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Contents

(Continued overleaf)

EN

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

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

EN

I

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is obligatory)

REGULATIONS

COUNCIL REGULATION (EC, EURATOM) No 672/2008

of 8 July 2008

adjusting the weightings applicable to the remuneration and pensions of officials and other servants of the European Communities

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to the Protocol on the Privileges and Immunities of the European Communities, and in particular Article 13 thereof,

Having regard to the Staff Regulations of officials of the European Communities and to the Conditions of employment of other servants of the European Communities, as laid down by Council Regulation (EEC, Euratom, ECSC) No 259/68 [1], and in particular Articles 63 and 64, Article 65(2), Article 82 of the Staff Regulations and Annexes VII, XI and XIII thereto, and the first paragraph of Article 20, Article 64 and Article 92 of the Conditions of employment of other servants,

Having regard to the proposal from the Commission,

Whereas there was a substantial increase in the cost of living in Bulgaria, Estonia, Latvia, Lithuania and Romania in the period June to December and the weightings applied to the remuneration of officials and other servants should therefore be adjusted,

HAS ADOPTED THIS REGULATION:

Article 1

With effect from 16 November 2007, the weightings applicable, under Article 64 of the Staff Regulations, to the remuneration of officials and other servants employed in the countries listed below shall be as follows:

— Bulgaria 69,7,

— Lithuania 77,4.

Article 2

With effect from 1 January 2008, the weightings applicable, under Article 64 of the Staff Regulations, to the remuneration of officials and other servants employed in the countries listed below shall be as follows:

— Estonia 83,6,

— Latvia 83,6,

— Romania 78,8.

Article 3

With effect from the first day of the month following that of the publication of this Regulation in the *Official Journal of the European Union*, the weightings applicable under Article 17(3) of Annex VII to the Staff Regulations to transfers by officials and other servants shall be as follows:

— Bulgaria 61,4,

— Estonia 80,8,

— Latvia 78,8,

— Lithuania 71,5,

— Romania 72,9.

[1] OJ L 56, 4.3.1968, p. 1. Regulation as last amended by Regulation (EC, Euratom) No 420/2008 (OJ L 127, 15.5.2008, p. 1).

Article 4

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, 8 July 2008.

For the Council
The President
C. LAGARDE

COMMISSION REGULATION (EC) No 673/2008

of 16 July 2008

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

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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 17 July 2008.

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

Done at Brussels, 16 July 2008.

For the Commission

Jean-Luc DEMARTY

Director-General for Agriculture and Rural Development

([1]) OJ L 299, 16.11.2007, p. 1. Regulation as last amended by Commission Regulation (EC) No 510/2008 (OJ L 149, 7.6.2008, p. 61).

([2]) OJ L 350, 31.12.2007, p. 1. Regulation as last amended by Regulation (EC) No 590/2008 (OJ L 163, 24.6.2008, p. 24).

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	32,2
	MK	25,8
	TR	75,2
	ME	17,1
	XS	23,8
	ZZ	34,8
0707 00 05	MK	21,3
	TR	105,1
	ZZ	63,2
0709 90 70	TR	87,1
	ZZ	87,1
0805 50 10	AR	91,4
	US	55,6
	UY	101,5
	ZA	99,2
	ZZ	86,9
0808 10 80	AR	92,0
	BR	99,9
	CL	97,9
	CN	69,1
	NZ	116,4
	US	118,0
	UY	81,3
	ZA	103,1
	ZZ	97,2
0808 20 50	AR	111,5
	AU	143,2
	CL	116,0
	NZ	116,2
	ZA	107,5
	ZZ	118,9
0809 10 00	TR	169,7
	XS	127,0
	ZZ	148,4
0809 20 95	TR	340,1
	US	305,5
	ZZ	322,8
0809 30	TR	129,9
	ZZ	129,9
0809 40 05	IL	154,7
	XS	99,1
	ZZ	126,9

(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'.

COMMISSION REGULATION (EC) No 674/2008

of 16 July 2008

modifying Council Regulation (EC) No 1782/2003, Council Regulation (EC) No 247/2006 and establishing budgetary ceilings for 2008 for the partial or optional implementation of the Single Payment Scheme and the annual financial envelopes for the Single Area Payment Scheme provided for in Regulation (EC) No 1782/2003

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) No 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001 [1], and in particular Articles 64(2), 70(2), 143b(3), 143bc(1) and the second subparagraph of Article 143bc(2) thereof,

Having regard to Council Regulation (EC) No 247/2006 of 30 January 2006 laying down specific measures for agriculture in the outermost regions of the Union [2], and in particular the second sentence of Article 20(3) thereof,

Whereas:

(1) Annex VIII to Council Regulation (EC) No 1782/2003 establishes, for each Member State, the national ceilings which cannot be exceeded by the reference amounts referred to in Chapter 2 of Title III of that Regulation.

(2) Pursuant to the first sentence of Article 20(3) of Regulation (EC) No 247/2006, Portugal decided to reduce the national ceiling of suckler cow premium rights for 2008 and subsequent years and to transfer the corresponding financial amount in order to strengthen the contribution made by the Community, in accordance with Article 23 of Regulation (EC) No 247/2006, to financing specific measures provided for under that Regulation. The national ceilings for Portugal for 2008 and for subsequent years, as set out in Annex VIII to Regulation (EC) No 1782/2003 should therefore be reduced by the amount to be added to the financial sums established in Article 23(2) of Regulation (EC) No 247/2006 for 2009 and subsequent budgetary years.

(3) For Member States implementing in 2008 the Single Payment Scheme provided for under Title III of Regulation (EC) No 1782/2003, the budgetary ceilings for each of the payments referred to in Articles 66 to 69 of that Regulation should be established for 2008 under the conditions laid down in Section 2 of Chapter 5 of Title III of the Regulation.

(4) For Member States making use of the option provided for in Article 70 of Regulation (EC) No 1782/2003, the budgetary ceilings applicable to the direct payments excluded from the Single Payment Scheme should be established for 2008.

(5) For the sake of clarity, the 2008 budgetary ceilings for the Single Payment Scheme should be published after the revised ceilings included in Annex VIII to Regulation (EC) No 1782/2003 have been deducted from the ceilings established for payments referred to in Articles 66 to 70 of that Regulation.

(6) For Member States implementing in 2008 the Single Area Payment Scheme provided for in Title IVa of Regulation (EC) No 1782/2003, the annual financial envelopes for 2008 should be established in accordance with Article 143b(3) of that Regulation.

(7) For the sake of clarity, the maximum amount of funds available to Member States applying the Single Area Payment Scheme for granting separate sugar payments in 2008 under Article 143ba of Regulation (EC) No 1782/2003, established on the basis of their notifications, should be published.

(8) For the sake of clarity, the maximum amount of funds available to Member States applying the Single Area Payment Scheme for granting separate fruit and vegetable payments in 2008 under Article 143bb of Regulation (EC) No 1782/2003, established on the basis of their notifications, should be published.

(9) For Member States applying the Single Area Payment Scheme, the 2008 budgetary ceilings applicable to transitional payments for fruit and vegetables in accordance with Article 143bc(1) and (2) of Regulation (EC) No 1782/2003, should therefore be established, on the basis of their notifications.

[1] OJ L 270, 21.10.2003, p. 1. Regulation as last amended by Regulation (EC) No 615/2008 (OJ L 168, 28.6.2008, p. 1).

[2] OJ L 42, 14.2.2006, p. 1. Regulation as last amended by Commission Regulation (EC) No 1276/2007 (OJ L 284, 30.10.2007, p. 11).

(10) Regulations (EC) No 1782/2003 and (EC) No 247/2006 should therefore be amended accordingly.

(11) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Direct Payments,

HAS ADOPTED THIS REGULATION:

Article 1

In Annex VIII to Regulation (EC) No 1782/2003, the sums relating to Portugal for 2008 and subsequent years are replaced with the following figures:

'2008	608 221
2009	608 751
2010 and subsequent years	608 447'.

Article 2

The figures relating to the Azores and Madeira for the 2009 budgetary year and subsequent years contained in the table in Article 23(2) of Regulation (EC) No 247/2006 are replaced as follows:

'2009	87,08
2010 and further	87,18'.

Article 3

1. The budgetary ceilings for 2008 referred to in Articles 66 to 69 of Regulation (EC) No 1782/2003 are listed in Annex I to this Regulation.

2. The budgetary ceilings for 2008 referred to in Article 70(2) of Regulation (EC) No 1782/2003 are listed in Annex II to this Regulation.

