malar Win, member of MWAF)	13.8.2009'

ANNEX II

ANNEX VII

List of enterprises owned or controlled by the Government of Burma/Myanmar or its members or persons associated with them, referred to in Article 15

Name	Address	Director/Owner/additional information	Date of listing
I. UNION OF MYANMAR ECONOMIC HOLDING LTD. (UMEHL)			
SERVICES			
Myawaddy Bank Ltd	24-26 Sule Pagoda Road, Yangon	Brig-Gen Win Hlaing (K1a, Annex II) and U Tun Kyi, Managing Directors	25.10.2004
II. MYANMAR ECONOMIC CORPORATION (MEC)			
Innwa Bank	554-556, Merchant Street, Corner of 35th Street, Kyauktada Tsp, Yangon	U Yin Sein, General Manager	25.10.2004
III. GOVERNMENT OWNED COMMERCIAL ENTERPRISES			
1. Myanma Electric Power Enterprise		(Ministry of Electric Power 2) Managing Director: Dr. San Oo a.k.a. Sann Oo	29.4.2008
2. Electric Power Distribution Enterprise		(Ministry of Electric Power 2), Managing Director: Tin Aung	27.4.2009
3. Myanma Agricultural Produce Trading		Managing Director: Kyaw Htoo (Ministry of Commerce)	29.4.2008
4. Myanmar Tyre and Rubber Industries	No. 30, Kaba Aye Pagoda Road, Mayangone Township, Yangon, Myanmar	(Ministry of Industry 2), Managing Director: Oo Zune	29.4.2008
5. Co-Operative Import Export Enterprise		(Ministry of Co-Operatives), Managing Director: Hla Moe	29.4.2008
IV. OTHERS			
1. Htoo Trading Co	5 Pyay Road, Hlaing Township, Yangon	Tay Za (J1a, Annex II)	10.3.2008
2. Htoo Group of Companies	5 Pyay Road, Hlaing Township Yangon		(*)
3. Htoo Transportation Services		Tay Za	10.3.2008
4. Htoo Furniture, a.k.a. Htoo Wood Products, a.k.a. Htoo Wood based Industry, a.k.a. Htoo Wood	21 Thukha Waddy Rd, Yankin Township, Yangon And 5 Pyay Road, Hlaing Township Yangon	Tay Za	29.4.2008
5. Treasure Hotels and Resorts (including Myanmar Treasure Resort, Ngwe Saung; Myanmar Treasure Resort, Bagan; Myanmar Treasure Resort, Inle;	No. 41, Shwe Taung Gyar Street, Bahan Township, Yangon	Tay Za	10.3.2008

Name	Address	Director/Owner/additional information	Date of listing
6. Aureum Palace Hotels And Resorts (including Aureum Palace Hotel and Resort, Ngapali; Aureum Hotel-Resort, Naypyitaw; Aureum Palace Hotel and Resort, Bagan; Aureum Palace Hotel and Resort, Pyin Oo Lwin; Aureum Resort and Spa, Ngwe Saung)	No. 41, Shwe Taung Gyar Street, Bahan Township, Yangon	Tay Za	10.3.2008
7. Malikha Lodge, Putao; Popa Mountain Resort; Kandawgyi Hill Resort, Pyin Oo Lwin	No 41 Shwe Taung Gyar Street, bahan Township, Yangon	Tay Za	(*)
8. Espace Avenir	523, Pyay Road Kamayut Township, Yangon	Tay Za	(*)
9. Yangon United Football Club	No. 718, Ywar Ma Kyaung Street, One Ward, Hlaing Township Yangon, Myanmar	Tay Za	(*)
10. Air Bagan	No. 56, Shwe Taung Gyar Street, Bahan Township, Yangon		10.3.2008
11. Myanmar Avia Export		Tay Za	10.3.2008
12. Pavo Aircraft Leasing PTE Ltd aka Pavo Trading Pte Ltd.		Tay Za	29.4.2008
13. Kanbawza Bank	Head Office: 615/1 Pyay Road, Kamaryut, Township, Yangon	Aung Ko Win (J3a, Annex II)	10.3.2008
14. Zaykabar Co	3 Main Road, Mingalardon Garden City, Mingalardon, Yangon	Chairman: Khin Shwe (J5a, Annex II), Managing Direction: Zay Thiha (J5c, Annex II)	10.3.2008
15. Shwe Thanlwin Trading Co	262 Pazundaung Main Road Lower, Pazundaung, Yangon	Kyaw Win (J7a, Annex II)	10.3.2008
16. Max Myanmar Co. Ltd (including Hotel Max, Chaungtha Beach; Royal Kumudra Hotel, Naypyitaw; Max Myanmar Construction Co. Ltd)	1 Ywama Curve, Bayint Naung Road, Blk (2), Hlaing Township, Yangon	U Zaw Zaw a.k.a. Phoe Zaw (J12a, Annex II), Daw Htay Htay Khaing (J12b, Annex II), wife of Zaw Zaw. Senior Executive Officer, U Than Zaw	10.3.2008
17. Hsinmin Cement Plant Construction Project	Union of Myanmar Economic Holdings Ltd, Kyaukse	Col Aung San (K8a, Annex II)	10.3.2008
18. Ayer Shwe Wa (Wah, War)	5 Pyay Road, Hlaing Township, Yangon	Aung Thet Mann a.k.a. Shwe Mann Ko Ko (A3c, Annex II) and Tay Za	10.3.2008
19. Myanmar Land And Development		Col (Retired) Thant Zin (K6a, Annex II)	10.3.2008
20. Eden Group of Companies	30-31 Shwe Padauk Yeikmon Bayint Naung Road Kamayut Tsp Yangon	Chit Khaing a.k.a. Chit Khine (J13a, Annex II)	10.3.2008

Name	Address	Director/Owner/additional information	Date of listing
21. Eden Hotels and Resorts (including Marina Residence, Kaba Aye Pagoda Road, Yangon; The Tingaha Hotel, Naypyitaw; Aye Thar Yar Golf Resort, Taunggyi; Signature Restaurant and Garden Café Bistro, Yangon; Eden BBB Restaurant, Bagan)	Unit 107, Marina Residence Kaba Aye Pagoda Road Yangon	Managing Director: Chit Khaing a.k.a. Chit Khine (J13a, Annex II)	(*)
22. Golden Flower Co. Ltd	214 Wardan Street, Lamadaw, Yangon	Managing Director: Aung Htwe (J15a, Annex II), Owner: Kyaw Myint (J17a, Annex II)	10.3.2008
23. Maung Weik Et Co., Ltd.	334/344 2nd Floor, Anawratha Road, Bagan Bldg, Lamadaw, Yangon	Maung Weik (J14a, Annex II)	10.3.2008
24. National Development Company Ltd.	3/A Thathumar Rd, Cor of Waizayantar Road, Thingangyun, Yangon		10.3.2008
25. A1 Construction And Trading Co. Ltd	41 Nawady St, Alfa Hotel Building, Dagon, Yangon Tel: 00-95-1-241905/245323/254812 Fax: 00 95 1 252806 Email: aone@mptmail.net.mm	Managing Director: U Yan Win	10.3.2008
26. Asia World Co. Ltd	6062 Wardan Street, Bahosi Development, Lamadaw, Yangon And 61-62 Bahosi Development Housing, Wadan Street, Lanmadaw Township, Yangon	Tun Myint Naing a.k.a. Steven Law (J4a, Annex II)	10.3.2008
27. Subsidiaries of Asia World: Asia World Industries Asia Light Co. Ltd. Asia World Port Management Co. Ahlon Warves	61-62 Bahosi Development Housing, Wadan Street, Lanmadaw Township, Yangon	Chairman/Director: Tun Myint Naing a.k.a. Steven Law (J4a, Annex II)	29.4.2008
28. Leo Express Bus	23/25 Upper Pansodan Street, Aung San Stadium (East Wing), Mingalar Taungnyunt Township, Yangon	Chairman/Director: Tun Myint Naing a.k.a. Steven Law (J4a, Annex II)	(*)
29. Yuzana Co. Ltd	No 130 Yuzana Centre, Shwegondaing Road, Bahan Township, Yangon	Chairman/Director: Htay Myint (J6a, Annex II)	10.3.2008
30. Yuzana Construction	No 130 Yuzana Centre, Shwegondaing Road, Bahan Township, Yangon	Chairman/Director: Htay Myint (J6a, Annex II)	10.3.2008
31. Yuzana Hotels (including Yuzana Hotel, Yangon; Yuzana Garden Hotel, Yangon; Yuzana Resort Hotel, Ngwe Saung)	130, Shwegondine (Shwegondaing) Road Bahan Township Yangon	Chairman/Director: Htay Myint	(*)

Name	Address	Director/Owner/additional information	Date of listing
32. Myangonmyint Co (enterprise held by the USDA)			10.3.2008
33. Dagon International/Dagon Timber Ltd,	262-264 Pyay Road Dagon Centre Sanchaung Yangon	Directors: "Dagon" Win Aung (J21a, Annex II) and Daw Moe Mya Mya (J21b, Annex II)	29.4.2008
34. Palm Beach Resort	Ngwe Saung	Owned by Dagon International. Directors, "Dagon" Win Aung (J21a, Annex II), Daw Moe Mya Mya (J21b, Annex II) and Ei Hnin Pwint a.k.a. Chistabelle Aung (J21c, Annex II)	29.4.2008
35. IGE Co Ltd	No.27-B, Kaba Aye Pagoda Road, Bahan Township Yangon Tel: 95-1-558266 Fax: 95-1-555369 and No.H-11, Naypyitaw, Naypuitaw Tel: 95-67-41-4211	Directors Nay Aung (D15e, Annex II) and Pyi (Pye) Aung (D15g, Annex II) and Managing Director Win Kyaing	29.4.2008
36. Aung Yee Phyoo Co.		Owned by family of Aung Thaung (Ministry of Industry 1) (D15a, Annex II)	27.4.2009
37. Queen Star Computer Company		Owned by Nandar Aye (A2c, Annex II), daughter of Maung Aye	27.4.2009
38. Htay Co.		Owned by Maj-Gen Hla Htay Win (A9a, Annex II)	27.4.2009
39. Mother Trading and Construction	77/78,Wadan Street,Bahosi Ward, Lanmadaw, Yangon Tel: 95-1-21-0514 Email: mother.trade@mptmail.net.mm	Director Aung Myat a.k.a. Aung Myint (J22a, Annex II)	29.4.2008
40. Kyaw Tha Company and Kyaw Tha Construction Group	No. 98, 50th Street, Pazundaung Township, Yangon, Tel: 95-1-296733 Fax: 95-1-296914 E - mail: kyawtha.wl@mptmail.net.mm Website: http://www.kyawtha.com	Director: U Win Lwin (J23a, Annex II), Managing Director: Maung Aye	29.4.2008
41. Ye Ta Khun (Yetagun) Construction Group	Yuzana Plaza West, Tamwe Township Yangoon	Owner: Aung Zaw Ye Myint (J26a, Annex II) son of General Ye Myint (previously A9a)	29.4.2008

Name	Address	Director/Owner/additional information	Date of listing
42. J's Donuts	26-28 Lanmadaw Street Lanmadaw Tsp, Yangon Tel: 95-1-710242 Junction 8 Shopping Centre 8th Mile Mayangon Tsp, Yangon Tel: 95-1-650771 (2nd Floor.) Yuzana Plaza Banyar Dala Road Mingalar Taung Nyunt Tsp, Yangon Tel: 95-1-200747 173-175 Pansodan Street Kyauktada Tsp, Yangon Tel: 95-1-287525 381-383 Near Bogyoke Aung San Market Shwebontha Street Pabedan Tsp, Yangon Tel: 95-1-243178	Owner: Kyaing San Shwe(A1i, Annex II) son of Senior General Than Shwe (A1a, Annex II)	29.4.2008
43. Sun Tac or Sun Tec Suntac Int'l Trading Co. Ltd.	151 (B) Thiri Mingalar Lane Mayangon Township Yangon Tel: 01- 650021 654463	Owner: Sit Taing Aung, son of Aung Phone (former Minister of Forestry)	29.4.2008
44. (MMS) Min Min Soe Group of Companies	23-A, Inya Myaing Street, Bahan Tsp. Tel: 95-1-511098, 514262 E-mail: mms@mptmail.net.mm	Shareholder Kyaw Myo Nyunt (J8c, Annex II) son of Maj-Gen Nyunt Tin, Minister of Agriculture (Retired) (J8a, Annex II)	29.4.2008
45. Myanmar Information and Communication Technology a.k.a. Myanmar Infotech	MICT Park, Hlaing University Campus	Part Owner: Aung Soe Tha (D20e, Annex II)	29.4.2008
46. MNT (Myanmar New Tech- nology)		Owner: Yin Win Thu, Partner: Nandar Aye (A2c, Annex II)	29.4.2008
47. Forever Group	No (14 02/03), Olympic Tower I, Corner of Boaungkyaw Street and Mahabandoola Street Kyauktada Township. Yangon. Tel: 95-1-204013, 95-1-204107 email Address: forevergroup@mptmail.net.mm	Managing Director: Daw Khin Khin Lay Member of Board of Directors: Khin Maung Htay Senior Manager Kyaw Kyaw	29.4.2008

(*) OJ: Please insert date of adoption of the Decision.

COMMISSION REGULATION (EU) No 412/2010**of 11 May 2010****establishing the standard import values for determining the entry price of certain fruit and vegetables**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ⁽¹⁾,

Having regard to Commission Regulation (EC) No 1580/2007 of 21 December 2007 laying down implementing rules for Council Regulations (EC) No 2200/96, (EC) No 2201/96 and (EC) No 1182/2007 in the fruit and vegetable sector ⁽²⁾, and in particular Article 138(1) thereof,

Whereas:

Regulation (EC) No 1580/2007 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 XV, Part A thereto,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 138 of Regulation (EC) No 1580/2007 are fixed in the Annex hereto.

Article 2

This Regulation shall enter into force on 12 May 2010.

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

Done at Brussels, 11 May 2010.

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

Jean-Luc DEMARTY
*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 350, 31.12.2007, 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	MA	65,5
	TN	120,6
	TR	73,2
	ZZ	86,4
0707 00 05	EG	140,2
	MA	41,0
	MK	54,8
	TR	118,3
	ZZ	88,6
0709 90 70	TR	102,7
	ZZ	102,7
0805 10 20	EG	48,5
	IL	62,7
	MA	53,2
	TN	46,4
	TR	51,4
	US	67,7
	ZZ	55,0
0805 50 10	TR	68,2
	ZA	78,6
	ZZ	73,4
0808 10 80	AR	87,0
	BR	76,9
	CA	119,3
	CL	80,6
	CN	78,9
	CR	59,1
	MK	22,1
	NZ	113,0
	US	126,3
	UY	72,1
	ZA	86,3
	ZZ	83,8

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

DECISIONS

COMMISSION DECISION

of 9 March 2010

concerning the aid awarded for Farm Dairy Flevoland (C 45/08)

(notified under document C(2010) 1240)

(Only the Dutch text is authentic)

(2010/269/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union (TFEU) ⁽¹⁾, and in particular the first subparagraph of Article 108(2) thereof,

After having, in accordance with this article, invited the interested parties to present their observations and having regard to these observations,

Whereas:

I. Procedure

- (1) When examining a fact sheet sent in relation to an application for exemption based on Commission Regulation (EC) No 68/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to training aid ⁽²⁾, the Commission came across information regarding aid granted or to be granted to Farm Dairy Flevoland. By letter of 29 June 2004 (ref. AGR/16887), the Commission asked the Netherlands for information on this measure.
- (2) The Dutch authorities replied by letter of 28 November 2005, registered as received on 29 November 2005.
- (3) By letter of 22 May 2007 the Commission asked for further information; the Netherlands replied by letter of 22 June 2007, registered as received on 25 June 2007.
- (4) The measure was entered in the register of unnotified aid under number NN 97/05.

⁽¹⁾ As of 1 December 2009, Articles 87 and 88 of the EC Treaty have become Articles 107 and 108, respectively, of the TFEU. The two series of provisions are identical in substance. For the purposes of this decision, the references to Articles 107 and 108 of the TFEU should be understood as referring to Articles 87 and 88 respectively of the EC Treaty, where necessary.

⁽²⁾ OJ L 10, 13.1.2001, p. 20.

- (5) The Commission decision to initiate the formal investigation procedure was taken on 26 November 2008 and published in the *Official Journal of the European Union* ⁽³⁾. The Commission called on the other Member States and interested third parties to submit their comments on the aid in question.

- (6) The Netherlands sent their comments by letter dated 19 January 2009, registered on the same day.

- (7) Farm Dairy sent the Commission its observations as an interested third party by letter of 18 May 2009. Following a request for a deadline extension and in view of the particular circumstances expressed by Farm Dairy, supplementary annexes to the letter of 18 May 2009 were sent to the Commission by letter of 15 June 2009, registered on 18 June 2009. Those observations were sent to the Dutch authorities by letter of 24 June 2009. The Netherlands replied in turn by letter dated 17 July 2009, registered on the same day.

- (8) The Commission asked the Netherlands some additional questions by letter dated 18 September 2009. The latter asked, by letter dated 16 October 2009, for the deadline for replying to be extended to 18 November 2009. This extension was granted to them by letter dated 10 November 2009. The Netherlands provided additional information by letter of 23 November, registered on the same day.