3. The budgetary ceilings for 2008 for the Single Payment Scheme referred to in Title III of Regulation (EC) No 1782/2003 are listed in Annex III to this Regulation.

4. The annual financial envelopes for 2008 referred to in Article 143b(3) of Regulation (EC) No 1782/2003 are set out in Annex IV to this Regulation.

5. The maximum amounts of funding available to the Czech Republic, Latvia, Lithuania, Hungary, Poland, Romania and Slovakia for granting the separate sugar payment in 2008, as referred to in Article 143ba(4) of Regulation (EC) No 1782/2003, are listed in Annex V to this Regulation.

6. The maximum amounts of funding available to the Czech Republic, Hungary, Poland and Slovakia for granting the separate fruit and vegetable payment in 2008, as referred to in Article 143bb(4) of Regulation (EC) No 1782/2003, are listed in Annex VI to this Regulation.

7. The budgetary ceilings for 2008 referred to in Article 143bc(1) and the second subparagraph of Article 143bc(2) of Regulation (EC) No 1782/2003 are listed in Annex VII to this Regulation.

Article 4

This Regulation shall enter into force on the seventh 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, 16 July 2008.

For the Commission
Mariann FISCHER BOEL
Member of the Commission

ANNEX I

BUDGETARY CEILINGS FOR DIRECT PAYMENTS TO BE GRANTED IN ACCORDANCE WITH THE PROVISIONS OF ARTICLES 66 TO 69 OF REGULATION (EC) No 1782/2003

2008 calendar year

(EUR thousand)

	BE	DK	DE	EL	ES	FR	IT	NL	AT	PT	SI	FI	SE	UK
Arable crops area payments					372 670	1 154 046								
Durum wheat supplementary payment					42 025	14 820								
Suckler cow premium	77 565				261 153	734 416			70 578	78 695				
Additional suckler cow premium	19 389				26 000				99	9 462				
Special beef premium		33 085									6 298	24 420	37 446	
Slaughter premium, adults					47 175	101 248		62 200	17 348	8 657				
Slaughter premium, calves	6 384				560	79 472		40 300	5 085	946				
Sheep and goat premium		855			183 499					21 892	432	600		
Sheep premium						66 455								
Sheep and goat supplementary premium					55 795					7 184	149	200		
Supplementary sheep premium						19 572								
Aid for area under hops			2 277			98			27		124			
Tomatoes — Article 68b(1)				10 720	28 117	4 017	91 984			16 667				
Fruit and vegetables other than tomatoes — Article 68b(2)				17 920	93 733	43 152	9 700							
Article 69, all sectors													3 421	
Article 69, arable crops				47 323			141 712			1 878		5 840		
Article 69, rice										150				
Article 69, beef and veal				8 810	54 966		28 674			1 681	3 713	10 118		29 800
Article 69, sheep and goat meat				12 615			8 665			616				
Article 69, cotton					13 432									
Article 69, olive oil				22 196						5 658				
Article 69, tobacco				7 578	2 353									
Article 69, sugar				2 697	18 985		9 932			1 203				
Article 69, dairy products					19 763									

ANNEX II

BUDGETARY CEILINGS FOR DIRECT PAYMENTS TO BE GRANTED IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE 70 OF REGULATION (EC) No 1782/2003

2008 calendar year

(EUR thousand)

	Belgium	Greece	Spain	France	Italy	Netherlands	Portugal	Finland
Article 70(1)(a)								
Aid for seeds	1 397	1 400	10 347	2 310	13 321	726	272	1 150
Article 70(1)(b)								
Arable crops payments			23					
Grain legumes aid			1					
Crop specific aid for rice				3 053				
Tobacco aid							166	
Dairy premiums							12 608	
Additional payments to dairy producers							6 254	

ANNEX III

BUDGETARY CEILINGS FOR THE SINGLE PAYMENT SCHEME

2008 calendar year

Member State	(EUR thousand)
Belgium	502 200
Denmark	993 338
Germany	5 741 963
Ireland	1 340 752
Greece	2 234 039
Spain	3 600 357
France	6 159 613
Italy	3 827 342
Luxembourg	37 051
Malta	3 017
Netherlands	743 163
Austria	649 473
Portugal	434 232
Slovenia	62 902
Finland	523 362
Sweden	719 414
United Kingdom	3 947 375

ANNEX IV

ANNUAL FINANCIAL ENVELOPES FOR THE SINGLE AREA PAYMENT SCHEME

2008 calendar year

Member State	(EUR thousand)
Bulgaria	248 821
Czech Republic	437 762
Estonia	50 629
Cyprus	24 597
Latvia	69 769
Lithuania	184 702
Hungary	641 446
Poland	1 432 192
Romania	529 556
Slovakia	188 923

ANNEX V

MAXIMUM AMOUNT OF FUNDING AVAILABLE TO MEMBER STATES FOR GRANTING THE SEPARATE SUGAR PAYMENTS REFERRED TO IN ARTICLE 143ba OF REGULATION (EC) NO 1782/2003

2008 calendar year

Member State	(EUR thousand)
Czech Republic	34 730
Latvia	6 110
Lithuania	9 476
Hungary	37 865
Poland	146 677
Romania	2 781
Slovakia	17 712

ANNEX VI

MAXIMUM AMOUNT OF FUNDING AVAILABLE TO MEMBER STATES FOR GRANTING THE SEPARATE FRUIT AND VEGETABLE PAYMENTS REFERRED TO IN ARTICLE 143bb OF REGULATION (EC) No 1782/2003

2008 calendar year

Member State	(EUR thousand)
Czech Republic	414
Hungary	4 756
Poland	6 715
Slovakia	516

ANNEX VII

BUDGETARY CEILINGS FOR TRANSITIONAL PAYMENTS IN THE FRUIT AND VEGETABLE SECTOR REFERRED TO IN ARTICLE 143bc OF REGULATION (EC) No 1782/2003

2008 calendar year

(1 000 EUR)

Member State	Cyprus	Romania	Slovakia
Tomatoes — Article 143bc(1)		869	509
Fruit and vegetables other than tomatoes — Article 143bc(2).	4 478		

COMMISSION REGULATION (EC) No 675/2008

of 16 July 2008

amending Council Regulation (EC) No 1236/2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1236/2005 of 27 June 2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment [1], and in particular Article 12(1) thereof,

Whereas:

(1) Annex I to Regulation (EC) No 1236/2005 lists the competent authorities to which specific functions related to the implementation of that Regulation are attributed.

(2) Belgium, the Czech Republic, Denmark, Estonia, Greece, Spain, France, Italy, Latvia, Luxembourg, the Netherlands, Poland, Romania, Slovenia, Slovakia and the United Kingdom have requested that the information concerning their competent authorities be amended. The address of the Commission should also be amended.

(3) It is appropriate to publish the full updated list of competent authorities,

HAS ADOPTED THIS REGULATION:

Article 1

Annex I to Regulation (EC) No 1236/2005 is replaced by the text in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the third 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, 16 July 2008.

For the Commission
Benita FERRERO-WALDNER
Member of the Commission

[1] OJ L 200, 30.7.2005, p. 1. Regulation as last amended by Regulation (EC) No 1791/2006 (OJ L 363, 20.12.2006, p. 1).

ANNEX

'ANNEX I

LIST OF AUTHORITIES REFERRED TO IN ARTICLES 8 AND 11

A. **Authorities of the Member States**

BELGIUM

Federale Overheidsdienst Economie, K.M.O., Middenstand & Energie

Algemene Directie Economisch Potentieel

Dienst Vergunningen

Leuvenseweg 44

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Service public fédéral économie, PME, classes moyennes & énergie

Direction générale du potentiel économique

Service licences

Rue de Louvain 44

B-1000 Bruxelles

Tél. (32-2) 277 67 13

Fax (32-2) 277 50 63

BULGARIA

Министерство на икономиката и енергетиката

(Ministry of Economy and Energy)

ул.'Славянска' № 8

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Fax.: +359 29 87 21 90

CZECH REPUBLIC

Ministerstvo průmyslu a obchodu

Licenční správa

Na Františku 32

110 15 Praha 1

Česká republika

Tel.: (420) 224 90 76 41; (420) 224 90 76 38

Fax: (420) 224 22 18 11

E-mail: osm@mpo.cz

DENMARK

Annex III, No 2 and 3

Justitsministeriet

Slotsholmsgade 10

DK-1216 København K

Denmark

Telephone: (45) 72 26 84 00

Telefax: (45) 33 93 35 10

E-mail: jm@jm.dk

Annex II and Annex III, No 1

Økonomi- og Erhvervsministeriet

Erhvers- og Byggestyrelsen

Eksportkontroladministrationen

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DK-2100 København Ø

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GERMANY

Bundesamt für Wirtschaft und Ausfuhrkontrolle (BAFA)

Frankfurter Straße 29—35

D-65760 Eschborn

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Fax: (+49) 6196 908 800

E-Mail: ausfuhrkontrolle@bafa.bund.de

ESTONIA

Eesti Välisministeerium

1. Poliitikaosakond

Relvastus- ja strateegilise kauba kontrolli büroo

Islandi väljak 1

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Licensing Unit

Department of Enterprise, Trade and Employment

Earlsfort Centre

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Dublin 2

Ireland

Tel. (353-1) 631 21 21

Fax (353-1) 631 25 62

GREECE

Υπουργείο Οικονομίας και Οικονομικών

Γενική Διεύθυνση Διεθνούς

Οικονομικής Πολιτικής

Διεύθυνση Καθεστώτων Εισαγωγών-Εξαγωγών,

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Ερμού και Κορνάρου 1,

GR-105 63 Αθήνα

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SPAIN

Secretaría General de Comercio Exterior

Secretaría de Estado de Comercio

Ministerio de Industria, Turismo y Comercio

Paseo de la Castellana, 162

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Departamento de Aduanas e Impuestos Especiales de la Agencía Estatal de Administración Tributaria

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Direction générale des douanes et droits indirects

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Trade Service

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LATVIA

Ekonomikas ministrija

Brīvības iela 55

LV-1519 Rīga

Latvija

Telefax: +371 6 7280882

LITHUANIA

Policijos departamento prie Vidaus reikalų ministerijos

Licencijavimo skyrius

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LUXEMBOURG

Ministère de l'économie et du commerce extérieur

Office des licences

BP 113

L-2011 Luxembourg

Tél. (352) 24 78 23 70

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Courriel: office.licences@mae.etat.lu

HUNGARY

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Telefax: +36 1 336 74 28
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Servizzi Kummerċjali
Lascaris
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Telefax: +356 21 24 05 16

NETHERLANDS

Ministerie van Economische Zaken
Directoraat-generaal voor Buitenlandse Economische Betrekkingen
Directie Handelspolitiek en Globalisering
Bezuidenhoutseweg 20
Postbus 20101
2500 EC Den Haag
The Netherlands
Telephone: (31-70) 379 64 85, 379 62 50

AUSTRIA

Bundesministerium für Wirtschaft und Arbeit
Abteilung für Aus- und Einfuhrkontrolle
Stubenring 1
A-1011 Wien
Tel.: (+43) 1 71100 8327
Fax: (+43) 1 71100 8386
E-Mail: post@C22.bmwa.gv.at

POLAND

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Departament Administrowania Obrotem
plac Trzech Krzyży 3/5
00-507 Warszawa
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tel. (+48 22) 693 55 53
fax (+48 22) 693 40 21
e-mail: SekretariatDAO_1@mg.gov.pl

PORTUGAL

Ministério das Finanças
Direcção-Geral das Alfândegas e dos Impostos Especiais de Consumo
Direcção de Serviços de Licenciamento
Rua Terreiro do Trigo, edifício da Alfândega
P-1149-060 Lisboa
Tel.: (351-21) 881 42 63
Fax: (351-21) 881 42 61

ROMANIA

Ministerul pentru Întreprinderi Mici şi Mijlocii, Comerţ, Turism şi Profesii Liberale
Departamentul pentru Comerţ Exterior
Direcţia Generală Politici Comerciale
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827 15 Bratislava
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Telephone: +421 2 48 54 21 65
Telefax: +421 2 43 42 39 15

FINLAND

Sisäasiainministeriö
Arpajais- ja asehallintoyksikkö
PL 50
FI-11101 RIIHIMÄKI
Puhelin (358-9) 160 01
Faksi (358-19) 72 06 68
Sähköposti: aahy@poliisi.fi

SWEDEN

Kommerskollegium

PO Box 6803

S-113 86 Stockholm

Tfn (46-8) 690 48 00

Fax (46-8) 30 67 59

E-post: registrator@kommers.se

UNITED KINGDOM

Import of goods listed in Annex II:

Department for Business, Enterprise and Regulatory Reform

Import Licensing Branch

Queensway House

West Precinct

Billingham TS23 2NF

United Kingdom

Tel. (44-1642) 364 333

Fax (44-1642) 364 269

E-mail: enquiries.ilb@berr.gsi.gov.uk

Export of goods listed in Annexes II or III, and supply of technical assistance related to goods listed in Annex II as referred to in Articles 3(1) and (4)(1):

Department for Business, Enterprise and Regulatory Reform

Export Control Organisation

1 Victoria Street

London SW1H 0ET

United Kingdom

Tel. (44-20) 7215 2423

Fax (44-20) 7215 0531

E-mail: lu3.eca@berr.gsi.gov.uk

B. **Address for notifications to the Commission**

Commission of the European Communities

Directorate-General for External Relations

Directorate A. Crisis Platform — Policy Coordination in Common Foreign and Security Policy

Unit A.2. Crisis Response and Peace Building

CHAR 12/45

B-1049 Brussels

Tel. (32-2) 295 55 85

Fax (32-2) 299 08 73

E-mail: relex-sanctions@ec.europa.eu.'

COMMISSION REGULATION (EC) No 676/2008

of 16 July 2008

registering certain names in the Register of protected designations of origin and protected geographical indications (Ail de la Drôme (PGI), Všestarská cibule (PDO), Slovenská bryndza (PGI), Ajo Morado de Las Pedroñeras (PGI), Gamoneu or Gamonedo (PDO), Alheira de Vinhais (PGI), Presunto de Vinhais or Presunto Bísaro de Vinhais (PGI))

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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) In accordance with the first subparagraph of Article 6(2) and pursuant to Article 17(2) of Regulation (EC) No 510/2006, France's application to register the name 'Ail de la Drôme', the Czech Republic's application to register the name 'Všestarská cibule', Slovakia's application to register the name 'Slovenská bryndza', Spain's applications to register the names 'Ajo Morado de Las Pedroñeras' and 'Gamoneu' or 'Gamonedo' and Portugal's applications to register the names 'Alheira de Vinhais' and 'Presunto de Vinhais' or 'Presunto Bísaro de Vinhais' were published in the *Official Journal of the European Union* [2].

(2) As no objection under Article 7 of Regulation (EC) No 510/2006 has been received by the Commission, these names should be entered in the Register,

HAS ADOPTED THIS REGULATION:

Article 1

The names in the Annex to this Regulation are hereby entered in the Register of protected designations of origin and protected geographical indications.

Article 2

This Regulation shall enter into force on the 20th 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, 16 July 2008.

For the Commission
Mariann FISCHER BOEL
Member of the Commission

[1] OJ L 93, 31.3.2006, p. 12. Regulation as last amended by Regulation (EC) No 417/2008 (OJ L 125, 9.5.2008, p. 27).

[2] OJ C 227, 27.9.2007, p. 20 (Ail de la Drôme), OJ C 228, 28.9.2007, p. 18 (Všestarská cibule), OJ C 232, 4.10.2007, p. 17 (Slovenská bryndza), OJ C 233, 5.10.2007, p. 10 (Ajo Morado de Las Pedroñeras), OJ C 236, 9.10.2007, p. 13 (Gamoneu or Gamonedo), OJ C 236, 9.10.2007, p. 18 (Alheira de Vinhais), OJ C 236, 9.10.2007, p. 10 (Presunto de Vinhais or Presunto Bísaro de Vinhais).

ANNEX

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

Class 1.2. Meat products (cooked, salted, smoked, etc.)

PORTUGAL

Alheira de Vinhais (PGI)

Presunto de Vinhais or Presunto Bísaro de Vinhais (PGI)

Class 1.3. Cheeses

SPAIN

Gamoneu or Gamonedo (PDO)

SLOVAKIA

Slovenská bryndza (PGI)

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

CZECH REPUBLIC

Všestarská cibule (PDO)

SPAIN

Ajo Morado de Las Pedroñeras (PGI)

FRANCE

Ail de la Drôme (PGI)

COMMISSION REGULATION (EC) No 677/2008

of 16 July 2008

on the issuing of import licences for applications lodged during the first seven days of July 2008 under tariff quotas opened by Regulation (EC) No 616/2007 for poultry meat

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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 1301/2006 of 31 August 2006 laying down common rules for the administration of import tariff quotas for agricultural products managed by a system of import licences ([2]), and in particular Article 7(2) thereof,

Having regard to Commission Regulation (EC) No 616/2007 of 4 June 2007 opening and providing for the administration of Community tariff quotas for poultry meat originating in Brazil, Thailand and other third countries ([3]), and in particular Article 5(5) thereof,

Whereas:

(1) Regulation (EC) No 616/2007 opened tariff quotas for imports of products in the poultry meat sector.