II. Description

II.1. Background of the measure

- (9) Farm Dairy manufactures dairy products. It moved to its current location in Lelystad, Flevoland, which is a region classified as objective No 1. On 24 August 1998 Farm Dairy applied for investment aid pursuant to point 3.3 of the Flevoland Province SPD (Single Programming Document or 'Enig Programmeringsdocument'). The company intended to create both direct and indirect jobs in the region.

⁽³⁾ OJ C 87, 16.4.2009, p. 5.

- (10) On 23 September 1998, the Province gave a favourable opinion to this application for aid. In this decision, the Province based itself, *inter alia* on the favourable outlook in terms of job creation, environment, reduction of milk transport costs (up to then the milk produced in Flevoland was processed outside of Flevoland and even as far away as Belgium) and the company's prospects of profitability. Farm Dairy anticipated having contracts with the milk producers of Flevoland and agreements with a well-known supermarket chain, which would ensure the sale of the dairy products. Farm Dairy planned to handle 48 million kilos of milk a year.
- (11) The Province applied to the Dutch Ministry of Agriculture [Ministerie voor Landbouw, Natuur and Voedselkwaliteit — LNV] for co-financing and an assessment of the project. There seemed to have been a difference of opinions between the Province and the 'Directie Noordwest' of the Ministry of Agriculture concerning the application for co-financing, in particular with regard to the innovative character of the project. For this reason, IKC gave a second opinion. This second opinion, issued on 17 December 1998, noted the project's qualities with regard to employment, outlets and profitability. However, it concluded that the innovative character of the project was poor. The production process itself was not innovative, although it used the most advanced techniques, but the project contained market innovations. This second opinion took several criteria into consideration, such as the development of the region and the financial outlook for the project. In view of the fact that the project would be particularly beneficial at provincial level (and less at national level), the usual scale for distributing the co-financing of subsidies was revised downwards, which meant that the provincial quota share was increased.
- (12) In view of this position adopted by the Dutch Ministry of Agriculture, the Province issued a decision granting Farm Dairy a total amount of NLG 1 575 000 (EUR 715 909), informing Farm Dairy on 3 March 1999 of its intention to provide this grant. The grant was to be financed by contributions from the European Agricultural Guidance and Guarantee Fund (EAGGF), the central Government and the Province.
- (13) Following doubts concerning the possibilities of obtaining authorisation for the aid from the European Commission, the Dutch Ministry of Agriculture decided not to grant the public financing, informing the Province of this by letter of 14 September 1999.
- (14) DG Agriculture conducted an inspection and decided that the project could not be financed via the SPD, and that consequently the part of the financing to come from the EAGGF would not be granted. It informed the Province of this decision by letter of 25 June 1999.
- (15) The Province nevertheless decided to finance the project exclusively out of its own funds. Farm Dairy was informed of the final award and payment of the aid by letter of 20 November 2000.
- (16) On 23 February 2001 an informal meeting was held between DG Agriculture officials and representatives of Flevoland Province, at the latter's request. At this meeting the officials pointed out that the aid to Farm Dairy was not compatible with the common market and would have to be recovered or allocated to another project.
- (17) The Province decided to grant the aid in the form of compensation to Farm Dairy for the damage suffered as a result of the withdrawal of the decision granting the aid. The compensation was equal to the amount which Farm Dairy would have received if the aid had been authorised. The Province estimated that as the award decision did not provide for the possibility of the aid being withdrawn, it was bound by this decision and obliged to award the aid, or risk Farm Dairy taking legal action against it. The Province informed Farm Dairy of its proposal for compensation by letter dated 10 May 2001. Farm Dairy accepted this proposal by letter dated 21 May 2001.

II.2. Legal basis

- (18) Originally, the aid had been awarded under the SPD for Flevoland Province as aid for investment under point 3.3 of the SPD. Subsequently, and for the reasons explained above, the aid was granted as compensation for the losses suffered as a result of the decision to withdraw the granting of the aid.

II.3. Aid amount

- (19) The aid amounts to NLG 1 575 000 or EUR 715 909. This amount corresponds to 8,5 % of the amount of the total investments, namely NLG 18 597 000 or EUR 8 438 951.

II.4. Recipient

- (20) The beneficiary is Farm Dairy Holding B.V. situated in Lelystad. This is a company which produces dairy products (including yoghurts and other milk-based desserts).

II.5. Duration of the measure

- (21) The aid was awarded for the period from 1 October 1998 to 1 May 2000, corresponding to the start and end dates of the Farm Dairy project. The award decision as such was taken on 3 March 1999.

III. Points raised by the Commission in the context of initiating an investigation procedure

- (22) The Commission initiated the investigation procedure provided for under Article 108(2) of the TFEU because it had serious doubts as to the compatibility of this aid with the internal market.

- (23) In particular, the Commission has, in a preliminary fashion, examined the compatibility of the measures in question from the perspective of aid for investment and aid for compensation of damage.

- (24) In the case of the aid for investment, the Commission applied the rules applicable at the time of granting the aid, i.e. the guidelines for State aid in connection with investments in the processing and marketing of agricultural products⁽¹⁾ (hereinafter 'the guidelines'), given that it related to an investment. These guidelines exclude, in a general way, aid for investment in the sector of cow's milk and products of this milk, except in the case of one of the exceptions referred to in point 2.3 of the Annex to Commission Decision 94/173/EC of 22 March 1994 on the selection criteria to be adopted for investments for improving the processing and marketing conditions for agricultural and forestry products⁽²⁾. These exceptions include investments with a major innovative element. In this regard, in the decision to open the investigation procedure, the Commission concluded that there were not enough elements to be able to conclude that the aid in question met the conditions to benefit from one of the exceptions. Point 3 d) of the guidelines provides for the possibility of declaring certain aid compatible if it is eligible for co-financing. In the decision to open the procedure, the Commission concluded that this possibility could not be applied in the case in question, given that a letter from the Commission to the Netherlands dated 25 June 1999 refused all financing based on the SPD.

- (25) The Commission also examined the argument of the Dutch authorities, according to which the aid had been granted by way of compensation for damage suffered as a result of an error by the authorities in initially granting aid which had later turned out to be illegal and perhaps incompatible with the common market. The Commission concluded that the company which received the aid could not however have believed in good faith in the legitimacy of the aid if it had not been awarded in accordance with the procedure laid down. It

consequently expressed doubts that the compensation was an adequate justification allowing the conclusion that the measure in question did not constitute aid.

- (26) As the Dutch authorities did not advance any other legal basis, the Commission concluded that there were doubts as to the compatibility of the measures in question and considered that it could not be excluded that they constituted operating aid.

IV. Comments from third parties

- (27) First of all, Farm Dairy indicated its surprise at the publication of the decision to open the formal investigation procedure. Farm Dairy was convinced that the case had long since been closed. Farm Dairy then complained that it had not been able to exercise any influence on the correspondence between Flevoland Province and the Commission, not having been informed of the Commission's investigation until the formal investigation procedure was opened.

- (28) Farm Dairy's comments are subdivided into four parts: firstly, the general background of the measure and the recipient's legitimate faith; secondly, the application of the Flevoland SPD measures; thirdly, the assessment with regard to Decision 94/173/EC; and fourthly, the contesting of the application of compound interest in the event of a negative decision with recovery.

IV.1. General background of the measure

- (29) In the month of August 1998, Farm Dairy applied to Flevoland Province for subsidies under the 1994-1999 SPD. This SPD particularly emphasised the need to extend the possibilities concerning the processing and marketing of agricultural products in Flevoland Province. In this context, the Farm Dairy project seemed particularly relevant, as it intended to build an independent milk processing plant in Lelystad.

- (30) Farm Dairy reported a posteriori the positive results engendered by the construction of the Lelystad plant: emergence of competition on the Dutch dairy products market, dominated at the time by Friesland Coberco and Campina Melkunie; proximity of the milk producers; innovations (make-to-order system); introduction of 2-litre containers on the Dutch market; increase in employment in an 'objective 1' region; stimulation of economic growth in the region. At the time, Farm Dairy intended to develop a line of special and innovative products on the Dutch market.

⁽¹⁾ OJ C 29, 2.2.1996, p. 4.

⁽²⁾ OJ L 79, 23.3.1994, p. 29.

(31) Farm Dairy indicated that the application for subsidies had been assessed positively by the Province and by the Dutch Ministry of Agriculture (LNV) on the basis of an independent opinion from the IKC, which concluded that the project was innovative in part. An agreement had consequently been signed on 24 February 1999 between Flevoland Province and Farm Dairy, awarding a subsidy under measure 3.3 of the Flevoland SPD. Farm Dairy emphasises that it was only in 2001 that it was informed by Flevoland Province that the aid was not authorised under State aid rules. To avoid legal proceedings, the Province proposed paying compensation. Farm Dairy noted that the decision to open the investigation procedure mentions that the incompatibility of the aid was brought up only in the course of a conversation between the Province and the Commission. Yet, the Province had indicated to Farm Dairy that a Commission official had suggested that compensation could be paid. In view of these elements, Farm Dairy indicates that it could have legitimate faith in the fact that the case was closed.

(32) As far as the intensity of the aid is concerned, Farm Dairy noted that the final intensity of the aid was [...] (*) % of the real investment costs, contrary to the figure of 8,5 % of the estimated investment costs. This percentage is clearly lower than the authorised percentages (for example, in favour of small and medium-sized enterprises).

IV.2. *Farm Dairy's observations concerning assessment under the Flevoland SPD*

(33) Flevoland Province assessed the measure under measure 3.3 of the Flevoland SPD, which is intended to stimulate new agricultural activities and has environmental and job creation goals. Farm Dairy expressed its surprise to see the Commission qualify the measure as requiring assessment under point 3.2 of the Flevoland SPD regarding Council Regulation (EEC) No 866/90 of 29 March 1990 on improving the processing and marketing conditions for agricultural products⁽¹⁾. An assessment from this perspective entails an obligation to meet the criteria for investments in point 2.3 of the Annex to Decision 94/173/EC.

(34) Farm Dairy noted that it considered that the conditions set out in point 3.3 of the Flevoland SPD had been met: in particular, in 2000 Farm Dairy had created 61 jobs (instead of the 35 initially planned) and had invested a total of NLG [...] million (instead of the 18,5 million initially planned). Moreover, the investment was positive in environmental terms: there was a reduction in the rates of CO₂ emissions and in the use of fuels because of the proximity of the milk producers. The innovative concept of the 'make-to-order' system reduced the need for refrigerated capacity, which consumes a lot of energy.

(35) Farm Dairy concluded this point by indicating that the Commission should have approved the subsidy under measure 3.3 instead of measure 3.2 of the Flevoland SPD.

IV.3. *Farm Dairy's observations concerning an assessment under Decision 94/173/EC*

(36) Firstly, Farm Dairy considered that the aid was compatible with the criteria set out in point 1.1 of Decision 94/173/EC. As indicated above, the investment was beneficial for the environment and featured technological innovations. Furthermore, the proximity of milk suppliers allowed the interim costs of collecting the milk to be reduced and the concept of centralising the production chain in one company allowed direct distribution.

(37) Secondly, Farm Dairy considered that the aid in question met the requirements made by the criteria mentioned in point 2.3 of the Annex to Decision 94/173/EC mentioned earlier.

(38) In particular, Farm Dairy argued that the investment included a major innovative part, for two reasons: firstly, the company's internal process is based on a 'make-to-order' system. This means that the raw material, the milk, is transformed within the company to a finished product, which is packed on site and loaded immediately into refrigerated lorries. Consequently, this eliminates the need to use a central distribution facility. The system also makes it possible to match the initial supply of milk exactly to the quantity of orders in hand. Consequently, this significantly reduces the refrigeration costs connected with transporting milk to the plant. Farm Dairy emphasised that it has invested in modern pasteurisation systems with a high yield in proportion to energy requirements. This production process has contributed to the high quality of the Farm Dairy products.

(39) Secondly, Farm Dairy reported having also innovated at production level by introducing 2-litre polyethylene containers on the Dutch market. In 1999, Farm Dairy was the first dairy product company to put containers like this on the market. At the time, only smaller cardboard containers were available. To this end, Farm Dairy had imported a special machine from the United States to manufacture these containers. In 1999 the demand for these containers was not yet very high. It was not until 2004 that these containers were in high demand. Since 2004 Farm Dairy has filled 2-litre containers with more than [...] million litres of milk, which makes up [...] % of its total milk production. Annexed to Farm Dairy's observations is a press article reporting on this innovation, along with company statistics indicating the growing proportion of milk sold in 2-litre containers in the period from 1999 to 2008.

(*) This information is confidential.

⁽¹⁾ OJ L 91, 6.4.1990, p. 1.

- (40) Also enclosed with the comments from Farm Dairy is a report entitled 'Innovations by Farm Dairy at the time of the SPD application in 1998', by [...], who was the then [...] of the competitor company [...]. Farm Dairy emphasised that this independent report shows that the introduction of 2-litre polyethylene containers on the Dutch market was revolutionary to the extent that the two dominant parties (Friesland-Coberco and Campina Melkunie) tried to curb the introduction of this packaging. This container had numerous advantages in comparison with the cardboard containers available at the time. Farm Dairy was clearly the first to introduce this container to the Netherlands. Furthermore, the logistical concept of the company (production chain in one company) allowed the milk to be kept for longer because of the absence of central distribution facilities and the lack of need for extended supply chains.
- (41) Farm Dairy also supplied a table where the specific costs of the investment relative to the production of 2-litre containers were isolated from the remaining investment costs. When Farm Dairy was built, four packaging lines were created, including one dedicated specifically to packaging 2-litre containers. These costs were also separated from the other investment costs.
- (42) Farm Dairy also indicated that at the time of the application for investment, it envisaged launching a line of special products: cream in goblets, fruit yoghurts and other cream and fruit-based desserts.
- (43) In response to the criteria mentioned in point 2.3 of the Annex to Decision 94/173/EC on the development of demand, Farm Dairy indicated that essentially the demand came from supermarkets and that they were extremely enthusiastic about the idea of having a new player on the market. From the start, Farm Dairy had supply contracts with the main supermarkets operating in the Netherlands.
- (44) As far as the exception concerning the shortage of capacities and the existence of real and effective outlets is concerned, it is clear from the reaction of the supermarkets mentioned in recital 43 that the existence of real and effective outlets was clearly shown. According to Farm Dairy, the shortage of capacities is clear from the Dutch competition authorities decision of 23 December 1998 in the context of Friesland Coberco Dairy Foods taking over the De Kievit dairy product company. The Netherlands import more milk for processing than they export. The import-export balance shows that only 2,5 % of the milk processed in the Netherlands was imported. Farm Dairy deduced from all this information that the fresh milk market in the Netherlands did not have excess capacity.
- (45) In addition, Farm Dairy mentioned that the Flevoland milk suppliers had decided to no longer supply milk to Campina Melkunie, their client, to deliver their milk to

Comelco in Belgium. However, Campina Melkunie's takeover of Comelco in 1991 and its final implementation in 1996 forced the milk suppliers to find another alternative. This other alternative was the arrival of Farm Dairy in 1999.

- (46) Farm Dairy concluded this point by indicating the difficulties of finding more precise information ten years after the facts, and queries the duration of the procedure between the Commission and the Netherlands.

IV.4. *Payment of a compound interest rate*

- (47) Farm Dairy noted the duration of the procedure and its legitimate faith that the case seemed to have been closed to contest the imposition of a compound interest rate as of the award of the aid. Farm Dairy cannot be held responsible for the fact that the case remained inactive for a long period, which caused the accumulation of interest rates. For this reason, Farm Dairy requested the application of a simple interest rate because if it had known that the aid was illegal and if it had had the choice, it would have chosen to repay the sum earlier.
- (48) Farm Dairy based its request on the Commission communication dated 8 May 2003, which indicated that up until then it was not clear what type of interest rate should be applied. On the basis of the principle of equal treatment, Farm Dairy requested that the Commission decide that the compound interest rate period should not apply for the period before 8 May 2003.

V. **Observations presented by the Netherlands**

- (49) By letter of 19 January 2009, the Netherlands presented their comments on the Commission's decision to initiate the procedure provided for in Article 108(2) of the TFEU in respect of the unnotified aid. The Netherlands reaction was limited to noting that they had no additional information to submit, having already supplied it in the context of the preliminary investigation procedure.
- (50) In the light of Farm Dairy's comments, the Commission nonetheless wished to obtain additional explanations. To this effect, it asked the Netherlands to inform it whether the introduction of 2-litre containers was an innovation as Farm Dairy claimed, and whether this aspect was taken into consideration when the Dutch authorities assessed the project. As far as the make-to-order process was concerned, the Commission asked the Netherlands to comment on the information provided by Farm Dairy stating that this process constituted an innovation at the time of the application for investment. Lastly, the Commission asked the Netherlands to comment on the existence of realistic outlets and shortage of capacity at the time the aid was awarded, by providing it with any study or document that may be useful in this respect.