(2) The applications for import licences lodged during the first seven days of July 2008 for the subperiod 1 October to 31 December 2008 relate, for some quotas, to quantities exceeding those available. The extent to which licences may be issued should therefore be determined and an allocation coefficient laid down to be applied to the quantities applied for.

(3) The applications for import licences lodged during the first seven days of July 2008 for the subperiod 1 October to 31 December 2008 do not, for some quotas, cover the total quantity available. The quantities for which applications have not been lodged should therefore be determined and these should be added to the quantity fixed for the following quota subperiod,

HAS ADOPTED THIS REGULATION:

Article 1

1. The quantities for which import licence applications have been lodged pursuant to Regulation (EC) No 616/2007 for the subperiod 1 October to 31 December 2008 shall be multiplied by the allocation coefficients set out in the Annex to this Regulation.

2. The quantities for which import licence applications have not been lodged pursuant to Regulation (EC) No 616/2007, to be added to the subperiod 1 January to 31 March 2009, are set out in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on 17 July 2008.

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

Done at Brussels, 16 July 2008.

For the Commission

Jean-Luc DEMARTY

Director-General for Agriculture and Rural Development

([1]) OJ L 299, 16.11.2007, p. 1. Regulation as last amended by Commission Regulation (EC) No 510/2008 (OJ L 149, 7.6.2008, p. 61).

([2]) OJ L 238, 1.9.2006, p. 13. Regulation amended by Regulation (EC) No 289/2007 (OJ L 78, 17.3.2007, p. 17).

([3]) OJ L 142, 5.6.2007, p. 3. Regulation as amended by Regulation (EC) No 1549/2007 (OJ L 337, 21.12.2007, p. 75).

ANNEX

Group No	Order No	Allocation coefficient for import licence applications lodged for the subperiod 1.10.2008-31.12.2008 (%)	Quantities not applied for to be added to the subperiod 1.1.2009-31.3.2009 (kg)
1	09.4211	1,512861	—
2	09.4212	(1)	55 566 000
4	09.4214	15,583235	—
5	09.4215	29,741127	—
6	09.4216	(2)	4 300 910
7	09.4217	2,883739	—
8	09.4218	(1)	6 807 600

(1) Not applied: no licence application has been sent to the Commission.
(2) Not applied: the applications do not cover the total quantity available.

COMMISSION REGULATION (EC) No 678/2008

of 16 July 2008

amending for the 97th time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, and repealing Council Regulation (EC) No 467/2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan [1], and in particular Article 7(1), first indent, thereof,

Whereas:

(1) Annex I to Regulation (EC) No 881/2002 lists the persons, groups and entities covered by the freezing of funds and economic resources under that Regulation.

(2) On 1 and on 3 July 2008, the Sanctions Committee of the United Nations Security Council decided to amend the list of persons, groups and entities to whom the freezing of funds and economic resources should apply. Annex I should therefore be amended accordingly.

(3) In order to ensure that the measures provided for in this Regulation are effective, this Regulation must enter into force immediately,

HAS ADOPTED THIS REGULATION:

Article 1

Annex I to Regulation (EC) No 881/2002 is hereby amended as set out in the Annex to this Regulation.

Article 2

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

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

Done at Brussels, 16 July 2008.

For the Commission
Eneko LANDÁBURU
Director-General for External Relations

[1] OJ L 139, 29.5.2002, p. 9. Regulation as last amended by Commission Regulation (EC) No 580/2008 (OJ L 161, 20.6.2008, p. 25).

ANNEX

Annex I to Regulation (EC) No 881/2002 is amended as follows:

(1) The following entries shall be added under the heading 'Natural persons':

'(a) Ahmed **Deghdegh** (*alias* Abd El Illah). Date of birth: 17.1.1967. Place of birth: Anser, Wilaya (province) of Jijel, Algeria. Nationality: Algerian. Other information: (a) Belongs to the leadership of the Organisation of Al-Qaida in the Islamic Maghreb. More particularly involved in the finances of the organisation; (b) Mother's name: Zakia Chebira. Father's name: Lakhdar.

(b) Yahia **Djouadi** (*alias* (a) Yahia Abou Ammar; (b) Abou Ala). Date of birth: 1.1.1967. Place of birth: M'Hamid, Wilaya (province) of Sidi Bel Abbes, Algeria. Nationality: Algerian. Other information: (a) Belongs to the leadership of the Organisation of Al-Qaida in the Islamic Maghreb; (b). Located in Northern Mali as of June 2008; (c) Mother's name: Zohra Fares. Father's name: Mohamed.

(c) Salah **Gasmi** (*alias* (a) Abou Mohamed Salah; (b) Bounouadher). Date of birth: 13.4.1974. Place of birth: Zeribet El Oued, Wilaya (province) of Biskra, Algeria. Nationality: Algerian. Other information: (a) Belongs to the leadership of the Organisation of Al-Qaida in the Islamic Maghreb. More particularly involved in the propaganda activities of the organisation; (b) Located in Northern Mali as of June 2008; (c) Mother's name: Yamina Soltane. Father's name: Abdelaziz.

(d) Abid **Hammadou** (*alias* (a) Abdelhamid Abou Zeid; (b) Youcef Adel; (c) Abou Abdellah). Date of birth: 12.12.1965. Place of birth: Touggourt, Wilaya (province) of Ouargla, Algeria. Nationality: Algerian. Other information: (a) Associated with the Organisation of Al-Qaida in the Islamic Maghreb; (b) Located in Northern Mali as of June 2008; (c) Mother's name: Fatma Hammadou. Father's name: Benabes.'

(2) The entry 'Hamid **Al-Ali** (*alias* (a) Dr Hamed Abdullah **Al-'Ali**, (b) Hamed **Al-'Ali**, (c) Hamed bin 'Abdallah **Al-'Ali**, (d) Hamid 'Abdallah **Al-'Ali**, (e) Hamid 'Abdallah Ahmad **Al-'Ali**, (f) Hamid bin Abdallah Ahmed **Al-Ali**, (g) Abu Salim). Date of birth: 20.1.1960. Nationality: Kuwaiti' under the heading 'Natural persons' shall be replaced by:

'Hamid Abdallah Ahmed **Al-Ali** (*alias* (a) Dr Hamed Abdullah **Al-Ali**, (b) Hamed **Al-'Ali**, (c) Hamed bin 'Abdallah **Al-'Ali**, (d) Hamid 'Abdallah **Al-'Ali**, (e) Hamid 'Abdallah Ahmad **Al-'Ali**, (f) Hamid bin Abdallah Ahmed **Al-Ali**, (g) Abu Salim). Date of birth: 20.1.1960. Nationality: Kuwaiti.'

(3) The entry 'Jaber **Al-Jalamah** (*alias* (a) Jaber **Al-Jalahmah**, (b) Abu Muhammad **Al-Jalahmah**, (c) Jabir Abdallah Jabir Ahmad **Jalahmah**, (d) Jabir 'Abdallah Jabir Ahmad **Al-Jalamah**, (e) Jabir **Al-Jalhami**, (f) Abdul-Ghani, (g) Abu Muhammad). Date of birth: 24.9.1959. Nationality: Kuwaiti. Passport No: 101423404' under the heading 'Natural persons' shall be replaced by:

'Jaber Abdallah Jaber **Al-Jalahmah** (*alias* (a) Jaber **Al-Jalamah**, (b) Abu Muhammad **Al-Jalahmah**, (c) Jabir Abdallah Jabir Ahmad **Jalahmah**, (d) Jabir 'Abdallah Jabir Ahmad **Al-Jalamah**, (e) Jabir **Al-Jalhami**, (f) Abdul-Ghani, (g) Abu Muhammad). Date of birth: 24.9.1959. Nationality: Kuwaiti. Passport No: 101423404.'

II

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory)

DECISIONS

EUROPEAN PARLIAMENT

DECISION OF THE EUROPEAN PARLIAMENT

of 18 June 2008

amending Decision 94/262/ECSC, EC, Euratom on the regulations and general conditions governing the performance of the Ombudsman's duties

(2008/587/EC, Euratom)

THE EUROPEAN PARLIAMENT,

Having regard to the Treaty establishing the European Community, and in particular Article 195(4) thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 107d(4) thereof,

Having regard to the draft decision approved by the European Parliament on 22 April 2008 [1] and to the resolution adopted and the amendments approved on 18 June 2008 [2],

Having regard to the opinion of the Commission,

With the approval of the Council [3],

Whereas:

(1) The Charter of Fundamental Rights of the European Union recognises the right to good administration as a fundamental right of citizens of the Union.

(2) Citizens' confidence in the capacity of the Ombudsman to conduct thorough and impartial inquiries in alleged cases of maladministration is fundamental to the success of the Ombudsman's action.

(3) It is desirable to adapt the Statute of the Ombudsman in order to eliminate any possible uncertainty concerning the capacity of the Ombudsman to conduct thorough and impartial inquiries in alleged cases of maladministration.

(4) It is desirable to adapt the Statute of the Ombudsman in order to allow for any possible evolution of the legal provisions or of case law concerning the intervention of bodies, offices and agencies of the European Union in cases before the Court of Justice.

(5) It is desirable to adapt the Statute of the Ombudsman to take account of the changes that have occurred in recent years as regards the role of EU institutions and bodies in combating fraud against the financial interests of the European Union, notably the creation of the European Anti-Fraud Office (OLAF), so as to allow the Ombudsman to notify those institutions or bodies of any information falling within their remit.

(6) It is desirable to take steps so as to allow the Ombudsman to develop his or her cooperation with similar institutions at national and international level, as well as with national or international institutions, even where they cover a wider range of activities than the European Ombudsman — such as the protection of human rights — since such cooperation may make a positive contribution towards enhancing the efficiency of the Ombudsman's action.

(7) The Treaty establishing the European Coal and Steel Community expired in 2002,

[1] Not yet published in the Official Journal.
[2] Not yet published in the Official Journal.
[3] Decision of the Council of 12 June 2008.

HAS DECIDED AS FOLLOWS:

Article 1

Amendments to Decision 94/262/ECSC, EC, Euratom

Decision 94/262/ECSC, EC, Euratom of the European Parliament [1] is hereby amended as follows:

1. in Citation 1, the words ', Article 20d(4) of the Treaty establishing the European Coal and Steel Community' shall be deleted;

2. recital 3 shall be replaced by the following:

'Whereas the Ombudsman, who may also act on his own initiative, must have access to all the elements required for the performance of his duties; whereas to that end Community institutions and bodies are obliged to supply the Ombudsman, at his request, with any information which he requests of them and without prejudice to the Ombudsman's obligation not to divulge such information; whereas access to classified information or documents, in particular to sensitive documents within the meaning of Article 9 of Regulation (EC) No 1049/2001 (*), should be subject to compliance with the rules on security of the Community institution or body concerned; whereas the institutions or bodies supplying classified information or documents as mentioned in the first subparagraph of Article 3(2) should inform the Ombudsman of such classification; whereas for the implementation of the rules provided for in the first subparagraph of Article 3(2), the Ombudsman should have agreed in advance with the institution or body concerned the conditions for treatment of classified information or documents and other information covered by the obligation of professional secrecy; whereas if the Ombudsman finds that the assistance requested is not forthcoming, he shall inform the European Parliament, which shall make appropriate representations;

(*) Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).';

3. in Article 1(1), the words ', Article 20d(4) of the Treaty establishing the European Coal and Steel Community' shall be deleted;

4. Article 3(2) shall be replaced by the following:

'2. The Community institutions and bodies shall be obliged to supply the Ombudsman with any information he has requested from them and give him access to the files concerned. Access to classified information or documents, in particular to sensitive documents within the meaning of Article 9 of Regulation (EC) No 1049/2001, shall be subject to compliance with the rules on security of the Community institution or body concerned.

The institutions or bodies supplying classified information or documents as mentioned in the previous subparagraph shall inform the Ombudsman of such classification.

For the implementation of the rules provided for in the first subparagraph, the Ombudsman shall have agreed in advance with the institution or body concerned the conditions for treatment of classified information or documents and other information covered by the obligation of professional secrecy.

The institutions or bodies concerned shall give access to documents originating in a Member State and classed as secret by law or regulation only where that Member State has given its prior agreement.

They shall give access to other documents originating in a Member State after having informed the Member State concerned.

In both cases, in accordance with Article 4, the Ombudsman may not divulge the content of such documents.

Officials and other servants of Community institutions and bodies must testify at the request of the Ombudsman; they shall continue to be bound by the relevant rules of the Staff Regulations, notably their duty of professional secrecy.';

5. Article 4 shall be replaced by the following:

'*Article 4*

1. The Ombudsman and his staff, to whom Article 287 of the Treaty establishing the European Community and Article 194 of the Treaty establishing the European Atomic Energy Community shall apply, shall be required not to divulge information or documents which they obtain in the course of their inquiries. They shall, in particular, be required not to divulge any classified information or any document supplied to the Ombudsman, in particular sensitive documents within the meaning of Article 9 of Regulation (EC) No 1049/2001, or documents falling within the scope of Community legislation regarding the protection of personal data, as well as any information which could harm the person lodging the complaint or any other person involved, without prejudice to paragraph 2.

[1] OJ L 113, 4.5.1994, p. 15.

2. If, in the course of inquiries, he learns of facts which he considers might relate to criminal law, the Ombudsman shall immediately notify the competent national authorities via the Permanent Representations of the Member States to the European Communities and, insofar as the case falls within its powers, the competent Community institution, body or service in charge of combating fraud; if appropriate, the Ombudsman shall also notify the Community institution or body with authority over the official or servant concerned, which may apply the second paragraph of Article 18 of the Protocol on the Privileges and Immunities of the European Communities. The Ombudsman may also inform the Community institution or body concerned of the facts calling into question the conduct of a member of their staff from a disciplinary point of view.';

6. the following Article 4a shall be inserted:

'*Article 4a*

The Ombudsman and his staff shall deal with requests for public access to documents, other than those referred to in Article 4(1), in accordance with the conditions and limits provided for in Regulation (EC) No 1049/2001.';

7. Article 5 shall be replaced by the following:

'*Article 5*

1. Insofar as it may help to make his enquiries more efficient and better safeguard the rights and interests of persons who make complaints to him, the Ombudsman may cooperate with authorities of the same type in certain Member States provided he complies with the national law applicable. The Ombudsman may not by this means demand to see documents to which he would not have access under Article 3.

2. Within the scope of his functions as laid down in Article 195 of the Treaty establishing the European Community and Article 107d of the Treaty establishing the European Atomic Energy Community and avoiding any duplication with the activities of the other institutions or bodies, the Ombudsman may, under the same conditions, cooperate with institutions and bodies of Member States in charge of the promotion and protection of fundamental rights.'.

Article 2

This decision shall be published in the *Official Journal of the European Union*.

Article 3

This decision shall enter into force 14 days after its publication in the *Official Journal of the European Union*.

Done at Strasbourg, 18 June 2008.

For the European Parliament
The President
H.-G. PÖTTERING

III

(Acts adopted under the EU Treaty)

ACTS ADOPTED UNDER TITLE V OF THE EU TREATY

COUNCIL JOINT ACTION 2008/588/CFSP

of 15 July 2008

on support for activities of the Preparatory Commission of the Comprehensive Nuclear-Test-Ban Treaty Organisation (CTBTO) in order to strengthen its monitoring and verification capabilities and in the framework of the implementation of the EU Strategy against Proliferation of Weapons of Mass Destruction

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 14 thereof,

Whereas:

(1) On 12 December 2003, the European Council adopted the EU Strategy against Proliferation of Weapons of Mass Destruction, Chapter III of which contains a list of measures that need to be taken both within the European Union and in third countries to combat such proliferation.

(2) The EU is actively implementing this Strategy and is giving effect to the measures listed in Chapter III thereof, in particular through releasing financial resources to support specific projects conducted by multilateral institutions, such as the Provisional Technical Secretariat of the Comprehensive Nuclear-Test-Ban Treaty Organisation (CTBTO).

(3) On 17 November 2003, the Council adopted Common Position 2003/805/CFSP [1] on the universalisation and reinforcement of multilateral agreements in the field of non-proliferation of weapons of mass destruction and means of delivery. That Common Position calls, *inter alia*, for the promotion of the signature and ratification of the Comprehensive Nuclear-Test-Ban Treaty (CTBT).