- (51) The Netherlands reported that as far as the introduction of the 2-litre containers is concerned, that really was an innovation in 1999. For this they based themselves on studies by the TNO ⁽¹⁾, the Nederlandse Zuivel Organisatie (NZO) and [x], a supermarket chain. The Netherlands submitted the TNO report and letters sent by the NZO and [x]. This information shows that Farm Dairy was clearly the first to introduce the 2-litre containers on the Dutch market, and that these containers were an innovation in 1999, given that before then milk was sold only in 1 litre or 1,5 litre containers.
- (52) This aspect was not taken into account during the IKC's assessment and the Province was not aware of this aspect. The Netherlands have indicated that this aspect would undoubtedly have changed the opinion given by the IKC at the time, by modifying the opinion on the innovative character of the project. Given that the IKC no longer exists, it is no longer possible to ask it for a second opinion.
- (53) At the Commission's request, the Netherlands sent a detailed list of the costs related only to the specific investment for the introduction of 2-litre containers. According to these figures, a total of FL 1 840 000 (i.e. EUR 834 956) was devoted to the specific investment for the 2-litre containers. The Dutch authorities added the cost of a quarter of the packaging lines to this, given that of the four packaging lines, one line was dedicated entirely to filling the 2-litre containers. This sum amounted to FL 2 936 250 (i.e. EUR 1 332 412). The total sum thus amounted to FL 4 776 250 (i.e. EUR 2 167 367).
- (54) With regard to the 'make-to-order' concept, the Commission asked the Netherlands to comment on its innovative character and to clarify whether the observations presented by Farm Dairy were liable to modify the earlier assessment, according to which the innovative nature of the project was quite poor. The Netherlands replied that the IKC's opinion considered that the project was innovative in part, in that the innovative character was not due to a product innovation but rather a market innovation. The assessment was made in the context of an application for co-financing from the Ministry of Agriculture. However, the Netherlands invoked other arguments to justify the innovative character of the project. They claimed that the 'make-to-order' system had increased the efficiency of the milk supply, by allowing milk to be kept for a longer period, and that in a country where people primarily consume pasteurised milk (rather than sterilised milk which keeps for longer). The Netherlands also cited the TNO study with regard to the innovative nature of the make-to-order system. This study indicates that the main system at the time was the 'make-to-stock' system, where a certain amount of stock is kept in reserve to be sold afterwards. This reduces delivery times, but also reduces flexibility with regard to the needs of clients 'such as supermarkets'. The 'make-to-order' system, for its part, is better able to meet this need for flexibility. Consequently, the Netherlands concluded that this concept was innovative in nature.
- (55) With regard to the existence of outlets and the absence of excess capacity, the Netherlands cited a report from Rabobank International from April 2009, which notes that 2,5 % of all the farm milk processed is imported. When factory milk is taken into account (i.e. milk that has been pasteurised to allow for longer transport), 10,5 % of all processed milk is imported. This shows that the Netherlands consider that there was no excess capacity in the Netherlands. Regarding the existence of outlets, the Netherlands confirmed Farm Dairy's analysis (see recitals 44 and 45). Furthermore, Farm Dairy's statistics show the possibility of outlets. It is also clear from the letter from [x] that the sales of 2-litre bottles produced by Farm Dairy increased its turnover.

VI. Appraisal

- (56) The Commission noted that Articles 92, 93 and 94 of the EC Treaty (which have become Articles 107, 108 and 109 of the TFEU) were applicable to the production of dairy products and other milk-based deserts at the time the aid was granted by virtue of Article 23 of Council Regulation (EEC) No 804/68 of 27 June 1968 on the common organisation of the market in milk and milk products ⁽²⁾.

VI.1. Existence of State aid within the meaning of Article 107(1) of the TFEU

- (57) Article 107(1) of the TFEU states that any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or certain production is incompatible with the common market insofar as it affects trade between Member States.
- (58) Aid awarded by the State: This condition was met, as the aid was awarded by Flevoland Province.

⁽¹⁾ TNO is an independent research organisation which works to apply scientific knowledge with the aim of strengthening the innovative power of industry and government (www.tno.nl).

⁽²⁾ OJ L 148, 28.6.1968, p. 13.

- (59) Measure which affects trade and distorts or threatens to distort competition: The dairy sector is open to competition at Community level ⁽¹⁾ and is consequently sensitive to any measure favouring production in a particular country. Furthermore, in the case in hand, the aim was to process the milk in Flevoland Province, whereas earlier the milk was partly processed in Belgium. Consequently, this measure threatens to distort competition in the milk and dairy product sector.
- (60) Measure which favours certain undertakings or the production of certain goods: the aid was awarded in favour of one single company, Farm Dairy.
- (61) For these reasons, the Commission concludes that the measure in question comes under Article 107(1) of the TFEU and constitutes State aid. The comments received after opening the procedure have not changed this conclusion.
- (62) At the outset, the Commission wanted however to examine the Farm Dairy's argument contesting the Commission's qualification of the measure as coming under point 3.2 of the Flevoland SPD although the Province had presented it to the Commission as a measure under point 3.3 of the Flevoland SPD (see recital 33 and those that follow).
- (63) At first the Commission believed that this debate concerned the award of Community funds, which is not the subject of this Decision, which examines the measure granted solely on the basis of the Province's funds, after the Dutch Ministry of Agriculture took note of the Commission's refusal to award Community funds. This Decision does not explain the reasons why the Commission refused the award of these Community funds, which should have been contested in good time under the procedures applicable to the award of Community funds. The Commission's refusal to award Community funds was communicated to the Netherlands by letter dated 25 June 1999, and as the Netherlands took note of it without contesting the measure ⁽³⁾, that refusal should no longer be questioned in this decision.

VI.2. Classification of the measure as illegal aid

- (62) Since the aid was granted and paid without prior notification to the Commission, it is illegal within the meaning of Article 1(f) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty ⁽²⁾.

VI.3. Assessment of the compatibility of the aid measure

- (63) The opening decision mentioned earlier referred to two possible justifications for the aid awarded by the Dutch authorities. At first, i.e. when the aid was awarded, they indicated that it was investment aid which should fall within the scope of the Flevoland SPD (see *supra* recital 9). The Flevoland Province authorities later converted this investment aid into compensation for the losses suffered when the aid was withdrawn. The information provided by Farm Dairy on the opening of the procedure will be examined in the section dealing with the compatibility of the aid as investment aid. The examination of the aid measure's compatibility will be divided into two parts: the examination of the compatibility of the aid as investment aid (VI.3.1) and as compensation (VI.3.2).

VI.3.1. Investment aid

- (67) The Commission examined the measures in light of the guidelines applicable at the time the measure was granted, namely 3 March 1999.

⁽¹⁾ According to the case law of the Court of Justice, the improvement of the competitive position of an undertaking resulting from a State aid generally proves a distortion of competition with other competing undertakings not receiving such aid (Case 730/79 [1980] ECR 2671, grounds 11 and 12). As far as the existence of intra-Community trade in the milk sector is concerned, see *supra*, recitals 44, 45 and 55, which the Commission considers to be well-founded.

⁽²⁾ OJ L 83, 27.3.1999, p. 1.

⁽³⁾ In the letter of 15 July 1999 sent by the Dutch Ministry of Agriculture to Flevoland Province, the Ministry noted that the project was not approved by the Commission and therefore refused to provide any financing itself.

⁽⁴⁾ OJ L 91, 6.4.1990, p. 7.

(68) By virtue of point 3(b) of the guidelines, the investment aid in favour of the investments mentioned in the second and third indents of point 1.2 in the Annex to Decision 94/173/EC cannot be considered to be compatible with the internal market. Likewise, the investments that are excluded by virtue of point 2 of the same Annex are considered to be incompatible with the common market if the particular conditions provided for in it are not met.

(69) Point 2.3 of the Annex to Decision 94/173/EC provides that 'The following investments are excluded in the sector of cow's milk and cow's milk products:

— [...]

— investments concerning the following products: butter, whey powder, milk powder, butteroil, lactose, casein, caseinate,

— investments in the manufacture of fresh products or cheese, except production involving substantial innovation in line with trends in demand and products for which there is a shortage of capacity and for which the existence of realistic potential outlets has been demonstrated, as well as the manufacture of products using traditional or organic methods as defined by Community rules.

The following investments are not concerned by the prohibitions referred to in the preceding indents provided that they do not lead to an increase in capacity:

— investments to bring establishments into line with Community health standards,

— investments concerning environmental protection.'

(70) This means that, a priori, investment aid for developing fresh products such as the one in question here would not be compatible with the internal market unless this investment comes under one of the exceptions mentioned in point 2.3 of the Annex to Decision 94/173/EC.

(71) The question of knowing whether one of the exceptions mentioned in point 2.3 of the Annex to Decision 94/173/EC applies was one of the main questions asked in the opening decision. This decision therefore examines these three exceptions: the substantial inno-

vation in production in line with trends in demand, a shortage of capacity and the existence of realistic potential outlets, the development of products using traditional or organic methods as defined by Community rules.

(a) Criteria concerning the substantial innovation in line with demand

(72) The documents that the Netherlands sent the Commission in 2005 show that the production process was not innovative in the light of the information provided at the time. As indicated in the opening decision, IKC considered that the project was not totally innovative. In particular, it considered that the project did not present innovative products but market innovations, and that the production process was not innovative, but used the most modern techniques. However, in view of the fact that the other criteria evaluated by IKC were met, IKC concluded that the project met the criteria to benefit from a subsidy, but reduced the size of it (see *supra* recital 11).

(73) The issue is whether the information supplied by Farm Dairy and the Netherlands in the context of the opening of the procedure is likely to call into question the analysis performed at the time in the context of the examination of the evaluation criteria for the SPD subsidies. This information (see recitals 36 to 46) has shown that the part of the investment concerning the new 2-litre polyethylene container was totally innovative and that Farm Dairy was the first company to make this product and put in on the Dutch market. The report provided to this effect by Farm Dairy notes the innovative character of this product and seems credible insofar as it was written by an industry expert who was working for one of Farm Dairy's competitors at the time. The report in question does not call into question the analysis made by IKC and the Dutch Ministry of Agriculture at the time, but does include information that was not sent to the Commission before the decision to open the procedure and which was not mentioned in the documents previously sent to the Commission. The 2-litre container mentioned was already very successful on the British and American markets. Farm Dairy was the first to put this type of container on the market. Consequently, Farm Dairy proved to be a trail-blazer, the 2-litre container becoming commonplace in the Netherlands.

(74) On the basis of the case-law of the Court of Justice of the European Union, the Commission is obliged to consider the different information it is sent and examine all the necessary points of view, in particular by requesting information from the recipients, in order to make a finding in full knowledge of all the facts relevant at the time of adoption of its decision⁽¹⁾.

⁽¹⁾ CFI, 9 September 2009, Case T-369/06, *Holland Malt v Commission*, paragraph 195 (not yet published).

- (75) In the case in question, the Commission asked the Netherlands to confirm the information provided by Farm Dairy. The Netherlands confirmed the information from Farm Dairy and provided three separate documents (see *supra* recitals 51 to 53) proving the innovative nature of the investment relating to the 2-litre containers. This information shows, on one hand, that the Netherlands did not take account of the element of investment for the part concerning the 2-litre containers when evaluating the innovative character, undoubtedly because the examination was on the basis of the SPD criteria and not specifically on the basis of the guidelines mentioned. On the other hand, the Netherlands did use independent experts who knew the market and the way in which dairy products were placed on the market. The studies conducted by these experts showed that, in fact, Farm Dairy was the first company to put this type of container on the Dutch market.
- (76) On the basis of this new information presented by the authorities and by Farm Dairy following the opening of the procedure, the Commission considers that the introduction and production of the 2-litre containers is of an innovative nature.
- (77) As far as the make-to-order concept is concerned, the question is similar: are the clarifications provided by Farm Dairy and by the Netherlands liable to modify the assessment made by the Commission at the time of the opening of the procedure?
- (78) Unlike the 2-litre containers, the Netherlands did take the 'make-to-order' concept into consideration when the subsidies were applied for in 1998. At the time it was concluded that the production process was not innovative as such, but that it used the most modern technology and was effective in terms of reducing energy consumption and better for the environment. The Netherlands and Farm Dairy had already used these arguments in previous correspondence. No other innovation was shown for the 'make-to-order' concept.
- (79) It is also important to verify whether production is in line with demand, as required by the first exception mentioned in Decision 94/173/EC. From the information supplied to the Commission (see recital 43), the demand for these products mainly came from supermarkets and that contracts had been concluded with at least five supermarkets. The Commission considers that this is a serious indication that the innovation was in line with trends in demand. This is corroborated by the fact that [x], cited by the Netherlands (see recital 55) significantly increased its turnover thanks to the milk sold by Farm Dairy.
- (80) In conclusion, the Commission considers that the conditions for the first exception are met for the case in question for the investment part concerning the 2-litre containers, given that the investment had an innovative nature in line with trends in demand. Based on the information supplied to it after opening the formal examination procedure, the Commission must conclude that the conditions of this first exception are met. The Commission does not as a matter of course have to examine which information it could have been sent, but the Commission should, on one hand, examine all the necessary points of view and, on the other hand, base itself on the information it has at the time it adopts its decision ⁽¹⁾. In the case in question, on the one hand the Commission opened the procedure and asked the Netherlands, by letter dated 18 September 2009, to confirm certain information mentioned by Farm Dairy in its comments. In this way, the Commission thus used all the means at its disposal to obtain information from third parties or from the Member State. On the other hand, in this decision, the Commission is basing itself on all the information received after opening the procedure. However, no contrary information was provided that indicated that the investment for the part concerning the 2-litre containers was neither innovative nor in line with trends in demand.
- (81) In view of the fact that the criteria mentioned in the guidelines in connection with Decision 94/173/EC are met with regard to the innovative character of the investment in relation to the 2-litre containers, but not for the rest of the investment, the costs relating to this investment must be isolated to allow the maximum aid intensity to be deducted from them.
- (82) The Dutch authorities indicated that a total of FL 1 840 000 (i.e. EUR 834 956) was devoted to the specific investment for the 2-litre containers. The Dutch authorities added the cost of a quarter of the packaging lines to this, given that of the four packaging lines, only one line was dedicated entirely to filling the 2-litre containers. This sum amounted to FL 2 936 250 (i.e. EUR 1 332 412). The total sum thus amounted to FL 4 776 250 (i.e. EUR 2 167 367) (see recital 53). No general cost (such as the building or the grounds) was included in this total.
- (83) The maximum aid intensity should thus be evaluated with respect to these eligible costs. As Flevoland was an Objective 1 region at the time of the application for investment, aid could be awarded for up to 75 % of the eligible costs. The subsidy granted — EUR 715 909 — represents less than 75 % of the eligible costs. Thus, the proposed investment is compatible with the rules on State aid.

⁽¹⁾ Case T-369/06, *op. cit.*, paragraphs 195-198.

(b) The existence of outlets and the shortage of capacity

- (84) Given that the conditions for the first exception mentioned in point 2.3 of the Annex to Decision 94/173/EC are met, and that this allows the aid awarded to be approved in full, there is no need to rule on the fact that the other exception conditions are met.

(c) The manufacture of products using traditional or organic methods as defined by Community rules

- (85) As for point (b) above, the analysis of this third exception is not necessary insofar as the analysis of the first exception allowed the aid in question to be deemed compatible. Moreover, this point does not seem relevant in view of the investment project in question which has nothing at all to do with the manufacture of products using traditional or organic methods.

- (86) However, the Commission examined the aid in question with regard to Article 3(d) of the guidelines referred to earlier, which states that 'the Commission shall examine, on a case-by-case basis, any aid measure which could be excluded by implementing these guidelines and appropriate measures, but what in principle is eligible for Community co-financing in accordance with the provisions of Council Regulation (EEC) No 2328/91 ⁽¹⁾'. The letter sent by the Commission to the Netherlands on 25 June 1999 shows that the project could not be financed through the SPD. Consequently, the Commission considers that the measure in question cannot benefit from the exemptions provided for in point 3(d) of the above guidelines.

VI.3.2. Other arguments examined during the opening of the procedure concerning the compatibility of the aid in full

- (87) During the opening of the procedure, the Commission had examined the compensation of damage following the non-award of the aid as a basis for approving the investment in full. During the preliminary phase, the Dutch authorities had indicated that the aid had been granted by way of compensation for damage suffered as a result of an error by the authorities in initially granting aid which had later turned out to be illegal and perhaps incompatible with the common market.

- (88) The Court of Justice has indicated the payment of liquidated damages did not constitute aid ⁽²⁾. The Court based itself for this on the fact that State aid is fundamentally different in its legal nature from damages which the competent national authorities may be ordered to pay to individuals in compensation for the damage they have caused to those individuals. Therefore, in principle the payment of liquidated damages does not give the beneficiary a benefit, as it is simply compensation for a right to which he is entitled.

- (89) In the case in question, it is difficult to speak of the recipient having a right to compensation, given that this claimed right is based from the outset on illegal behaviour of the Member State. However, case law has consistently held that in view of the mandatory nature of the supervision of State aid by the Commission under Article 108 of the Treaty, undertakings to which aid has been granted may not, in principle, entertain a legitimate expectation that the aid is lawful unless it has been granted in compliance with the procedure laid down in that Article. A diligent economic operator should normally be able to determine whether that procedure has been followed ⁽³⁾.

- (90) In the case in question, it must also be noted that the award of compensation would be tantamount to circumventing the prohibition on granting aid without the Commission's approval. This is confirmed by the fact that, when Flevoland Province stated that the aid in question had been granted in the form of compensation for an error by the authorities, it was well aware that the aid should have been notified to the Commission for approval before being paid.

- (91) Consequently, the Commission considers that the whole investment cannot be considered to be compatible because the aid in question would constitute compensation for the damage suffered by the beneficiary.

VI.3.3. Other points raised by Farm Dairy in the context of initiating an investigation procedure

- (92) Farm Dairy had contested the application of compound interest rates in the event of a negative decision from the

⁽¹⁾ OJ L 218, 6.8.1991, p. 1.

⁽²⁾ ECJ, Joined Cases 106/87-120/87, *Asteris and others v Greece and European Economic Community* [1988] ECR I-5515.