(4) The States Signatories to the CTBT have decided to establish a Preparatory Commission, endowed with legal capacity, for the purpose of carrying out the effective implementation of the CTBT, pending the establishment of the CTBTO.

(5) The early entry into force and universalisation of the CTBT and the strengthening of the monitoring and verification system of the Preparatory Commission of the CTBTO are important objectives of the EU Strategy against the Proliferation of Weapons of Mass Destruction. In this connection, the nuclear test carried out by the Democratic People's Republic of Korea in October 2006 further underlined the importance of the early entry-into-force of the CTBT and the need for an accelerated building-up and strengthening of the CTBTO monitoring and verification system.

(6) The Preparatory Commission of the CTBTO is engaged in identifying how its verification system could best be strengthened, including through the development of noble gas monitoring capacity and efforts aimed at fully involving States Signatories in the implementation of the verification regime. The Preparatory Commission should therefore be entrusted with the technical implementation of this Joint Action.

(7) In the light of the above, the Council adopted Joint Action 2006/243/CFSP [2] and thereafter Joint Action 2007/468/CFSP [3] on support for activities of the Preparatory Commission of the CTBTO in the area of training and setting up, as well as strengthening the capacities of its monitoring and verification system, and in the framework of the implementation of the EU Strategy against Proliferation of Weapons of Mass Destruction. This EU support should be continued,

[1] OJ L 302, 20.11.2003, p. 34.

[2] OJ L 88, 25.3.2006, p. 68.

[3] OJ L 176, 6.7.2007, p. 31.

HAS ADOPTED THIS JOINT ACTION:

Article 1

1. For the purposes of ensuring the continuous and practical implementation of certain elements of the EU Strategy against Proliferation of Weapons of Mass Destruction, the EU shall support the activities of the Preparatory Commission of the Comprehensive Nuclear-Test-Ban-Treaty (CTBTO) in order to further the following objectives:

(a) strengthening the capabilities of the CTBTO monitoring and verification system, including in the field of radio-nuclide detection;

(b) strengthening the capacity of the States Signatories of the CTBT to fulfil their verification responsibilities under the CTBT and to enable them to benefit fully from participation in the CTBT regime.

2. The projects to be supported by the EU shall have the following specific objectives:

(a) continuing support for the development by the Preparatory Commission of the CTBTO of capacity in the area of noble gas monitoring and verification for the detection and identification of possible nuclear explosions;

(b) providing technical assistance to African countries aimed at fully integrating States Signatories into the CTBTO monitoring and verification system.

These projects shall be carried out for the benefit of all States Signatories to the CTBT.

A detailed description of the projects is set out in the Annex.

Article 2

1. The Presidency, assisted by the Secretary-General of the Council/High Representative for the Common Foreign and Security Policy (SG/HR), shall be responsible for the implementation of this Joint Action. The Commission shall be fully associated.

2. The technical implementation of the projects referred to in Article 1(2) shall be carried out by the Preparatory Commission of the CTBTO. It shall perform this task under the control of the SG/HR, assisting the Presidency. For this purpose, the SG/HR shall enter into the necessary arrangements with the Preparatory Commission of the CTBTO.

3. The Presidency, the SG/HR and the Commission shall keep each other regularly informed about the projects, in conformity with their respective competences.

Article 3

1. The financial reference amount for the implementation of the projects referred to in Article 1(2) shall be EUR 2 316 000.

2. The expenditure financed by the amount stipulated in paragraph 1 shall be managed in accordance with the procedures and rules applicable to the general budget of the European Communities.

3. The Commission shall supervise the proper management of the expenditure referred to in paragraph 2, which shall take the form of a grant. For this purpose, it shall conclude a financing agreement with the Preparatory Commission of the CTBTO. The financing agreement shall stipulate that the Preparatory Commission of the CTBTO is to ensure visibility of the EU contribution, appropriate to its size.

4. The Commission shall endeavour to conclude the financing agreement referred to in paragraph 3 as soon as possible after the entry into force of this Joint Action. It shall inform the Council of any difficulties in that process and of the date of conclusion of the financing agreement.

Article 4

The Presidency, assisted by the SG/HR, shall report to the Council on the implementation of this Joint Action on the basis of regular reports prepared by the Preparatory Commission of the CTBTO. These reports shall form the basis for the evaluation by the Council. The Commission shall be fully associated. It shall provide information on the financial aspects of the implementation of this Joint Action.

Article 5

This Joint Action shall enter into force on the day of its adoption.

It shall expire 18 months after the date of the conclusion of the financing agreement between the Commission and the Preparatory Commission of the CTBTO or after six months if no financing agreement has been concluded before that date.

Article 6

This Joint Action shall be published in the *Official Journal of the European Union*.

Done at Brussels, 15 July 2008.

For the Council
The President
M. BARNIER

ANNEX

EU support for the activities of the Preparatory Commission of the CTBTO in order to strengthen its monitoring and verification capabilities and in the framework of the implementation of the EU Strategy against Proliferation of Weapons of Mass Destruction

I. INTRODUCTION

The building up of a well-functioning monitoring and verification system of the Preparatory Commission of the CTBTO is a crucial element for preparing the implementation of the CTBT once it has entered into force. The development of capacity of the Preparatory Commission of the CTBTO in the area of noble gas monitoring is an important tool for assessing whether or not an observed explosion is a nuclear test. In addition, the operability and performance of the CTBTO monitoring and verification system depends on the contribution of all States Signatories of the CTBT. Therefore, it is important to enable States Signatories to participate and contribute fully to the CTBTO monitoring and verification system.

The proposal is built on the following two components:

(a) noble gas monitoring;

(b) technical assistance.

II. DESCRIPTION OF THE PROJECTS

1. *Project Component Noble Gas Monitoring: radio-xenon measurements and data analysis to support the CTBTO in implementing the noble gas verification regime*

Background

1. The reported noble gas measurements of different teams in the aftermath of the DPRK event on 9 October 2006 have demonstrated the feasibility of radio-xenon measurements and the usefulness of these data for verification purposes. However, considerable research efforts are still necessary to fully determine the potential of this technology for CTBT purposes.

2. The results of the 'International Noble Gas Experiment' (INGE) gained during the last eight years clearly showed that the radio-xenon background was much more complex than initially thought. Indeed, initially unforeseen anthropogenic sources were identified, such as radioisotope production facilities for medical applications. Some of these facilities started operating after the negotiation of the CTBT. A complete inventory of radio-xenon sources is still to be done. Correlated to this issue is the variation of the atmospheric xenon activity concentration background in location, composition and with time.

3. Council Joint Action 2007/468/CFSP (second CTBTO Joint Action), was aimed at studying and measuring the xenon background in several parts of the world for limited periods. The aim of the second CTBTO Joint Action was to improve knowledge and understanding of the impact of sources, atmospheric transport and the influence of regional meteorological characteristics. The measurements are currently being performed at different distances of known anthropogenic sources, such as nuclear power plants and radiopharmaceutical plants. Results of the second CTBTO Joint Action will be used to further develop and validate methodologies for the categorisation of measurements detected by efficient noble gas detection systems.

Objectives of the new project

4. As a direct follow-up to the activities undertaken under the second CTBTO Joint Action, the CTBTO is now proposing a more comprehensive global measurement campaign. This will focus on examining the influence of local radio-xenon sources on the distribution and time variability of radio-xenon concentrations. The project aims at achieving the following objectives:

— to supplement the knowledge of the global xenon background through measurements for longer and thus more representative periods of time. This is needed to investigate the impact of regional and seasonal meteorological transport patterns.

— to add empirical data to improve our understanding of noble gas network performance and help to understand its strengths and weaknesses, in particular how noble gas detection inter-relates with other International Monitoring System (IMS) technologies and atmospheric transport calculations. It could also provide a valuable basis for a possible implementation of noble gas monitoring capability throughout the network, as mentioned in the Protocol to the CTBT,

— to test of xenon equipment and logistics under different environmental conditions. It is understood that available xenon measurement systems (Swedish SAUNA and French SPALAX systems) are well advanced, with the potential for transport and deployment in difficult environments. However, more experience is required to learn how and under what conditions these systems can be deployed, as well as which logistical and technical support is needed.