⁽³⁾ ECJ, Case C-169/95 *Spain v Commission* [1997] ECR I-135.

Commission with recovery (see *supra* recital 47). Given that the decision in question concluded that the aid was compatible, the recovery of the illegal aid is not envisaged and the comments from Farm Dairy are therefore no longer relevant.

VII. Conclusion

- (93) The State aid that the Netherlands granted to Farm Dairy is compatible for the part of the investment that concerns the new 2-litre containers. The initial total of the aid was consequently recalculated in relation to this part of the total investment and it is clear from this calculation that the aid awarded is compatible with the requirements of the guidelines in connection with State aid in connection with investments in the processing and marketing of agricultural products.
- (94) The Commission regrets, however, that the Netherlands implemented the above aid measure in contravention of Article 108(3) of the TFEU,

HAS ADOPTED THIS DECISION:

Article 1

The State aid of EUR 715 909 provided by the Netherlands to Farm Dairy is compatible with the internal market.

Article 2

This Decision is addressed to the Kingdom of the Netherlands.

Done at Brussels, 9 March 2010.

For the Commission

Dacian CIOLOŞ

Member of the Commission

COMMISSION DECISION

of 6 May 2010

amending Parts 1 and 2 of Annex E to Council Directive 92/65/EEC as regards the model health certificates for animals from holdings and for bees and bumble bees

(notified under document C(2010) 2624)

(Text with EEA relevance)

(2010/270/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Council Directive 92/65/EEC of 13 July 1992 laying down animal health requirements governing trade in and imports into the Community of animals, semen, ova and embryos not subject to animal health requirements laid down in specific Community rules referred to in Annex A (I) to Directive 90/425/EEC ⁽¹⁾, and in particular the first paragraph of Article 22 thereof,

Whereas:

- (1) Article 10 of Directive 92/65/EEC lays down the animal health requirements governing trade in dogs, cats and ferrets.
- (2) Part 1 of Annex E to that Directive sets out the model health certificate for trade in animals from holdings, including dogs, cats and ferrets.
- (3) Regulation (EC) No 998/2003 of the European Parliament and of the Council ⁽²⁾ lays down the animal health requirements applicable to the non-commercial movement of pet animals and the rules applying to checks on such movements. It applies to movements between Member States or from third countries of pet animals of the species listed in Annex I thereto. Dogs, cats and ferrets are listed in Parts A and B of that Annex.
- (4) The requirements laid down in Regulation (EC) No 998/2003 differ, depending on the Member State of destination and the Member State or third country of origin.
- (5) Third countries that apply to non-commercial movement of pet animals rules at least equivalent to the rules provided for in Regulation (EC) No 998/2003 are listed in Section 2 of Part B of Annex II to that Regulation.
- (6) In order to avoid that commercial movements are fraudulently disguised as non-commercial movements of pet animals within the meaning of Regulation (EC) No 998/2003, point (b) of the first paragraph of

Article 12 of that Regulation provides that the requirements and checks laid down in Directive 92/65/EEC are to apply to the movement of more than five pet animals where the animals are brought into the Union from a third country other than those listed in Section 2 of Part B of Annex II to that Regulation.

- (7) In addition, Commission Regulation (EU) No 388/2010 of 6 May 2010 implementing Regulation (EC) No 998/2003 of the European Parliament and of the Council as regards the maximum number of pet animals of certain species that may be the subject of non-commercial movement ⁽³⁾ provides that the requirements and checks referred to in point (b) of the first paragraph of Article 12 of Regulation (EC) No 998/2003 are to apply also to the movement of pet dogs, cats and ferrets where the total number of animals moved into a Member State from another Member State or a third country listed in Section 2 of Part B of Annex II to that Regulation, exceeds five.
- (8) Regulation (EC) No 998/2003 also provides that for a transitional period the non-commercial movement of dogs, cats and ferrets into the territory of Ireland, Malta, Sweden or the United Kingdom is to be subject to certain additional requirements.
- (9) Directive 92/65/EEC refers to those additional requirements only as regards trade in dogs, cats and ferrets destined for Ireland, Sweden or the United Kingdom.
- (10) The models for the certificates for intra-Union trade should be compatible with the integrated computerised veterinary system 'TRACES' developed in accordance with Commission Decision 2003/623/EC ⁽⁴⁾.
- (11) To ensure that the requirements and checks for non-commercial movements of more than five pet dogs, cats and ferrets into all Member States, including Malta, are applied in a uniform manner, it is necessary to adapt the model health certificate set out in Part 1 of Annex E to Directive 92/65/EEC.

⁽¹⁾ OJ L 268, 14.9.1992, p. 54.

⁽²⁾ OJ L 146, 13.6.2003, p. 1.

⁽³⁾ OJ L 114, 7.5.2010, p. 3.

⁽⁴⁾ OJ L 216, 28.8.2003, p. 58.

- (12) In addition, the model health certificate for intra-Union trade in live bees (*Apis mellifera*) and bumble bees (*Bombus* spp.) is laid down in Part 2 of Annex E to Directive 92/65/EEC.
- (13) That certificate establishes animal health requirements as regards American foulbrood for both bees and bumble bees. These requirements allow only movements of bees and bumble bees from areas that are free of that disease. A 30-day standstill is provided in case of an outbreak and it is applied to an area of three kilometres around the outbreak.
- (14) In most cases, however, bumble bees are bred in environmentally isolated structures that are regularly controlled by the competent authority and checked for the presence of diseases. Such establishments that are recognised by and under the supervision of the competent authority of the Member State concerned are not likely to be affected by the presence of American foulbrood in the three kilometres radius set out in Part 2 of Annex E in contrast with open air colonies.
- (15) It is therefore necessary to amend the model health certificate for intra-Union trade in live bees and bumble bees in order to introduce specific animal health requirements concerning the bumble bees bred in an environmentally isolated structure.

- (16) Parts 1 and 2 of Annex E to Directive 92/65/EEC should therefore be amended accordingly.

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

HAS ADOPTED THIS DECISION:

Article 1

Annex E to Directive 92/65/EEC is amended in accordance with the Annex to this Decision.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 6 May 2010.

For the Commission

John DALLI

Member of the Commission

ANNEX

Annex E to Directive 92/65/EEC is amended as follows:

1. Part 1 is replaced by the following:

'Part 1 — Health Certificate for trade in animals from holdings (ungulates, birds, lagomorphs, dogs, cats and ferrets)

92/65 EI

EUROPEAN UNION

Intra trade certificate

Part I: Details of consignment presented	I.1. Consignor Name Address Postal code		I.2. Certificate reference number		I.2.a. Local reference number:	
			I.3. Central Competent Authority			
			I.4. Local Competent Authority			
	I.5. Consignee Name Address Postal code		I.6. No(s) of related original certificates		No(s) of accompanying documents	
			I.7.			
	I.8. Country of origin	ISO code	I.9. Region of origin	Code	I.10. Country of destination	ISO code
					I.11. Region of destination	Code
	I.12. Place of origin/Place of harvest Holding ☐ Name Address Postal code		I.13. Place of destination Holding ☐ Semen centre ☐ Name Address Postal code		Establishment ☐ Embryo team ☐ Approval number Approved body ☐ Other ☐	
	I.14. Place of loading Postal code		I.15. Date and time of departure			
	I.16. Means of transport Aeroplane ☐ Ship ☐ Railway wagon ☐ Road vehicle ☐ Other ☐ Identification:		I.17. Transporter Name Address Postal code		Approval number Member State	
	I.18. Animal species/product		I.19. Commodity code (CN code)			
					I.20. Number/quantity	
	I.21.				I.22. Number of packages	
	I.23. Identification of container/seal number				I.24.	
I.25. Animals certified as/products certified for: Breeding ☐ Fattening ☐ Artificial reproduction ☐ Slaughter ☐ Pets ☐ Approved body ☐						
I.26. Transit through third country ☐ Third country Exit point Entry point		ISO code Code BIP unit no.:		I.27. Transit through Member States ☐ Member State Member State Member State		
I.28. Export ☐ Third country Exit point		ISO code Code		I.29. Estimated journey time		
I.30. Route plan Yes ☐ No ☐						
I.31. Identification of the animals Species Identification system Identification number Sex Age Quantity (Scientific name)						

COUNTRY		92/65 EI Animals from holdings (ungulates, birds, lagomorphs, dogs, cats and ferrets)	
II.	Health information	II.a. Certificate reference number	II.b.
Part II: Certification	I, the undersigned official veterinarian ⁽¹⁾ /veterinarian responsible for the establishment of origin and approved by the competent authority certify that:		
	either ⁽¹⁾ [II.1	at the time of inspection the above animals were fit to be transported on the intended journey in accordance with the provisions of Council Regulation (EC) No 1/2005.]	
	or ⁽¹⁾ [II.1	at the time of inspection the pet dogs ⁽¹⁾ /cats ⁽¹⁾ /ferrets ⁽¹⁾ were fit to travel:]	
	II.2	the conditions of Article 4 of Council Directive 92/65/EEC are fulfilled.	
	either ⁽¹⁾ [II.3.1	ruminant(s) ⁽¹⁾ / <i>Suidae</i> ⁽¹⁾ other than that/those covered by Directive 64/432/EEC:	
	(a)	belong(s) to the species	
	(b)	at the time of examination, do(does) not show any clinical sign of any disease to which it/they is/are susceptible;	
	(c)	come(s) from an officially tuberculosis-free ⁽¹⁾ /officially brucellosis-free ⁽¹⁾ or brucellosis-free ⁽¹⁾ herd ⁽¹⁾ /holding ⁽¹⁾ not subject to swine fever restrictions or from a holding where it/they was/were subjected with negative results to the test(s) laid down in Article 6(2)(b) of Directive 92/65/EEC.]	
	or ⁽¹⁾ [II.3.1	birds other than those referred to in Directive 90/539/EEC:	
	(a)	satisfy the requirements of Article 7 of Directive 92/65/EEC; and	
	(b)	at the time of examination do not show clinical signs of any disease to which the animals are susceptible.]	
	or ⁽¹⁾ [II.3.1	lagomorphs:	
	(a)	satisfy the requirements of Article 9 of Directive 92/65/EEC; and	
	(b)	at the time of examination do not show clinical signs of disease.]	
	or ⁽¹⁾ [II.3.1	dogs ⁽¹⁾ /cats ⁽¹⁾ /ferrets ⁽¹⁾ :	
either ⁽¹⁾	[(a) satisfy, in accordance with Article 10(2) of Directive 92/65/EEC, the requirements laid down in Articles 5 and 16 of Regulation (EC) No 998/2003;]		
or ⁽¹⁾	[(a) satisfy, in accordance with Article 10(3) of Directive 92/65/EEC, the requirements laid down in Articles 6 and 16 of Regulation (EC) No 998/2003;]		
or ⁽¹⁾	[(a) satisfy, in accordance with Commission Regulation (EU) No 388 /2010, the requirements laid down in Article 10(2) of Directive 92/65/EEC where the total number of pet animals moved for non-commercial purposes exceeds five;]		
or ⁽¹⁾	[(a) satisfy, in accordance with Commission Regulation (EU) No 388 /2010, the requirements laid down in Article 10(3) of Directive 92/65/EEC where the total number of pet animals moved for non-commercial purposes into Ireland, Malta, Sweden or the United Kingdom exceeds five;]		
and	(b) underwent a clinical examination, within 24 hours of dispatch, by a veterinarian authorised by the competent authority, and this examination showed the animals to be in good health.]		
II.4	The additional guarantees regarding diseases listed in Annex B ⁽²⁾ to Directive 92/65/EEC are as follows: ⁽¹⁾		
	Disease	Decision	
	Disease	Decision	
	Disease	Decision	
Notes Part I: — Box reference I.5: Not applicable to movements for non-commercial purposes of pet animals (dogs, cats and ferrets) exceeding the number of five. — Box reference I.6: No(s) of accompanying documents: CITES, if applicable. — Box reference I.19: Use the appropriate HS code: 01.06.19, 01.06.31, 01.06.32, 01.06.39. — Box reference I.31: Identification: individual identification must be used wherever possible but in the case of small animals, batch identification may be used.			

COUNTRY		92/65 EI Animals from holdings (ungulates, birds, lagomorphs, dogs, cats and ferrets)	
II. Health information	II.a. Certificate reference number	II.b.	
Part II: (¹) Delete as necessary. (²) As requested by a Member State benefiting from additional guarantees under Union legislation. — The colour of the stamp and signature must be different from that of the other particulars in the certificate.			
Official/approved veterinarian			
Name (in capital letters):		Qualification and title:	
Date:		Signature:	
Stamp:			

2. Part 2 is replaced by the following:

Part 2 — Health certificate for trade in bees and bumble bees

92/65 EII

EUROPEAN UNION

Intra trade certificate

Part I: Details of consignment presented	I.1. Consignor Name Address Postal code		I.2. Certificate reference number	I.2.a. Local reference number:		
			I.3. Central Competent Authority			
			I.4. Local Competent Authority			
	I.5. Consignee Name Address Postal code		I.6.			
			I.7.			
	I.8. Country of origin	ISO code	I.9.	I.10. Country of destination	ISO code	I.11.
	I.12. Place of origin/Place of harvest Holding ☐ Other ☐ Name Approval number Address Postal code		I.13. Place of origin/Place of harvest Holding ☐ Other ☐ Name Approval number Address Postal code			
	I.14. Place of loading Postal code		I.15. Date and time of departure			
	I.16. Means of transport Aeroplane ☐ Ship ☐ Railway wagon ☐ Road vehicle ☐ Other ☐ Identification:		I.17.			
	I.18. Animal species/product		I.19. Commodity code (CN code) 01.06.90		I.20. Number/quantity	
	I.21.		I.22. Number of packages			
	I.23. Identification of container/seal number		I.24.			
	I.25. Animals certified as/products certified for: Breeding ☐ Transhumance ☐					
	I.26. Transit through third country ☐ Third country Exit point Entry point		I.27. Transit through Member States ☐ Member State Member State Member State			
	I.28. Export ☐ Third country Exit point		I.29.			
I.30.						
I.31. Identification of the animals Species (Scientific name)						
Quantity						
Batch number						

COUNTRY		92/65 EII Bees (<i>Apis mellifera</i>) and bumble bees (<i>Bombus</i> spp.)	
II.	Health information	II.a. Certificate reference number	II.b.
Part II: Certification	I, the undersigned certify that:		
	II.1		
	either ⁽²⁾ [(a) the bees/bumble bees ⁽²⁾ come from an area which is not subject of the prohibition order associated with an occurrence of American foulbrood (the period of prohibition has been continued for at least 30 days following the last recorded case and the date of which all hives within a radius of three kilometres have been checked by the competent authority and all infected hives burned or treated and inspected to the satisfaction of the said competent authority);]		
	or ⁽²⁾ [(a) the bumble bees come from an environmentally isolated structure recognised by and under the supervision of the competent authority of the Member State which is free of American foulbrood and was inspected immediately prior to dispatch and all bumble bees and breeding stock show no clinical signs or suspicion of the disease;]		
	and (b) the bees/bumble bees ⁽²⁾ come from an area of at least 100 km radius which is not the subject of any restrictions associated with the suspicion or confirmed occurrence of the small hive beetle (<i>Aethina tumida</i>) or the Tropilaelaps mite (<i>Tropilaelaps</i> spp.), and where these infestations are absent;		
and (c) the bees/bumble bees ⁽²⁾ as well as their packaging have undergone a visual examination to detect the occurrence of the small hive beetle (<i>Aethina tumida</i>) or their eggs and larvae, or other infestations, in particular the Tropilaelaps mite (<i>Tropilaelaps</i> spp.), affecting bees.			
II.2	the additional guarantees regarding diseases listed in Annex B ⁽¹⁾ to Directive 92/65/EEC are as follows ⁽²⁾ :		
	Disease	Decision	
	Disease	Decision	
	Disease	Decision	
Notes			
Part I:			
— Box reference I.31: Species: introduce <i>Apis mellifera</i> or <i>Bombus</i> spp.			
Quantity: provide the number of colonies.			
Batch number: provide the number of seals where applicable.			
Part II:			
⁽¹⁾ As requested by a Member State benefiting from additional guarantees under Union legislation.			
⁽²⁾ Delete as necessary.			
— The colour of the stamp and signature must be different from that of the other particulars in the certificate.			
Approved veterinarian or approved official			
Name (in capital letters):		Qualification and title:	
Date:		Signature:	
Stamp:			

COMMISSION DECISION

of 11 May 2010

amending Annex II to Decision 2008/185/EC as regards the inclusion of Ireland in the list of regions where an approved national control programme for Aujeszky's disease is in place

*(notified under document C(2010) 2983)***(Text with EEA relevance)**

(2010/271/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Council Directive 64/432/EEC of 26 June 1964 on animal health problems affecting intra-Community trade in bovine animals and swine⁽¹⁾, and in particular Article 9(2) thereof,

Whereas:

- (1) Directive 64/432/EEC lays down rules applicable to intra-Community trade in bovine animals and swine. Article 9 of that Directive lays down criteria for approving compulsory national control programmes for certain contagious diseases, including Aujeszky's disease.
- (2) Commission Decision 2008/185/EC of 21 February 2008 on additional guarantees in intra-Community trade of pigs relating to Aujeszky's disease and criteria to provide information on this disease⁽²⁾ lays down the additional guarantees for movements of pigs between Member States. Those guarantees are linked to the classification of Member States according to their disease status.
- (3) Annex II to Decision 2008/185/EC lists Member States or regions thereof where approved national control programmes for Aujeszky's disease are in place.
- (4) Ireland has submitted supporting documentation to the Commission as regards the Aujeszky's disease status of that Member State. A national control programmes for Aujeszky's disease has been implemented in Ireland for several years.

(5) The Commission has examined the documentation submitted by Ireland and has found that the national control programme in that Member State complies with the criteria laid down in Article 9(1) of Directive 64/432/EEC. Accordingly, Ireland should be included in the list set out in Annex II to Decision 2008/185/EC.

(6) For the sake of clarity, it is necessary to make certain minor amendments to the entry for Spain in the list in Annex II to Decision 2008/185/EC.

(7) Annex II to Decision 2008/185/EC should therefore be amended accordingly.

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

HAS ADOPTED THIS DECISION:

Article 1

Annex II to Decision 2008/185/EC is replaced by the text in the Annex to this Decision.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 11 May 2010.

For the Commission

John DALLI

Member of the Commission

⁽¹⁾ OJ L 121, 29.7.1964, p. 1977/64.

⁽²⁾ OJ L 59, 4.3.2008, p. 19.

ANNEX

'ANNEX II

Member States or regions thereof where approved national control programmes for the eradication of Aujeszky disease are in place

ISO code	Member State	Regions
BE	Belgium	All regions
ES	Spain	The territory of the Autonomous Communities of Galicia, País Vasco, Asturias, Cantabria, Navarra, La Rioja The territory of the provinces of León, Zamora, Palencia, Burgos, Valladolid and Ávila in the Autonomous Community of Castilla y León The territory of the province of Las Palmas in the Autonomous Community of the Canary Islands
HU	Hungary	All regions
IE	Ireland	All regions
IT	Italy	The province of Bolzano
UK	United Kingdom	All regions in Northern Ireland'

GUIDELINES

GUIDELINE OF THE EUROPEAN CENTRAL BANK

of 21 April 2010

on TARGET2-Securities

(ECB/2010/2)

(2010/272/EU)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first indent of Article 127(2) thereof,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the 'Statute of the ESCB') and in particular Articles 3.1 and 12.1 and Articles 17, 18 and 22 thereof,

Whereas:

- (1) On 6 July 2006, the Governing Council of the European Central Bank (ECB) decided to explore, in cooperation with the central securities depositories (CSDs) and other market participants, the possibility of setting up a new Eurosystem service for securities settlement in central bank money, to be called TARGET2-Securities (T2S). As part of the Eurosystem's tasks in accordance with Articles 17, 18 and 22 of the Statute of the ESCB, T2S aims to facilitate post-trading integration by offering core, neutral and borderless pan-European cash and securities settlement in central bank money so that CSDs can provide their customers with harmonised and commoditised delivery-versus-payment settlement services in an integrated technical environment with cross-border capabilities. As the provision of central bank money is a core task of the Eurosystem, T2S has the nature of a public service. The euro area NCBs will provide collateral management services and settlement in central bank money in T2S.
- (2) Article 22 of the Statute of the ESCB mandates the Eurosystem to 'ensure efficient and sound clearing and payment systems within the Union'. Moreover, settlement in central bank money avoids liquidity risks and is therefore essential for sound post-trading of securities, and for the financial market in general.
- (3) On 17 July 2008, the Governing Council decided to launch the T2S project and to provide the resources required until its completion. On the basis of an offer

made by the Deutsche Bundesbank, the Banco de España, the Banque de France and the Banca d'Italia (hereinafter the '4CB'), the Governing Council also decided that T2S would be developed and operated by the 4CB.

- (4) The Governing Council adopted Decision ECB/2009/6 of 19 March 2009 on the establishment of the TARGET2-Securities Programme Board⁽¹⁾ as a streamlined management body of the Eurosystem that will develop proposals for the Governing Council on key strategic issues and execute tasks of a purely technical nature. The mandate of the T2S Programme Board, contained in the Annex to Decision ECB/2009/6, represents one of the cornerstones of T2S governance. The T2S Programme Board was simultaneously entrusted with certain implementing tasks by the Eurosystem central banks so that it can be fully operational and act on behalf of the whole Eurosystem.
- (5) This Guideline lays down in particular the basic foundations of the T2S Programme in its specification and development phase. It represents the culmination of the previously mentioned decisions of the Governing Council and further specifies in particular the roles and responsibilities of the T2S Programme Board and of the 4CB as well as their mutual relationship. It will be complemented by additional legal acts and contractual arrangements under the ultimate responsibility of the Governing Council as the T2S Programme is further developed.
- (6) In line with the previously mentioned decisions of the Governing Council, governance of the T2S Programme is based on three levels. On the first level of governance, ultimate decision-making in relation to T2S vests in the Governing Council, which assumes overall responsibility for the T2S Programme and, pursuant to Article 8 of the Statute of the ESCB, is the decision-maker for the whole Eurosystem. On the second level of governance, the T2S Programme Board was established to assist the ECB decision-making bodies in ensuring the successful and timely completion of the T2S Programme. Finally, the third level of governance is composed of the 4CB.

⁽¹⁾ OJ L 102, 22.4.2009, p. 12.

- (7) As T2S services are offered to CSDs, it is important to structure the relationship with them throughout the development, migration and subsequent operation of T2S. A CSD Contact Group will be set up for that purpose. National User Groups are a forum for communication and interaction with providers and users of securities settlement services within their national market. The T2S Advisory Group is a forum for communication and interaction between the Eurosystem and external T2S stakeholders.
- (8) T2S is not a commercial venture and it is not intended to compete with CSDs or any other market participant. Thus, while the financial regime of T2S aims at full cost recovery, T2S services are not provided for profit. An internal decision will be taken on the total investment in T2S for the Eurosystem, while the decision on the pricing of T2S services will aim at full cost recovery. Moreover, the Eurosystem should strictly apply the principle of non-discrimination regarding CSDs, and aim to ensure a level playing field among CSDs outsourcing their settlement platform to T2S.
- (9) T2S is a technical device that will not only be available for settlement in euro, it will also be open to non-euro area NCBs and other central banks that may wish to participate by making their currency available for central bank money settlement in T2S, as provided for in this Guideline,

HAS ADOPTED THIS GUIDELINE:

SECTION I

GENERAL PROVISIONS

Article 1

Subject matter and scope

1. T2S shall be based on a single technical platform integrated with central bank real-time gross settlement systems. It shall be a service provided by the Eurosystem to CSDs allowing for the core, neutral and borderless settlement of securities transactions on a delivery-versus-payment basis in central bank money.
2. This Guideline lays down the rules on the governance of the T2S Programme. It also lays down the main features of the T2S Programme, defining the respective roles and responsibilities of the T2S Programme Board and the 4CB, and the relations between them during the specification and development phase. It also specifies the main decisions to be taken in relation to T2S by the Governing Council. Moreover, this Guideline provides for the basic principles of all of the following in relation to T2S: (a) the financial regime, rights and warranties; (b) how the access of CSDs and contractual relations with CSDs will be determined; (c) how currencies other than the euro become eligible for use in T2S; and (d) the development of the T2S Programme.

Article 2

Definitions

For the purposes of this Guideline:

- ‘central securities depository’ (CSD) means an entity that: (a) enables securities transactions to be processed and settled by book entry; (b) provides custodial services, e.g. the administration of corporate actions and redemptions; and (c) plays an active role in ensuring the integrity of issues of securities,
- ‘delivery versus payment’ means a mechanism that links a securities transfer and a funds transfer in such a way as to ensure that delivery of securities occurs only if payment of funds occurs,
- ‘euro area NCB’ means the national central bank (NCB) of a Member State whose currency is the euro,
- ‘Eurosystem central bank’ means either a euro area NCB or the ECB, as the case may be,
- ‘Framework Agreement’ means the contractual framework to be entered into by a CSD and the Eurosystem for the development and operational phase,
- ‘general functional specifications’ (GFS) means a general description of the functional solution to be developed to satisfy the T2S user requirements. It will include elements such as the functional architecture (domains, modules and interactions), the conceptual models, the data model or the data flow process,
- ‘Level 2-Level 3 agreement’ means the supply and operation agreement that is negotiated between the T2S Programme Board and the 4CB, endorsed by the Governing Council and subsequently signed by the Eurosystem central banks and the 4CB. It contains the additional details of the tasks and responsibilities of the 4CB, the T2S Programme Board and the Eurosystem central banks,
- ‘Member State’ means a country that is a member of the Union,
- ‘non-euro area NCB’ means the NCB of a Member State whose currency is not the euro,
- ‘operational phase’ means the time period starting once the first CSD has migrated to T2S,
- ‘other central bank’ means the central bank of a country that is outside the Union,
- ‘payment schedule’ means a schedule indicating the payment sequence for instalments of reimbursement to the 4CB,
- ‘service level agreement’ means both the agreement defining the level of services to be provided by the 4CB to the Eurosystem, and the agreement defining the level of services to be provided by the Eurosystem to the CSDs, in relation to T2S,

- 'specification and development phase' means the time period beginning with the approval of the URD by the Governing Council and ending with the start of the operational phase,
- 'T2S business application' means the software developed and operated by the 4CB on behalf of the Eurosystem in view of enabling the Eurosystem to provide T2S services on the T2S platform,
- 'T2S Change and Release Management Procedure' means a set of rules and procedures that is applied whenever a change to T2S services is initiated,
- 'T2S financial envelope' means the upper boundary for the total cost of T2S to be reimbursed. The financial envelope determines: (a) for the participating NCBs the maximum amount to be paid for T2S; and (b) for the 4CB the amount they get back from the participating NCBs on delivery, based on the agreed payment schedule,
- 'T2S platform' means, for the purposes of this Guideline and notwithstanding the use of the term T2S platform in other T2S related documentation, the hardware and all software components (i.e. all software used excluding the T2S business application) required to run and operate the T2S business application,
- 'T2S Programme' means the set of related activities and deliverables needed to develop T2S until the full migration of all CSDs which have signed the Framework Agreement with the Eurosystem,
- 'T2S Programme Board' means the Eurosystem management body established pursuant to Decision ECB/2009/6, which has the task of developing proposals for the Governing Council on key strategic issues and executing tasks of a purely technical nature in relation to T2S,
- 'T2S project account' means the T2S account used to collect and distribute instalments, reimbursement and fees. The project account can have sub-accounts to separate different kinds of cash flows. It does not have a budgetary character,
- 'T2S services' means the services to be provided by the Eurosystem to CSDs on the basis of the Framework Agreement,
- 'T2S users' means legal entities which, for the purposes of T2S, have entered into a contractual relationship with CSDs that have signed the Framework Agreement with the Eurosystem. It also includes payment banks which have a contractual relationship with central banks and provide liquidity on a T2S dedicated cash account through a real-time gross settlement system account to a financial institution, settling in T2S,
- 'User detailed functional specifications (UDFS)' means a detailed description of the functions managing the T2S

external data flows (from application to application). It will include the necessary information for the users to adjust or to develop their internal information system in view of connecting it to T2S,

- 'User Handbook' means the document describing the way in which T2S users can make use of a number of T2S software functions that are available in a user to application (screen-based) mode,
- 'User requirements document' (URD) means the document setting out the user requirements for T2S as published by the ECB on 3 July 2008 and as subsequently amended through the T2S Change and Release Management Procedure.

SECTION II

GOVERNANCE OF THE T2S PROGRAMME

Article 3

Governance levels

The governance of the T2S Programme shall be based on three levels as described in this Section of the Guideline. Level 1 shall consist of the Governing Council, Level 2 shall consist of the T2S Programme Board and Level 3 shall consist of the 4CB.

Article 4

The Governing Council

1. The Governing Council shall be responsible for the direction, overall management and control of the T2S Programme. It shall also be responsible for ultimate decision-making in relation to the T2S Programme and shall decide on the allocation of tasks not specifically attributed to Levels 2 and 3.

2. In particular, the Governing Council shall have the following competences:

- (a) responsibility for the governance of the T2S Programme through all of the following activities:
 - (i) deciding on any issue regarding T2S governance; assuming responsibility for the overall T2S Programme and therefore being the final decision-maker if any dispute arises;
 - (ii) taking, on an ad hoc basis, decisions on tasks assigned to the T2S Programme Board or to the 4CB;
 - (iii) allocating the performance of subsequent or additional specific tasks relating to the T2S Programme to the T2S Programme Board and/or to the 4CB, while determining which decisions relating thereto it reserves to itself;
 - (iv) adopting any decision regarding the organisation of the T2S Programme Board;

- (b) dealing with requests from members of the T2S Advisory Group presented in accordance with the rules of the T2S Advisory Group;
- (c) deciding on the basic financial regime for T2S, namely:
 - (i) the pricing policy for T2S services;
 - (ii) the cost methodology for T2S;
 - (iii) the financial arrangements pursuant to Article 12;
- (d) deciding on the CSD access criteria;
- (e) validating and accepting the T2S Programme Plan; monitoring progress of the T2S Programme and deciding on measures to reduce any delay in implementing T2S;
- (f) deciding on the basic operational aspects of T2S, namely:
 - (i) the T2S operational framework, including the incident and crisis management strategy;
 - (ii) the T2S information security framework;
 - (iii) the T2S Change and Release Management Procedure;
 - (iv) the strategy for testing T2S;
 - (v) the T2S migration strategy;
 - (vi) the T2S risk management framework;
- (g) endorsing the basic contractual framework, namely:
 - (i) the agreements between Levels 2 and 3;
 - (ii) the service level agreements negotiated between the T2S Programme Board and the CSDs and Eurosystem central banks as well as with the 4CB;
 - (iii) the contracts with the CSDs that are negotiated by the T2S Programme Board jointly with the Eurosystem central banks and, on the other hand, the CSDs;
 - (iv) the contracts with non-euro area NCBs, other central banks or other competent monetary authorities, including respective service level agreements;
- (h) responsibility for taking appropriate measures to ensure enforcement of oversight rules and principles;
- (i) deciding on the date of the start of the migration of CSDs to T2S.

Article 5

The T2S Programme Board

1. The composition and mandate of the T2S Programme Board are laid down in Decision ECB/2009/6. The T2S Programme Board shall be in charge of the tasks assigned to Level 2 within the general framework defined by the Governing Council.

2. The mandate of the T2S Programme Board also includes:

- (a) discussing and approving the GFS, the UDFS and the User Handbooks;
- (b) implementing the T2S operational framework, including the incident and crisis management strategy, within the parameters set by the Governing Council;
- (c) negotiating the currency participation agreements referred to in Article 18(1) and (2);
- (d) providing information to relevant competent regulatory and oversight authorities;
- (e) negotiating the Level 2-Level 3 agreement with the 4CB, for endorsement by the Governing Council.

Article 6

The 4CB

1. The 4CB shall develop and operate T2S and shall provide information on their internal organisation and allocation of work to the T2S Programme Board.

The 4CB shall, in particular, perform all of the following tasks:

- (a) preparing, on the basis of the URD and the guidance of the T2S Programme Board, the GFS, the UDFS and the User Handbooks in accordance with the T2S Programme Plan;
- (b) developing and building T2S on behalf of the Eurosystem, and providing the technical components of T2S in accordance with the T2S Programme Plan and with the URD, the GFS and the UDFS and other specifications and service levels;
- (c) making T2S available to the T2S Programme Board in conformity with the approved timing, specifications and service levels;
- (d) submitting the following to the T2S Programme Board for the purposes of the T2S financial arrangements pursuant to Article 12:
 - (i) an estimate, in a form that can be assessed and/or audited by the relevant European System of Central Banks (ESCB) or Eurosystem committee and/or external auditors of the costs they will incur in developing and operating T2S;
 - (ii) a financial offer, including the type, payment schedule as well as the time period covered;
- (e) obtaining all licences necessary to build and operate T2S and to enable the Eurosystem to be in a position to provide T2S services to the CSDs;

- (f) implementing changes to T2S in accordance with the T2S Change and Release Management Procedure;
- (g) providing answers in their field of competence to requests formulated by the Governing Council or the T2S Programme Board;
- (h) providing training, technical and operational support for tests and for migration, under the coordination of the T2S Programme Board;
- (i) negotiating the Level 2-Level 3 agreement with the T2S Programme Board.

2. The 4CB shall be jointly and severally liable vis-à-vis the Eurosystem for the performance of their tasks. The liability shall cover fraud, wilful misconduct and gross negligence. The liability regime shall be further specified in the Level 2-Level 3 agreement.

3. Outsourcing or subcontracting the above tasks by the 4CB to external providers shall be without prejudice to the 4CB's liability towards the Eurosystem and other stakeholders and shall be transparent to the T2S Programme Board.

Article 7

Relations with external stakeholders

1. The T2S Advisory Group is a forum for communication and interaction between the Eurosystem and external T2S stakeholders. The T2S Advisory Group shall report to the T2S Programme Board and may, in exceptional cases, bring matters to the attention of the Governing Council.

The T2S Advisory Group shall be chaired by the Chairperson of the T2S Programme Board. The composition and mandate of the T2S Advisory Group are laid down in the Annex to this Guideline.

The Advisory Group shall perform its function according to the Rules of Procedure which are approved by the Governing Council.

2. The CSD Contact Group is a forum for communication and interaction with the CSDs. It shall facilitate the preparation and negotiation of the Framework Agreement between the Eurosystem, on the one hand, and the CSDs which are willing to participate in T2S, on the other hand. The CSD Contact Group shall be chaired by the Chairperson of the T2S Programme Board. The composition and mandate of the CSD Contact Group are laid down in the Annex.