Benefits

5. The benefits for the verification system will be:

— to obtain more observations of the radio-xenon background at different distances from the measured known anthropogenic sources,

— to obtain possible additional input for a global radio-xenon inventory,

— to support the development as well as the validation of the methodology for data analysis and interpretation for the IMS network,

— to further develop and validate atmospheric transport modelling at different scales and for different geographical regions,

— to encourage and support local cooperating institutions to participate in and contribute to the INGE experiment with follow-up national xenon detection systems to train local station operators and to facilitate system commissioning,

— to identify areas where the network performance could be affected by seasonal meteorological conditions.

Description

6. Within the project, it is planned to purchase two xenon measurement systems, preferably using two different detection methods. The systems, one robust mobile unit and one turnkey unit customised in a transportable container, will use existing and available technologies. Parallel to the system procurement, there will be site visits to check infrastructure and to prepare the measurement campaign. The selection of the sites and the duration of the measurements will be based on detailed meteorological studies to be carried out by the Provisional Technical Secretariat (PTS) in a preparatory phase. The criteria for the site selection will also be based on the availability of cooperating local institutions, logistics and meteorological criteria. The preparation phase is envisaged to last between three and six months.

7. After a short test operation period at headquarters, the two systems will be transported to the selected sites to measure radio-xenon for a representative period of time of 6 to 12 months. The systems will be installed, calibrated and put into operation by the system provider. Local staff will be contracted for the duration of the measurement and trained to be able to perform daily system operation and maintenance. After completion of the measurement, the systems will be returned to the PTS.

8. Close cooperation and participation of interested institutions in the countries where the measurements are carried out in all aspects of the project implementation will be sought. In addition, the PTS will seek the cooperation with EU Member States' institutions in specific fields, such as laboratory support, quality control, logistics and atmospheric transport studies.

9. The data will be analysed by the PTS. A workshop will be held at the end of the project to evaluate the results.

2. *Project Component Technical Assistance: Integrating States Signatories in Africa to fully participate in and contribute to the implementation of the CTBTO monitoring and verification system*

Background

1. One of the unique features of the CTBT verification system among arms control regimes is real-time provision of compliance-relevant information directly to participating States. The IMS and International Data Centre (IDC) data and products are made available to every State Signatory. Currently, the PTS provides data and products to more than 840 authorised users in 96 States Signatories.

2. While interest among developing countries in the establishment of National Data Centres (NDC) has grown significantly over the past two years (an increase of subscribers of approximately 20 %) many developing countries still do not yet have full access to the CTBTO system. This is particularly the case in the African region where the number of States establishing National Data Centres (NDCs) as well as the number of Secure Signatory Accounts (SSAs) remains low.

3. The proposed technical assistance activities are aimed at facilitating the improved participation by African States in the CTBT verification system and its scientific benefits. In order to be able to request data and products and to make use of them, potential users must be provided with sufficient technical background. Such background should cover the basic functionalities of the IDC and IMS as well as of the scientific applications that can be derived from the use of IMS data and IDC products. This can best be achieved through training activities over a longer period of time.

4. The project will therefore involve the extended presence of technical experts hired by the PTS in each beneficiary State, who will serve as regional Focal Points (FPs) for the duration of this project. As feasible, targeted training and technical assistance activities will be devised for the beneficiary States in which particular needs regarding the establishment of NDCs and SSAs as well as regarding the system's scientific benefits have been identified and assessed. Selected States Signatories in Africa which have yet to ratify the CTBT will also be involved in this project. All FP activities in beneficiary States will be carried out in close coordination with, and with support from, the PTS to ensure the efficiency and sustainability of training and technical assistance efforts undertaken in this project, as well as to ensure adequate harmonisation with the activities undertaken in Joint Action 2006/243/CFSP (first CTBTO Joint Action).

5. Applying the abovementioned criteria, the PTS foresees, in this first phase of targeted technical assistance efforts, activities in as many of the following African States as possible, subject to a prior assessment of feasibility by the PTS taking account of local conditions prevailing at the time, and following endorsement of beneficiary countries in accordance with provisions set out under IV:

— in Eastern and Southern Africa: Angola, Burundi, Comoros, Ethiopia, Kenya, Lesotho, Malawi, Mozambique, Swaziland, Rwanda, Tanzania, Uganda, Zambia and Zimbabwe,

— in Northern and Western Africa: Algeria, Benin, Chad, Egypt, Gabon, Gambia, Ghana, Equatorial Guinea, Guinea, Guinea-Bissau, Libya, Morocco, Togo and Tunisia.

Objectives of the project

6. The aims of the project are to provide beneficiary States with sufficient knowledge and assistance for the building and/or improving their own NDCs' capabilities, as well as a training programme for NDC staff. It will also include a strong component on IMS Station Operation practices. Beneficiary States will be enabled to access and use IDC data and products more easily, effectively and efficiently and to improve maintenance operations of IMS stations within their territories.

7. It is anticipated that the interaction with FPs will facilitate an increase in the number of NDCs among beneficiary States and an enhanced participation by those States in the implementation of the CTBT monitoring and verification system, including effective and efficient use of IDC data and products. Furthermore, the project aims at strengthening the interaction and cooperation between the CTBTO and scientists and scientific institutions in those regions.

8. An integral part of the project will involve the use of the PTS e-learning capacities developed under the first CTBTO Joint Action. It will provide a forum where participants can be instructed in the use of the e-learning products. The feedback from this process by users in the beneficiary States will have a positive influence on both the e-learning and technical assistance projects.

9. Focusing on technical assistance, this should raise the profile of each State Signatory's engagement with its NDC development activities undertaken by the PTS. These activities will be undertaken in furtherance of the provisions for technical assistance contained in Part I F. 22 of the Protocol to the CTBT.

Benefits

10. The project aims to have a number of important benefits for the CTBTO and the beneficiary States, namely:

— It will enable the NDCs in the beneficiary States to have a better qualified technical competence in:

— the upkeep and maintenance of their IMS stations,

— the analysis and management of the data and data products.

— It will allow those States that establish NDCs to receive and analyse the raw data provided by the IDC in real time.

11. States establishing NDCs will receive financial, technological and human support from the PTS, and such support will help recipient States to develop and maintain the technical expertise necessary to participate fully in the CTBT monitoring and verification system.

12. A greater appreciation among beneficiary States of how the establishment of a NDC can help enrich their own scientific base and how IMS data can be used for analysing events in the region.

13. Increasing the number and geographic spread of NDC sites receiving and independently analysing IDC information will allow more effective use of the IDC, thereby facilitating further improvement in system accuracy (as highlighted in the first system-wide performance test undertaken by the PTS in April-June 2005).

Description

14. The PTS will identify and provide two technical experts as consultants serving as FPs, who will be based in Africa for the duration of this project and who will coordinate all the activities, in consultation with and under approval of IDC management. The beneficiary States will be divided into two groups between the two FPs. The work in each region will be divided into two phases.

15. Phase 1: Technical working visits to each country:

— The FPs will travel to the beneficiary States as described above to assess the awareness and usage of PTS data products. They will interact with national authorities, to understand the current needs and perceptions, and to increase awareness of PTS data and products, including their potential use for civil and scientific purposes. In addition, the FPs will establish contact with other relevant institutes in each country which might benefit from utilising PTS data and products. The FPs will facilitate networking between the national authority and relevant institutes as appropriate. In cases where an NDC exists, the status of each NDC in terms of personnel and infrastructure (including computer and Internet infrastructure) will be assessed, in order to formulate priority promotional activities.

— Subsequently, a technical hands-on training session will be held, which will bring together participants from the institutions identified in this phase. This training session will provide technical instruction on PTS data and products. It will be customized based on the skill set of the participants and taking into account the official languages of the beneficiary countries. During this training session participants will work with PTS software developed for NDCs, which can be used to access and analyse PTS data and products. This software will be provided to participants (who are authorised users of the PTS) to install at their own institutes. In addition, computer hardware and peripherals will be given to participants who are authorised users of the PTS, based on their assessed needs. This session will also provide an opportunity to foster cooperation between technical staff at institutes in the region.

16. Phase 2: Follow-up

After the completion of phase 1, the participants should be able to utilise their new knowledge, software, and hardware and to install and operate these new items based on what was learned during the training session. In order to consolidate the acquired skills and/or to close remaining gaps, the FPs will return to the beneficiary countries to assess how the participants are making use of what was learned at the training sessions in Phase 1. The objective of these shorter follow-up visits is to ensure that the local technical staff can routinely use PTS data and products. These efforts will be customised based on the local needs and skills, with an eye towards sustainability, so that the activities continue even after the conclusion of this project.