3. The National User Groups are a forum for communication and interaction with providers and users of securities settlement services within their national market, in order to support the development and implementation of T2S and to assess the impact of T2S on the national markets. The National User

Groups shall be chaired by the respective NCBs. The composition and mandate of the National User Groups are laid down in the Annex.

Article 8

Good governance

1. In order to avoid conflicts of interest between the Eurosystem's T2S service-providing and its regulatory functions, the Eurosystem central banks shall ensure that:

(a) members of the T2S Programme Board do not participate in any oversight activity of their central bank in relation with T2S, as specified in the Rules of Procedure of the T2S Programme Board, as approved by the Governing Council. They shall not be members of the Payment and Settlement Systems Committee (PSSC), the Information Technology Committee (ITC) or the Eurosystem IT Steering Committee (EISC);

(b) there shall be separation between T2S oversight and the operational activities of T2S.

2. The T2S Programme Board shall be subject to reporting obligations, controlling and audit, as defined in this Guideline. Audits relating to the development, operation and cost of T2S shall be initiated and conducted on the basis of the principles and arrangements set out in the Governing Council's ESCB audit policy in force at the time when the relevant audit takes place.

Article 9

Cooperation and information

1. The 4CB and the T2S Programme Board shall cooperate with each other, exchange information and provide technical and other support to each other during the development of the T2S Programme.

2. The 4CB, the other Eurosystem central banks and the T2S Programme Board shall inform each other immediately of any issues that could materially affect the development or building of T2S, and shall endeavour to mitigate any related risk.

3. The T2S Programme Board shall report on a quarterly basis to the Governing Council on the development of the T2S Programme. Draft reports shall be sent to the PSSC and to the EISC for comments before submission via the Executive Board to the Governing Council.

4. The T2S Programme Board shall share the agendas, the summaries and the relevant documentation of its meetings with the members of the PSSC, to allow such members to provide input in case of need.

5. The T2S Programme Board may consult, and may be consulted by, any competent ESCB committees as necessary.

6. The 4CB shall provide regular reports on the T2S Programme to the T2S Programme Board.

7. The content and detailed procedure for the reporting obligations of the T2S Programme Board and of the 4CB is detailed in the Level 2-Level 3 agreement.

SECTION III

FINANCIAL REGIME

Article 10

Pricing policy

1. The pricing policy for T2S shall be guided by the basic principles of being not for profit, of full cost recovery and of non-discrimination towards CSDs.

2. Within 6 months following the adoption of this Guideline, the T2S Programme Board shall submit to the Governing Council a proposal on the pricing policy for T2S services, including the general procedures and a report on T2S's compliance with the objective of operating on a not-for-profit basis and achieving full cost recovery, including an assessment of any resulting financial risk that the Eurosystem may be exposed to. The pricing policy will be discussed with CSDs and users prior to being submitted to the Governing Council.

Article 11

Cost and accounting methodology

1. T2S shall be subject to the Eurosystem common cost methodology and the Guideline ECB/2006/16 of 10 November 2006 on the legal framework for accounting and financial reporting in the European System of Central Banks ⁽¹⁾ unless the Governing Council decides otherwise.

2. The T2S Programme Board shall, at a very early stage, involve the relevant ESCB/Eurosystem committees in the assessment of the correct implementation of:

- (a) the Eurosystem common cost methodology in the context of T2S cost estimates and the calculation of annual T2S costs; and
- (b) Guideline ECB/2006/16 by the ECB and the 4CB in the context of T2S cost and asset recognition.

Article 12

Financial arrangements

1. The T2S Programme Board shall submit a proposal on the T2S financial envelope to the Governing Council, which shall include the T2S costs, i.e. the 4CB and ECB costs for developing, maintaining and operating T2S.

2. The proposal shall also include:

- (a) type of offer;
- (b) payment schedule;
- (c) time period covered;

(d) cost sharing mechanism;

(e) the cost of capital.

3. The Governing Council shall decide on the financial arrangements.

Article 13

Payments

1. There shall be a T2S project account held at the ECB on behalf of the Eurosystem. The T2S project account shall not have a budgetary character but shall be used to collect and distribute all T2S-cost-related pre-payments, instalments and reimbursements as well as T2S usage fees.

2. The T2S Programme Board shall manage the T2S project account on behalf of the Eurosystem. Subject to validation and acceptance of the 4CB deliverables, the T2S Programme Board shall approve the payment of each instalment to the 4CB in accordance with the payment schedule approved by the Governing Council and set out in the Level 2-Level 3 agreement.

Article 14

The Eurosystem's rights to T2S

1. The T2S business application shall be fully owned by the Eurosystem.

2. To this end, the 4CB shall grant the Eurosystem licenses regarding the intellectual property rights required to enable the Eurosystem to provide the full range of T2S services to CSDs under the applicable rules and common service levels and on an equal basis. The 4CB shall indemnify the Eurosystem for any infringement claims raised by third parties in relation to such intellectual property rights.

3. The details regarding the Eurosystem's rights to T2S shall be agreed between the 4CB and the T2S Programme Board in the Level 2-Level 3 agreement. The rights of the authorities that have signed a currency participation agreement as defined in Article 18 will be laid down in such agreement.

SECTION IV

CENTRAL SECURITIES DEPOSITORIES

Article 15

CSD access criteria

1. CSDs shall be eligible for access to T2S services provided that they:

- (a) have been notified to the European Commission pursuant to Article 10 of Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems ⁽²⁾ or, in the case of a CSD from a non-European Economic Area (EEA) jurisdiction, they operate under a legal and regulatory framework that is equivalent to that in force in the Union;

⁽¹⁾ OJ L 348, 11.12.2006, p. 1.

⁽²⁾ OJ L 166, 11.6.1998, p. 45.

(b) have been positively assessed by the competent authorities against the CESR/ESCB Recommendations for Securities Settlement System;

(c) make each security/ISIN for which they are an issuer CSD (or technical issuer CSD) available to other CSDs in T2S upon request;

(d) commit to offer to other CSDs in T2S basic custody service on a non-discriminatory basis;

(e) commit towards other CSDs in T2S to carry out their central bank money settlement in T2S if the currency is available in T2S.

2. The rules in relation to the access criteria for CSDs shall be implemented in the contractual agreements between the Eurosystem central banks and the CSDs.

3. The ECB shall maintain a list on its website identifying the CSDs admitted to settle in T2S.

Article 16

Contractual relations with CSDs

1. The contracts between the Eurosystem central banks and CSDs, including the service level agreements, shall be fully harmonised.

2. The T2S Programme Board, jointly with the Eurosystem central banks, shall negotiate the contracts with CSDs.

3. The contracts with CSDs shall be approved by the Governing Council and subsequently signed by the Eurosystem central bank of the country where the seat of the CSD is located, or by the ECB for CSDs located outside the euro area, in either case acting in the name and on behalf of all Eurosystem central banks. In relation to Ireland, the contract will be signed by the Eurosystem central bank of the Member State that has notified the securities settlement system to the European Commission in accordance with Article 10 of Directive 98/26/EC.

Article 17

Compliance with regulatory requirements

1. The T2S Programme Board shall aim to support ongoing compliance by CSDs with relevant legal, regulatory and oversight requirements.

2. The T2S Programme Board shall consider whether the ECB should issue recommendations in order to foster legislative adaptations to ensure equal access rights to the T2S services by CSDs, and make proposals relating thereto to the Governing Council.

SECTION V

CURRENCIES OTHER THAN THE EURO

Article 18

Eligibility conditions for inclusion in T2S

1. An EEA currency other than the euro shall be eligible for use in T2S provided that the non-euro area NCB, other central bank or other authority responsible for such currency enters into a currency participation agreement with the Eurosystem and that the Governing Council has approved the eligibility of such currency.

2. A currency other than an EEA currency shall be eligible for use in T2S provided that the Governing Council has approved the eligibility of such currency, if:

(a) the legal, regulatory and oversight framework applicable to settlement in that currency provides substantially the same or a higher degree of legal certainty as that in force in the Union;

(b) the inclusion of such currency in T2S would have a positive impact on the contribution of T2S to the Union securities settlement market;

(c) the other central bank or other authority responsible for such currency enters into a mutually satisfactory currency participation agreement with the Eurosystem.

3. In accordance with the mandate of the T2S Programme Board, non-euro area NCBs may be represented on the T2S Programme Board.

SECTION VI

T2S PROGRAMME DEVELOPMENT

Article 19

T2S Programme Plan

1. Upon the adoption of this Guideline, the T2S Programme Board shall make proposals to the Governing Council for a T2S Programme Plan, based on the URD, consisting of a structured list of deliverables and activities in relation to the T2S Programme, together with their interdependencies and intended start and end dates.

2. On the basis of proposals made by the T2S Programme Board, the Governing Council shall assess, validate and accept the T2S Programme Plan.

3. The T2S Programme Board shall establish a detailed programme schedule on the basis of the T2S Programme Plan identifying the milestones of the T2S Programme. The schedule shall be published and communicated to T2S stakeholders.

4. If there is a serious risk that a milestone of the T2S Programme will not be achieved, the T2S Programme Board shall promptly inform the Governing Council thereof, and propose measures to reduce any delay in implementing the T2S Programme.

SECTION VII

FINAL PROVISIONS*Article 20***Level 2-Level 3 agreement**

1. Subject to this Guideline, a Level 2-Level 3 agreement shall provide for the additional details of the tasks and responsibilities of the 4CB, the T2S Programme Board and the Eurosystem central banks.
2. The draft Level 2-Level 3 agreement shall be submitted for endorsement by the Governing Council and then signed by the Eurosystem and the 4CB.

*Article 21***Dispute resolution**

1. If a dispute in relation to a matter regulated by this Guideline cannot be settled by agreement between the affected parties, any affected party may submit the matter to the Governing Council for a decision.

2. The Level 2-Level 3 agreement shall provide that the T2S Programme Board or the 4CB may bring any dispute arising out of the Level 2-Level 3 agreement to the Governing Council.

*Article 22***Entry into force**

This Guideline shall enter into force on 1 May 2010.

*Article 23***Addressees and implementing measures**

This Guideline applies to all Eurosystem central banks.

Done at Frankfurt am Main, 21 April 2010.

For the Governing Council of the ECB

The President of the ECB

Jean-Claude TRICHET

ANNEX

T2S ADVISORY GROUP**Mandate and composition****1. Mandate and competences**

The TARGET2-Securities (T2S) Advisory Group (AG) has the following mandate:

- (a) supporting the Eurosystem's review of the General Specifications (GS) and the User Detailed Functional Specifications (UDFS) to ensure their full compliance with the User Requirements Document (URD);
- (b) supporting the Eurosystem's review of any requests to change the URD;
- (c) providing advice as to the further definition of the legal underpinning for the GS and the UDFS;
- (d) supporting the Eurosystem in further defining the pricing framework;
- (e) continuing the work on harmonisation in the field of securities settlement related to T2S;
- (f) supporting implementation efforts in the market;
- (g) advising on, and supporting the implementation of, agreements and policies that contribute to an effective and cost efficient post-trading T2S environment between T2S and CSDs, and thus to encourage commitment by central securities depositories (CSDs) and market users to shift balances and settlement activity to T2S;
- (h) advising on migration issues and phasing.

2. Composition

- 2.1. The AG is composed of the Chairperson, the Secretary, full members and observers.
- 2.2. Whenever deemed appropriate, the Chairperson may at their discretion invite additional experts to meetings of the AG on an ad hoc basis and inform the AG thereof.

3. Full members

- 3.1. Full members are entitled to take part in decisions taken by the AG.
- 3.2. Each group eligible for full membership pursuant to paragraph 3.3 is allotted the same number of full members. The number of full members of each other stakeholder group is equal to the number of full members in the central bank stakeholder group.
- 3.3. A representative of any of the following groups is eligible to be a full member of the AG:
 - (a) central banks – the ECB and each national central bank (NCB) of the euro area is to be represented by one full member. Upon adoption of the euro by a Member State, the respective NCB also participates as a full member in the AG as of the date of entry into the euro area. A central bank outside the euro area that has decided to include its currency in T2S is also represented by one full member as of the date of that decision. As a public authority, the European Commission is a full member and is counted as a member of the central bank group;
 - (b) Central Securities Depositories (CSDs) – each group of CSDs, which may constitute of several CSDs, or each CSD, as the case may be, that settles its euro transactions and/or its transactions in its national currency other than the euro and that has met the following criteria is a full member of the AG and may nominate one representative:

- it has declared its support to T2S,
- it is willing to enter into a contractual arrangement with the Eurosystem,
- it has declared its intention to use T2S once it is in operation.

According to paragraphs 3.2 and 3.3(a) the number of CSD representatives is equal to the number of central bank representatives. Thus, larger groups of CSDs and larger CSDs have a higher number of representatives, depending on their settlement volume. The number of additional representatives is determined by the CSDs represented in the AG and the AG Chairperson, in line with the *d'Hondt* methodology for proportional representation;

- (c) users – the Nomination Committee (NC) selects members from the user community on the basis of applications received by the Secretary pursuant to a predefined key:
- at least eleven full members representing major commercial banks active in the securities business in currencies that are eligible for settlement in T2S, irrespective of their place of incorporation,
 - at least two full members representing international investment banks,
 - at least two full members representing banks which are active in the securities settlement industry to serve their local customers,
 - at least one full member representing a central counterparty.

4. **Observers**

- 4.1. Observers are entitled to participate in the meetings of the AG, but may not participate in its decision-making process.
- 4.2. One Representative of each of the following groups/institutions is eligible to be an observer of the AG:
- (a) Committee of European Securities Regulators;
 - (b) European Banking Federation;
 - (c) European Savings Bank Group;
 - (d) European Association of Cooperative Banks;
 - (e) European Securities Services Forum;
 - (f) Federation of European Securities Exchanges;
 - (g) CSDs that support T2S and which are operated by an NCB;
 - (h) chairpersons of AG sub-groups.
- 4.3. The Eurosystem central banks that will build and operate the T2S platform (4CB) may nominate one representative per individual central bank to participate in the AG as observer. These representatives present their view to the AG in a uniform way.

5. **Nomination procedures**

5.1. The following nomination procedures apply for full members and observers:

- (a) a central bank representative is nominated by the Governor/President of the central bank concerned pursuant to the applicable central bank statute;
- (b) a CSD representative is nominated by the head of the CSD concerned;
- (c) a user representative is nominated by the respective organisations on the basis of applications *ad personam*. They are designated by the NC in line with the applicable NC procedures and criteria;
- (d) an observer is nominated by the head of the group/institution concerned.

5.2. Each nominee has to have the appropriate level of seniority and the relevant technical expertise. The nominating entities are responsible for ensuring that a nominee can make sufficient time available in order to be actively involved in the work of the AG.

5.3. Any nomination must be confirmed in writing to the Secretary.

6. **Participation**

6.1. Full members and observers in the AG participate in the AG strictly on a personal basis. Their attendance to the AG meetings is considered as a signal of their commitment to the project.

6.2. Full members and observers are entitled to designate an alternate (with an equivalent level of seniority and expertise) who, in exceptional circumstances, attends the AG in case of absence of the former and may express views or, in case of full members, vote on his/her behalf by way of a proxy vote. Full members and observers concerned inform the Secretary thereof sufficiently in advance.

6.3. Whenever a full member or observer has left the entity they represent, their membership ceases with immediate effect.

6.4. The AG Chairperson will request the responsible nominating organisation or the NC, as the case may be, to designate a substitute member each time a full member or an observer resigns or their membership ceases, in accordance with the applicable nomination procedure set out in Article 5.

7. **Chairperson**

7.1. The Chairperson must be a senior manager of the ECB and is appointed by the Governing Council. The Chairperson is entitled to designate an alternate to replace them in exceptional circumstances.

7.2. The Chairperson is responsible for organising the meetings of the AG and chairs those meetings. In this function, they decide on the agenda of the meetings, taking into account contributions from members of the AG, and decide on the documents to be sent to the AG.

7.3. The Chairperson decides whether a subject belongs to the field of competence of the AG (according to paragraph 1.2) and will inform the AG accordingly if they decide that a matter does not fall within the AG's field of competence.

7.4. The Chairperson performs all functions as provided for in the Governing Council decision, as well as all other functions subsequently delegated to them by the AG.

7.5. The Chairperson nominates the chairpersons and the regular members of the sub-groups that are established under the auspices of the AG.

- 7.6. The Chairperson is the only person to represent the AG externally. The AG will be informed in an appropriate manner prior to any relevant external representations undertaken by the Chairperson on behalf of the AG. Any external communication of the AG will be brought to the attention of the AG sufficiently in advance.

8. **Secretariat**

- 8.1. The Secretary must be a highly experienced ECB staff member and is appointed by the Chairperson. The Chairperson may designate an alternate to replace the Secretary in exceptional circumstances.

- 8.2. The Secretary is provided with operational and secretarial support by the ECB.

- 8.3. The Secretary works under the guidance of the Chairperson. The Secretary's tasks involve, in particular:

- (a) assisting the Chairperson in his/her duties;
- (b) organising meetings and preparing the summary of the meetings;
- (c) assisting in the drafting of documents adopted by the AG;
- (d) acting as coordinator for consultations;
- (e) organising external communication in relation to the work of the AG and the other groups (such as the publication of AG documents);
- (f) executing all other functions assigned to him/her by these Rules of Procedure or the AG or the Chairperson, as the case may be.

- 8.4. The Secretary is an *ex officio* member of the NC. He may also participate to the sub-structures of the AG.

- 8.5. The Secretary is not entitled to take part in the decisions of the AG.

9. **Working procedures**

- 9.1. As a rule, the AG meets once every quarter. Additional meetings may be called by the Chairperson, the dates of which will be communicated sufficiently in advance to the AG. In principle, meetings take place at the premises of the ECB.

- 9.2. The working language is English.

- 9.3. Provisional conclusions on the main outcome of an AG meeting are published on the ECB's website within three working days after the meeting. These provisional conclusions are published under the responsibility of the Chairperson, and marked as such, without involvement of the AG. The Secretary also provides an action list after each AG meeting listing the tasks and deadlines that were allocated during that meeting. The summary of an AG meeting is drafted by the Secretary and circulated to the members of the AG within six working days of the meeting. Comments on the draft summary must be received from AG members within three working days. The final summary is published once it has been approved by the AG. It replaces the provisional conclusions of the Chairperson, which will be removed from the website after the summary is published. The summary indicates the topics that were under consideration, as well as the results of the discussions.

- 9.4. The AG works in an open and transparent manner.

The agenda of a meeting and the documents to be discussed (including input from AG sub-structures) will be circulated to the members and published on the ECB's website at least five working days before the meeting. It is at the discretion of the AG to decide whether documents that were sent less than five days in advance of a meeting will be discussed during that meeting. Comments and other submissions received by the Secretary no later than three working days before a meeting will be distributed to the AG and, in principle, will also be published on the ECB's website. Documents of a confidential nature (such as documents received from market participants on the condition of confidentiality or documents deemed confidential by the Chairperson) will not be published.

- 9.5. Decisions of the AG take either the form of advice that is sent directly to the ECB's decision-making bodies, i.e. the Governing Council and the Executive Board, or of resolutions concerning the organisation of the AG work or the work of the sub-groups.
- 9.6. As a rule, any advice to the ECB's decision-making bodies is adopted by way of consensus among the AG's members taking part in the AG's decisions. If a consensus cannot be reached, the Chairperson may decide to assess the degree of support for specific advice by asking all full members of the AG taking part in the AG's decision-making bodies. In case there are several proposals for advice on the same subject, only those proposals that are supported by at least seven full members of the AG (or their alternates) will be notified to the ECB's decision-making bodies. Full members are not allowed to support more than one proposal on the same subject. For issues of extreme importance, seven full members can request that their minority view be immediately submitted to the ECB's decision-making bodies.
- 9.7. The AG may establish sub-structures to support its work related to: (a) the technical implementation of the user requirements; (b) harmonisation for T2S-related matters; (c) legal issues related to T2S; or (d) any other area where the AG deems specific support necessary. The mandates of such sub-structures are defined and adopted by the AG.

The AG may establish sub-groups which encompass all AG stakeholder groups and which are of a longer term nature. In addition, the AG may also establish task forces which do not necessarily encompass all AG stakeholders and/or are of a short term nature. Furthermore, the AG as well as the T2S project team may call for workshops to address particular topics on an ad-hoc basis.

Decisions of the AG concerning the organisation of the work of the sub-structures will be taken by consensus, or by simple majority vote, if no consensus is reached.

- 9.8. The AG must ensure that a wide range of market participants and authorities are given the opportunity to provide input to the AG and that they are informed of its deliberations. The Secretary acts as coordinator for any such consultations and is supported by the ECB T2S Team, and by other ECB staff where necessary.

To this end, in each country, a National User Groups (NUG) will be established as a link between the national market and the AG. NUGs may submit suggestions or resolutions to the AG via the Secretary.

The AG must use appropriate means to consult market participants, authorities, as well as all other stakeholders and interested parties, e.g. through NUGs, public consultations, round-table discussions, dedicated meetings and information sessions, or the publication of feedback statements following consultations.

All consultations must, as a rule, provide for a window of no less than three weeks for comments, unless the Chairperson of the AG decides otherwise.

10. Reporting lines and relationship with European System of Central Bank (ESCB) Committees

- 10.1. The Governing Council may provide general guidance to the AG, either on its own initiative or upon request.
- 10.2. The AG submits its advice directly to the ECB's decision-making bodies for their consideration.
- 10.3. The AG may provide guidance directly to a sub-group via the respective Chairperson as work to be undertaken pursuant to the mandate, either on its own initiative or upon their request.
- 10.4. Through the Chairperson, the AG may consult an ESCB Committee or its subgroup(s) on specific technical issues within the field of competence and expertise of that Committee (such as legal issues in relation to T2S). In principle, a minimum period of three weeks for any such consultation will be given, unless special circumstances require a shorter period. The Chairperson also ensures that the AG's work does not overlap with the mandate of an ESCB Committee.

CSD CONTACT GROUP

Mandate and composition

1. Scope of the mandate

The CSD Contact group (CCG) shall facilitate the preparation and negotiation of the Framework Agreement, between the Eurosystem, on the one hand, and the CSDs which are willing to participate in T2S, on the other hand. The Framework Agreement shall be a document which will be proposed by the Governing Council to all European CSDs. It shall cover the development and the operational phases of T2S. It will be signed by CSDs individually.

2. Composition

The CCG shall be composed of the CSD project sponsors and of the members and alternates of the T2S Programme Board.

The project sponsors are nominated by the managing boards of those CSDs that have signed the MoU with the Eurosystem on 16 July 2009 or have made a unilateral declaration of its acceptance thereafter. Each CSD member may designate an alternate which may replace him/her in case of unavailability. In case neither the project sponsor nor his/her alternate is available, the CSD is not represented. In case T2S Programme Board members and alternates are not available, they cannot be replaced.

The Chairperson of the CCG shall be the Chairperson of the T2S Programme Board. The Chairperson shall in coordination with the CSDs: (1) decide on the frequency, format and agenda of the meetings; (2) invite external experts and/or T2S Team members to the meetings on specific topic. The rapporteur shall be a member of the T2S Team at the ECB. He/she shall: (1) coordinate the organisation of the meetings and the timely transmission of the relevant documents; (2) support the Chairperson in preparations for group's meetings; (3) draft the outcome of the meetings; (4) support the Chairperson in managing the relations with the relevant (sub-) groups.

3. Working procedures, interaction and support

Working procedures

The CCG shall aim at adopting its resolutions by consensus. In case, a consensus can not be reached for two consecutive meetings, the divergences shall be carefully documented. In such a case, it shall be the responsibility of the T2S Programme Board to make a proposal to the Governing Council. CSDs who disagree with the T2S Programme Board proposal shall have the possibility to express a diverging opinion.

Interaction between T2S Advisory Group (AG) and the CCG

The Chairperson of the CCG shall, on a regular basis, inform the AG on the progress of the Framework Agreement negotiation process.

Where relevant the CCG (possibly via the Project Managers sub-group (PMSG) and the Task Force on Contractual Issues (TCI)) will receive input from the existing sub-structures of the AG.

CCG support

The CCG shall be supported by:

- the PMSG, responsible for preparing the business view for the negotiation (including, inter alia, functional, technical and planning items),
- the TCI, which shall provide legal support to the CCG and in that role will 'translate' the business input received from the CCG and the PMSG into the appropriate legal terms.

The CCG will define the mandate of these two task forces and will set their agenda in broad terms.

NATIONAL USERS GROUP

Mandate and composition

1. Introduction

The National User Group (NUG) brings together providers and users of securities settlement services within its national market in order to support the development and implementation of TARGET2-Securities (T2S). It creates a forum for involving national market participants in the T2S Advisory Group's (AG) work and establishes the formal link between the AG and the national market. It acts both as a sounding board for the T2S project team, and as a provider of input to the AG in relation to all matters considered by the AG. As such, it may also suggest issues for AG consideration.

The NUGs may be involved in the URD change management process and can play an important role in assessing such requests in the context of the operation of the national market. The NUGs should adopt the T2S principle of seeking to avoid incorporating national specificities in T2S, and should actively promote harmonisation.

2. Mandate

The mandate of NUGs is to:

- assess the impact of the T2S functionality, and in particular any changes in the T2S user requirements, on their national market; when doing so, due consideration should be given to the concept of a 'lean T2S' that aims at avoiding national specificities and at promoting harmonisation,
- bring material concerns of the national market to the attention of the AG,
- raise the awareness of T2S in all segments of the national securities community,
- support the AG members representing the national community.

3. Composition

The NUGs comprise of the Chairperson, the Secretary and members.

The Chairperson of a NUG should preferably be a full member or observer of the AG. This role will typically be performed by a senior official of the relevant national central bank. In the case where the relevant central bank does not provide or designate the Chairperson of the NUG, the Chairperson will be nominated by the AG Chairperson who will look for consensus amongst the main participants in the relevant market. Should the Chairperson not be a member of the AG, an AG member should coordinate between the AG and the NUG Chairperson to ensure a close link between the AG and the NUG.

The Secretary of the NUGs is provided by the relevant national central bank in euro area countries; in other countries the NUG Secretary is appointed by the NUG Chairperson. The Secretary is expected to attend regular briefings organised for NUG secretaries by the T2S team.

The NUG members comprise the relevant AG members and observers (or their nominated senior representative, acceptable to the NUG Chairperson) and additional persons with the knowledge and standing to be broadly representative of all categories of users and providers in the national market. NUG members may thus include central securities depositories, brokers, banks, investment banks, custodians, issuers and/or their agents, central counterparties, exchanges and multilateral trading facilities, the relevant national central bank, regulatory authorities and the relevant banking associations.

4. Working procedures

NUGs only deal with issues relevant to T2S. They are invited to actively seek briefing from the T2S team in relation to live issues, and provide national views in a timely fashion on matters requested by the AG Secretary or raised by the NUG. The T2S team regularly provides information to the NUGs and organises meetings with the NUG secretaries to foster the interaction between the NUG and the T2S team.

The NUGs will endeavour to have regular meetings aligned with the schedule of AG meetings, so that they can offer advice to national AG members. However, no AG member is bound by any such advice. NUGs may also make written submissions to the AG via the Secretary of the AG and invite an AG member to present its view.

The NUG Secretary aims at circulating an agenda and relevant documents for discussion at a NUG meeting at least five business days ahead of the meeting. A summary of NUG meetings will be published on the T2S website – and, if deemed appropriate, on the website of the respective NCB – in English and in any other Union language within three weeks after each meeting.

The members of the NUGs will be published on the T2S website. The NUGs will also publish a NUG-contact e-mail address on the T2S website, so that participants in national markets know whom to contact to express their views.

IV

(Acts adopted before 1 December 2009 under the EC Treaty, the EU Treaty and the Euratom Treaty)

COMMISSION DECISION

of 24 March 2009

on State aid C 47/05 (ex NN 86/05) implemented by Greece for Hellenic Vehicle Industry SA (ELVO)

(notified under document C(2009) 1476)

(Only the Greek text is authentic)

(Text with EEA relevance)

(2010/273/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 88(2) thereof,

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

Having called on interested parties to submit their comments pursuant to the provisions cited above ⁽¹⁾,

Whereas:

1. PROCEDURE

- (1) The Commission received a complaint by letter dated 27 May 2002 alleging that the Greek authorities had granted state aid to ELVO — Hellenic Industry SA ('ELVO').
- (2) After an extensive exchange of views with the Greek authorities, the Commission informed Greece by a letter dated 7 December 2005 that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the aid.
- (3) The Commission decision to initiate the procedure was published in the *Official Journal of the European Union* ⁽²⁾. The Commission invited interested parties to submit their comments on the aid.
- (4) The Commission received no comments from interested parties.
- (5) Greece submitted its comments to the Commission's opening decision by a letter dated 1 March 2006. Greece submitted further information by letters dated 26 July 2006, 28 July 2006, 2 August 2006, 22 June

2007, 2 July 2007, 31 August 2007, 6 September 2007, 18 October 2007, 22 February 2008 and 20 August 2008.

- (6) A meeting between Commission officials and the Greek authorities in the presence of representatives of ELVO was held on 4 May 2007.

2. THE FACTS

2.1. The beneficiary

- (7) ELVO is a company producing military vehicles, civilian vehicles and spare parts based in Thessaloniki, Greece. ELVO is the main supplier of motor vehicles to the Greek armed forces.
- (8) According to the information available, the company produces the following types of vehicles: buses, trolley buses, tipper vehicles, waste bin lorries, water tankers, fire extinguishing vehicles, snow-ploughs, aircraft transporters, crane transporters, tractors, lorries, trailers, SUVs, tanks and armoured vehicles.
- (9) The company was founded in 1972 as Steyr Hellas SA, producer of tractors, trucks, bikes and engines. In 1987 the company was renamed ELVO and the Greek Government became the principal shareholder.
- (10) Mytilineos Holdings SA acquired 43 % of ELVO by a share sale agreement of 29 August 2000 after a public tender (hereinafter this sale is referred to as 'the partial privatisation'). Currently, 51 % of ELVO is owned by the Greek Government.
- (11) ELVO currently employs about 672 persons (2007 figures). Its turnover in 2007 was EUR 84 million.

⁽¹⁾ OJ C 34, 10.2.2006, p. 24.

⁽²⁾ Cf. footnote 1.

2.2. The support measures

2.2.1. The tax waiver under Law 2771/1999

- (12) Under Article 15(3) of Law 2771/1999 passed on 16 December 1999, the Greek state released ELVO from all debts to the public purse related to taxes and fiscal penalties for the years 1988 to 1998 (hereinafter 'tax waiver A'). According to the Greek authorities, this corresponded to a waiver of GRD 1 193 753 186 (corresponding to EUR 3 503 310,89) ⁽³⁾ due from ELVO to the public purse.
- (13) In their comments further to the Commission's Decision to open the procedure under Article 88(2) of the EC Treaty the Greek authorities informed the Commission of two other measures in support of ELVO.

2.2.2. The tax waiver pursuant to Law 1892/90

- (14) By a decision ⁽⁴⁾ taken pursuant to Article 49 of Law 1892/90, the Greek authorities waived EUR 3 546 407,89 of taxes from ELVO (hereinafter 'tax waiver B'). This corresponded to ELVO's tax obligations from 1998 (year of the previous tax audit) until the sale to Mytilineos. The waiver took the form of repayments by the tax administration of taxes previously paid by ELVO. This breaks down as follows:

— EUR 2 912 380,90 concerned VAT paid by ELVO after the partial privatisation but due for the period between 1 January 2000 and the partial privatisation on 29 August 2000. This sum was repaid by the Greek authorities in two instalments on 7 November 2002 (EUR 900 000) and on 6 February 2004 (EUR 2 012 318,90).

— EUR 634 088,99 corresponded to taxes paid by ELVO for the operating years 1998, 1999 and 2000 (up until the partial privatisation). Greece has not indicated the exact date of the repayment.

2.2.3. The loan guarantee

- (15) In 1997, ELVO was granted a loan corresponding to EUR 23 008 134,635 by the German bank Bayerische Hypo and Vereinsbank AG. This loan was secured by a guarantee from the Greek state (hereinafter referred to as 'the loan guarantee'). ELVO provided no collateral for the guarantee but paid the state a fee of 1 % of the amount. The Greek authorities have informed the Commission

that the loan was used to finance production for the Ministry of Defence procurement programmes, more specifically the production of [...] ^(*) intended for the Greek army.

3. REASONS FOR OPENING THE PROCEDURE UNDER ARTICLE 82(2)

- (16) As mentioned above, the Commission informed Greece by a letter of 7 December 2005 that it had opened the proceedings under Article 88(2) of the EC Treaty in respect of tax waiver A, which it considered to constitute state aid. The Commission had doubts about the aid's compatibility with the common market on the following grounds.
- (17) In the exchange of views that preceded the opening decision, Greece had argued that ELVO's activity in its entirety was covered by Article 296 of the EC Treaty since ELVO mainly produced military vehicles intended for the Greek armed forces. However, the Commission noted that ELVO also manufactured civilian and dual use vehicles. Greece had not shown that the tax waiver had only benefited ELVO's military production and that it was necessary for Greece's essential defence interests.
- (18) Consequently, the Commission considered that only part of the financial support granted to ELVO was in favour of military production covered by Article 296 of the EC Treaty and that the aid granted to the production not so covered had to be investigated within a procedure on the basis of Article 88(2) of the EC Treaty.
- (19) In the same letter the Commission enjoined Greece, in accordance with Article 10(3) of Council Regulation (EC) No 659/1999 ⁽⁵⁾, to provide it with information on a number of points, among which were the following:
- information on any other financial support provided to ELVO from public resources,
 - evidence that the cost and revenue accounts linked to the civilian production (including dual use) and military production were separated and that the aid only favoured the military production,
 - data on the split of the turnover between product categories (civilian, dual use and military).

4. OBSERVATIONS OF THE GREEK AUTHORITIES

- (20) Further to the Commission's decision to open the investigation procedure, Greece submitted the following comments.

⁽³⁾ EUR amount as provided by the Greek authorities.

⁽⁴⁾ This decision had material force only in the share sale agreement of 29 August 2000 between the Greek State and Mytilineos.

^(*) Information covered by professional confidentiality.

⁽⁵⁾ Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 83, 27.3.1999, p. 1).

4.1. Other aid measures

- (21) Further to the Commission's injunction, Greece informed the Commission of tax waiver B and the loan guarantee as described above. Greece stated that ELVO had received no other support from public funds.

4.2. Relevance of Article 296 of the EC Treaty

- (22) Greece confirmed that ELVO did not maintain separate accounts for the civilian and military parts of its production. However, Greece argued that ELVO mainly produced military equipment. Thus in the years 1987 to 1998, 'military programmes' amounted to 85 % of the company's sales. If military production accounted for only 54 % of sales in 1999, this was an exceptional event due to the implementation of an agreement from 1997 to deliver buses and trolley buses to various public bodies (and indeed in the following years 2000-2002, the military share of sales was back at the normal high levels: 64,61 %, 72,59 % and 98,40 %, respectively). Thus, except for the year 1999, the overwhelming share of ELVO's production covered military material which could be covered by Article 296 of the EC Treaty.

4.3. Private vendor principle

- (23) Insofar as tax waivers A and B would not be covered by Article 296 EC, they should be seen in the context of the partial privatisation of ELVO. This was performed through an open tender in which eight Greek and international groups expressed an interest. Four submitted eligible bids. Mytilineos' bid was considered the best.

- (24) As part of the privatisation process, the Greek state decided that ELVO should be sold free of all tax obligations known before the sale was completed, and that any tax obligations that would arise before the sale but become due only later should fall to the Greek state. These conditions were part of the terms of the tender procedure and known to all bidders (whose bids consequently reflected their expectation that these debts would be written off). The purpose was to ensure the highest possible price for the shares (net of the waived tax claims).

- (25) The Greek state argues that it is common commercial practice in similar deals for the vendor to assume the financial obligations of the sold entity that have not materialised at the time the transaction is completed. Furthermore, the Greek authorities argue that the price paid by Mytilineos (EUR 12 179 071) left them with a substantial net consideration, even when the waived debt is deducted (net EUR 5 129 298,12).

- (26) Thus Greece claims to have acted in a manner similar to that of a private vendor seeking to maximise the profit from the sale of his asset and that therefore tax waivers A and B do not involve state aid.

4.4. State aid scheme N 11-1991

- (27) The Greek authorities also referred to the state aid scheme N 11/91 approved by the Commission by a letter of 11 July 1991. This scheme allowed state aid in the form of debt write-offs or debt capitalisation in relation to the privatisations of 208 identified undertakings in the public sector, amongst which ELVO. However, the scheme required prior notification of such aid to the Commission in two situations:

- if the sale of the undertaking was carried out through a procedure other than an open bid, i.e. through direct sale to a third party,
- if the undertaking operated in certain sectors, among which was the automotive sector ⁽⁶⁾.

- (28) The Greek authorities claim that the debt write-off based on Law 1892/90 was covered by this scheme. The write-off did not require a prior notification to the Commission as the sale of the 43 % of ELVO was carried out by means of an open bidding procedure, and since ELVO was a military producer it did not fall into the category of 'automobile' producers within the meaning of state aid provisions.

5. ASSESSMENT

5.1. Article 296 of the EC Treaty

- (29) Before going into a substantive assessment of the support measures under the state aid rules it is appropriate to deal with Greece's contention regarding the implications of Article 296 of the EC Treaty.
- (30) On the basis of Article 296(1)(b) EC the provisions of the Treaty do not preclude a Member State from taking 'such measures as it considers necessary for the protection of the essential interests of its security which are connected with the production of or trade in arms, munitions and war material; such measures shall not adversely affect the conditions of competition in the common market regarding products which are not intended for specifically military purposes.' This provision applies to a list of products drawn up by the Council (see Article 296(2) EC) and which includes among others (point 6 of the list) 'tanks and specialist fighting vehicles: ... (b) Military type vehicles, armed or armoured, including amphibious vehicles; (c) armoured cars ...'.

⁽⁶⁾ In French 'automobiles'.

- (31) This implies, as far as is relevant for this case, that the state aid provisions of the EC Treaty do not apply for measures relating to products included in the 1958 list, provided that such measures are considered necessary for the protection of the essential security interests of the Member State.
- (32) Case law requires a Member State which seeks to rely on Article 296 EC to furnish evidence that the exemptions do not go beyond the limits in such exceptional cases ⁽⁷⁾.
- (33) Greece has first argued that all ELVO's production, or at least a very substantial proportion thereof, concerns military material covered by Article 296(1)(b) EC, such that the state aid rules of the Treaty cannot apply to preclude any state support in favour of ELVO.
- (34) This view cannot be accepted. It is clear from the information in the case that ELVO's production concerns not only products covered by Article 296 EC but also products which are either suited for dual use or intended for purely civilian use (see recitals 8 and 17 above). For this reason alone, the Commission cannot accept the blanket assertion that all ELVO's activities are covered by Article 296(1)(b) EC. The application of this exception must be assessed separately for each aid measure in view of its purpose and scope.
- (35) In the case of tax waivers A and B the Commission cannot accept the contention that they are covered by Article 296 EC. Indeed, in the absence of any separate accounting between the civil and military production, it is impossible to ascertain whether these measures would benefit exclusively the military production.
- (36) The case of the loan guarantee is different. Greece has provided information showing that the guarantee covered a loan taken by ELVO to execute orders for vehicles intended for the Greek armed forces. The first order concerned [...], which are clearly covered by the list of military material covered by Article 296 EC. The second order concerned [...], which *prima facie* could be considered dual use products and thus could be covered by Article 296 EC only if they are specifically intended for military use. In this respect Greece has formally declared that [...] have been manufactured to the specifications of the Greek military forces [...]. The Commission accepts that [...], because of their characteristics, are placed in the list of items referred to in paragraph 30 above, in particular in point 6(b) thereof. Greece has further assured the Commission that all [...] have been delivered [...] to be used exclusively for military purposes, as confirmed by a letter of the Ministry of Defence. Greece has also stated that [...] are intended for and support military operations and were adjudged suitable for those purposes of [...]. The Commission accepts that the vehicles are necessary for the protection of Greece's essential security interests.
- (37) The Commission is satisfied that the order for which the loan guarantee as provided concerned war material within the meaning of Article 296(1)(b) EC and that the guarantee was necessary for the supply of this material to the Greek defence forces. The Commission consequently accepts that the loan guarantee is exempt from the state aid provisions of the EC Treaty by virtue of the exception of Article 296(1)(b) EC.
- (38) The following analysis under state aid rules will consequently only concern tax waivers A and B.

5.2. Existence of state aid

5.2.1. *Notions of state resources, selectivity, affecting of trade and distortion of competition*

- (39) Pursuant to Article 87(1) of the EC Treaty, '... any aid granted by a Member State or through state resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, insofar as it affects trade between Member States be incompatible with the common market' unless such aid can be justified under Article 87(2) or (3) of the EC Treaty. The notion of state aid covers not only direct transfers of state resources, e.g. in the form of grants, but also cases in which the state waives claims against a beneficiary and thus foregoes revenue.
- (40) The Commission considers that tax waivers A and B are state aid because they involve taxes which are state resources and grant a selective advantage explicitly to ELVO, which otherwise would have to pay these debts. The waivers are also clearly imputable to the state since they were effected through measures taken by organs of the state (i.e. a law in the case of tax waiver A and a repayment decision of the tax administration in the case of tax waiver B). Since there is competition and trade between the Member States in the vehicle industry, the financial advantages favouring ELVO compared to its competitors distort or threaten to distort competition and affect trade between the Member States.

⁽⁷⁾ See in this regard the judgment of the ECJ of 8 April 2008 in Case C-337/05, *Commission v Italy* (not yet published), paragraphs 42-49.

5.2.2. *The criterion of advantage: Greece's claim to have acted as a private vendor*

- (41) Greece has however argued that tax waivers A and B do not constitute state aid as they do not provide an advantage to ELVO which it could not have received under normal market conditions. Indeed, as set out in recitals 23 to 26 of this decision, Greece argues that it has acted as any private vendor would have done in similar circumstances.
- (42) This claim cannot be accepted.
- (43) First, the Commission notes that whereas Greece claims to have acted in the same way as a private vendor would have done in similar circumstances, it nevertheless used powers which are the exclusive preserve of the state in order to grant the support measures to ELVO: a specific law in the case of the tax write-off under tax waiver A and a decision by the tax administration in the case of tax waiver B. These are powers of which a private vendor could never avail himself. It is therefore by definition excluded that the Greek state acted like a private operator acting in normal conditions ⁽⁸⁾.
- (44) Furthermore, and by way of a subsidiary argument, the Commission also notes that Greece's contention that waiving the tax claims allowed it to achieve a higher net price (i.e. sale price of the shares minus the foregone tax revenue) for its shares in ELVO than it would have been able to achieve if it had sold the shares without writing off the tax claims is simply an assertion, unsubstantiated by any evidence (such as for instance a comparison between the actual sale price and the estimated share price in the alternative scenario). In the absence of even the slightest indication to this effect, it is not possible to accept Greece's suggestion that the tax waivers made business sense.
- (45) The Commission consequently dismisses Greece's claim to have acted as a market economy vendor and finds that the tax waivers A and B gave ELVO an advantage that it would not have been able to obtain on normal market terms.

5.2.3. *Conclusion regarding the existence of state aid*

- (46) The Commission finds that tax waivers A and B constitute state aid within the meaning of Article 87(1) of the EC Treaty.

5.3. Compatibility with the common market

5.3.1. *Alleged compatibility under state aid scheme N 11/91*

- (47) In the course of the investigation Greece argued that tax waivers A and B, if found to constitute state aid, would in any event be covered by the above-mentioned scheme

⁽⁸⁾ See the ruling of the Court of First Instance of 17 December 2008 in Case T-196/04 *Ryanair* (not yet published), paragraphs 84, 85 and 90.

authorised by the Commission in case N 11/91, and consequently be compatible with the common market. The Commission cannot, however, accept the arguments of Greece set out in recitals 27 and 28 above.

- (48) As a preliminary remark, the Commission notes that Law 1892/90, which was the subject-matter of the Commission's decision N 11/91, applies only in the event of the sale or any other form of transfer of an undertaking or of all of an undertaking's assets or of a majority of an undertaking's shares (Article 49 of Law 1892/90). However, in the present case, only 43 % of the shares in ELVO was sold to a private party, and the Greek Government retained 51 %. Already, on this ground, the Commission doubts that the partial privatisation of ELVO falls under the scheme.
- (49) Even if it were, for argument's sake, accepted that the share sale agreement falls under scheme N 11/91, the conditions of that scheme are not met in the case at issue.
- (50) Indeed, even if it were — again for argument's sake — accepted that the construction of military vehicles did not enter into the definition of the automotive sector for the purposes of the scheme, the fact is that ELVO, as shown above, manufactures a large range of dual use or civilian vehicles besides its specifically military production. ELVO's civil production itself suffices to qualify it as an automotive producer for the purpose of the scheme.
- (51) In a case of privatisation of an automotive company, such as ELVO, prior notification to the Commission is a substantive requirement for compatibility with the common market under the scheme. ⁽⁹⁾ Greece did not notify the partial privatisation of ELVO. Tax waivers A and B cannot consequently be considered compatible with the common market by virtue of the scheme.

5.3.2. *Other grounds of compatibility*

- (52) Greece has suggested no other grounds of compatibility, and the Commission does not find that the aid can be considered compatible with the common market on any other legal basis.

⁽⁹⁾ It follows from case law that where an approved aid scheme requires certain forms of aid (for example to undertakings in a certain sector) to be notified, these aids are excluded from the authorisation contained in the scheme and require individual notification. The notification is thus a substantive requirement and not simply a matter of providing information. Cf. Joined Cases T-447/93, T-448/93 and T-449/93, *AIETEC et al.*, [1995] ECR p. II-1971, para. 129 and 135; Case C-169/95, *Commission v Spain*, [1997] ECR I-135, para. 28-29; Joined Cases T-132/96 and T-143/96, *Freistaat Sachsen* [1999] ECR p. II-3663, para. 203; Joined Cases C-57/00 P and C-61/00 P, *Freistaat Sachsen*, [2003] ECR I-9975, para. 114 et seq.

- (53) The Commission consequently finds that the state aid granted to ELVO is incompatible with the common market.

5.4. Establishment of the aid amount

- (54) The incompatible state aid shall be recovered from ELVO. However, as the Commission acknowledged in the opening decision, the part of ELVO's production which concerns military material can be considered covered by Article 296(1)(b) of the Treaty. To the extent that the aid benefited this part of the production, it should not be considered as state aid, since the aid was necessary for the protection of Greece's essential security interests. The question then arises of how to apportion the aid between the two sides of the production.

- (55) The state aid covered by the present decision was not assigned to a particular activity, in that it was not earmarked to finance a given project. The Commission has therefore to determine the extent to which the aid benefited the military activities and the extent to which it benefited the civil activities. This calculation is complicated by the fact that ELVO did not keep separate accounts for the civil activities and for the military activities. In these circumstances, the Commission will base its analysis on the relative size of the two activities. It must therefore assess the relative weight of each activity. The Commission observes that any state aid granted to ELVO and not assigned to finance a particular activity has at the same time covered debts from the past and given ELVO an advantage in financing future activities. Therefore, in determining the extent to which the state aid benefited the civil and the military activities, the Commission considers that the analysis cannot be limited to the division between civil and military production (i.e. the relative weight of each activity) in the year when the support was provided, but that it is necessary to calculate the average division between these two activities over a sufficiently long period. The fact that the relative weight of the two activities can vary strongly from one year to another also justifies using an average over several years. Indeed, a given year may not be representative of the average division between the two activities over the longer term.

- (56) In the absence of separate accounts for civilian and military production, this apportionment will necessarily have to be based on an approximation. The Commission considers that the division between ELVO's sales to military programmes and civilian customers, as explained by Greece, provides an acceptable approximation for the proportion of civil and military material

in ELVO's production and that the proceeds from tax waivers A and B should be apportioned accordingly ⁽¹⁰⁾.

- (57) Greece has provided information on ELVO's sales to military programmes and to civilian customers respectively. Based on the period from 1987 to 2000 inclusive, i.e. the period covered by the tax waivers, the weighted average proportion of sales to military programmes is 79,9 %. The part of civilian production is consequently 20,1 %.

- (58) Applying this ratio to the tax waivers, the incompatible aid to be recovered from ELVO (all amounts in the calculation rounded up to the nearest full currency unit) is GRD 1 193 753 186 × 0,201 = GRD 239 944 390 for tax waiver A, and EUR 3 546 407,89 × 0,201 = EUR 712 827,99 for tax waiver B.

- (59) However, if the Commission accepts that 79,9 % of any inflow of state money would have financed the military activities of ELVO, it must also conclude that 79,9 % of any outflow of money from the company would have been supported by the military part of its operations. Since the greater part of ELVO's activity is military, and since ELVO does not keep separate accounts for the civil activities, there is a risk that reimbursement of the aid received by the civil activities will be financed in the main by funds which otherwise would have financed the military activities. Consequently, in order to re-establish the competitive situation that would have prevailed without state aid and to prevent the granting of additional aid to the civil activities, Greece will have to ensure that the aid is recovered exclusively from the civil revenue of ELVO ⁽¹¹⁾.

- (60) This decision does not prejudice the position that the Commission may take on the compatibility of the measures in question under common market rules relating in particular to state procurement and concessions,

HAS ADOPTED THIS DECISION

Article 1

The State aid amounting to GRD 239 944 390 and EUR 712 827,99 unlawfully granted by Greece in favour of ELVO, in breach of Article 88(3) of the Treaty, is incompatible with the common market.

⁽¹⁰⁾ For a similar approximation see the Commission decision of 2 July 2008 in State aid case C-16/04 implemented by Greece in favour of Hellenic Shipyards (not yet published in the Official Journal but available on http://ec.europa.eu/competition/state_aid/register/).

⁽¹¹⁾ See the judgment in case C-16/04 referred to in footnote 10, in particular paragraph 340 et seq.

Article 2

1. Greece shall recover the aid referred to in Article 1 from the beneficiary. The aid shall be recovered exclusively from the revenue of ELVO from its civil activities.

2. The sums to be recovered shall bear interest from the date on which they were put at the disposal of the beneficiary until the date of their actual recovery.

3. The interest shall be calculated on a compound basis in accordance with Chapter V of Commission Regulation (EC) No 794/2004 ⁽¹²⁾.

Article 3

1. Recovery of the aid referred to in Article 1 shall be immediate and effective.

2. Greece shall ensure that this Decision is implemented within four months following the date of notification hereof.

Article 4

1. Within two months following notification of this Decision, Greece shall submit the following information to the Commission:

(a) the total amount (principal and recovery interest) to be reimbursed by the beneficiary (in this respect Greece shall in particular indicate the exact date of repayment of

EUR 634 088,99 under Tax Waiver B (see recital 14, second dashed indent));

(b) a detailed description of the measures already taken and planned to comply with this Decision;

(c) documents demonstrating that the beneficiary has been ordered to repay the aid.

2. Greece shall keep the Commission informed of the progress of the national measures taken to implement this Decision until recovery of the aid referred to in Article 1 has been completed. It shall immediately submit, on simple request by the Commission, information on the measures already taken and planned to comply with this Decision. It shall also provide detailed information concerning the amounts of aid and recovery interest already recovered from the beneficiary.

Article 5

This Decision is addressed to the Hellenic Republic.

Brussels, 24 March 2009.

For the Commission

Neelie KROES

Member of the Commission

⁽¹²⁾ Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 140, 30.4.2004, p. 1.).

Information about the amounts of aid received, to be recovered and already recovered

Identity of the beneficiary	Total amount of aid received under the scheme (*)	Total amount of aid to be recovered (*) (Principal)	Total amount already reimbursed (*)	
			Principal	Recovery interest

(*) Million of national currency.

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