17. As conclusion of the project, a comprehensive report will be submitted for each beneficiary country, which describes the progress made, as well as the articulated and perceived needs, and the inter-relationships between the organisations which were visited. This will form the basis for further follow-up activities in the respective countries.

III. DURATION

The total estimated duration of the implementation of the projects is 18 months.

IV. BENEFICIARIES

The beneficiaries of the projects in this Joint Action are all States Signatories to the CTBT, as well as the Preparatory Commission of the CTBTO.

The final choice of beneficiary countries for the project component 'Technical Assistance' will be made in consultation between the implementing entity and the Presidency, assisted by the SG/HR, in close consultation with Member States and the Commission in the framework of the competent Council Working Party. The final decision will be based on proposals by the implementing entity in accordance with Article 2(2) of this Joint Action.

V. IMPLEMENTING ENTITY

The CTBTO Preparatory Commission will be entrusted with the technical implementation of the projects. The projects will be implemented directly by staff of the Preparatory Commission of the CTBTO, experts from the States Signatories to the CTBT and contractors. In the case of contractors, the procurement of any goods, works or services by the Preparatory Commission of the CTBTO in the context of this Joint Action will be carried out as detailed in the financing agreement to be concluded by the European Commission with the Preparatory Commission of the CTBTO.

The implementing entity will prepare:

(a) a mid-term report after the first six months of the implementation of the projects;

(b) a final report not later than one month after the end of the implementation of the projects.

Reports will be sent to the Presidency, assisted by the SG/HR.

VI. THIRD-PARTY PARTICIPANTS

The projects will be financed in their entirety by this Joint Action. Experts from the Preparatory Commission of the CTBTO and from the States Signatories to the CTBT may be considered as third-party participants. They will work under the standard rules of operation for experts of the Preparatory Commission of the CTBTO.

IV

(Other acts)

EUROPEAN ECONOMIC AREA

EFTA SURVEILLANCE AUTHORITY

EFTA SURVEILLANCE AUTHORITY DECISION

No 125/06/COL

of 3 May 2006

regarding the Norwegian Energy Fund (Norway)

THE EFTA SURVEILLANCE AUTHORITY [1],

Having regard to the Agreement on the European Economic Area [2], in particular to Articles 61 to 63 and Protocol 26 thereof,

Having regard to the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice [3], in particular to Article 24 thereof,

Having regard to Article 1(2) of Part I and Articles 4(4), 6, 7(2), 7(3), 7(4), 7(5) and 14 of Part II of Protocol 3 to the Surveillance and Court Agreement,

Having regard to the Authority's Guidelines [4] on the application and interpretation of Articles 61 and 62 of the EEA Agreement, and in particular Chapter 15 on Environmental Aid thereof,

Having regard to the Authority's Decision of 14 July 2004 on the implementing provisions referred to under Article 27 of Part II of Protocol 3 to the Surveillance and Court Agreement,

Having called on interested parties to submit their comments pursuant to those provisions [5] and having regard to their comments,

Whereas:

I. FACTS

1. Procedure

By letter of 5 June 2003 from the Norwegian Mission to the European Union, forwarding a letter from the Ministry of Petroleum and Energy dated 4 June 2003, both received and registered by the Authority on 10 June 2003 (Doc. No 03-3705-A, registered under case SAM 030.03006), the Norwegian authorities notified alterations of two existing aid schemes, namely 'Grant programme for introduction of new energy technology' and 'Information and educational measures in the field of energy efficiency', pursuant to Article 1(3) of Part I of Protocol 3 to the Surveillance and Court Agreement.

[1] Hereinafter referred to as the Authority.
[2] Hereinafter referred to as the EEA Agreement.
[3] Hereinafter referred to as the Surveillance and Court Agreement.
[4] Guidelines on the application and interpretation of Articles 61 and 62 of the EEA Agreement and Article 1 of Protocol 3 to the Surveillance and Court Agreement, adopted and issued by the EFTA Surveillance Authority on 19 January 1994, published in OJ L 231, 3.9.1994, p. 1; EEA Supplements No 32, p. 1. The Guidelines were last amended on 19 April 2006. Hereinafter referred to as the State Aid Guidelines.

[5] OJ C 196, 11.8.2005, p. 5.

By letter dated 16 June 2003 (Doc. No 03-3789-D), the EFTA Surveillance Authority (hereinafter 'the Authority') informed the Norwegian authorities that due to the fact that the scheme had already been put into effect on 1 January 2002, i.e. *before* the notification, the measure would be assessed as 'unlawful aid' in accordance with Chapter 6 of the Authority's Procedural and Substantive Rules in the Field of State Aid ([6]).

After various exchanges of correspondence ([7]), by letter dated 18 May 2005 the Authority informed the Norwegian authorities that it had decided to initiate the procedure laid down in Article 1(2) of Part I of Protocol 3 to the Surveillance and Court Agreement in respect of the Norwegian Energy Fund.

The Authority's Decision No 122/05/COL to initiate the procedure was published in the *Official Journal of the European Union* and the EEA Supplement thereto ([8]). The Authority called on interested parties to submit their comments thereon. The Authority received one observation. By letter dated 27 September 2005 (Event No 335569) the Authority forwarded the observation to the Norwegian authorities for comments.

By letter from the Norwegian Mission to the European Union dated 15 July 2005, forwarding a letter from the Ministry of Modernisation dated 12 July 2005 and a letter from the Ministry of Petroleum and Energy dated 11 July 2005, the Norwegian authorities submitted comments to the Authority's decision to open the formal investigation procedure. The letters were received and registered by the Authority on 19 July 2005 (Event No 327172).

Further information, in particular a report by the expert First Securities, was submitted by the Norwegian authorities on 6 October 2005 (Event No 345642). A meeting between the Norwegian authorities and the Authority took place on 11 October 2005. By email of 18 November 2005, the Norwegian authorities submitted further information (Event No 350637). A meeting with the Norwegian authorities took place on 13 February 2006. Further information was submitted by the Norwegian authorities on 8 March 2006 (Event No 365788).

([6]) Chapter 6 was subsequently deleted by Authority Decision No 195/04/COL of 14 July 2004. The definition of unlawful aid is now to be found in Article 1(f) in Part II of Protocol 3 to the Surveillance and Court Agreement.

([7]) For more detailed information on the various correspondence between the Norwegian authorities and the Authority, reference is made to the Authority's Decision to open the formal investigation procedure, Decision No 122/05/COL, see above fn. 5.

([8]) See above, fn. 5.

2. **Description of the support measures under the Energy Fund**

With its notification, the Norwegian Government announced alterations of two existing schemes in the field of energy which have been operating since 1978/79 under the competence of the NVE, the Norwegian Water Resources and Energy Directorate. The first scheme was the 'Grant program for introduction of new energy technology' by which the Norwegian Government gave investment support for the introduction of renewable energy technology. The second scheme, 'Information and education measures in the field of energy efficiency', concerned support for campaigns and courses on energy efficiency for the industry, commercial and household sectors. The schemes were funded by budgetary allocations. The most important notified alterations to the schemes concerned:

2.1. the merger of the schemes under a new funding mechanism, the Energy Fund;

2.2. a different way of financing the schemes by now also making — for all measures supported by Enova — use of a levy on the electricity distribution tariffs ([9]) in addition to continued grants over the state budget; and

2.3. the administration of the Energy Fund by the newly established administrative body Enova. Likewise, new provisions and an agreement between the Norwegian State and Enova have been adopted. These new provisions should ensure that the support measures attain certain newly identified energy policy objectives.

ad 2.1 Merger of the two support schemes

On 1 January 2002 the Energy Fund was established and the two schemes mentioned above were merged under that Fund. The Energy Fund serves as a financing mechanism for support measures, which continue under the new regime.

ad 2.2 The new mode of financing the Energy Fund

Whereas the existing schemes were funded by grants from the state budget, the newly established Energy Fund is financed by grants from the state budget, as well as by means of a levy on the electricity distribution tariffs (not a levy on the energy production itself).

([9]) According to the Norwegian authorities, this levy was introduced in 1990 in the course of the deregulation of the electricity market. Before 2002, the grid companies managed the levy to cover their own costs connected to information on energy efficiency.

This levy is provided for by the Energy Fund Regulation of the Ministry of Petroleum and Energy of 10 December 2001 ([10]). According to section 3 in conjunction with section 2a) of the Energy Fund Regulation, any company which has been granted a license according to section 4-1 of the Energy Act ([11]) (*'omsetningskonsesjoner'*) shall, when it charges the end user for the withdrawal of electrical energy from the grid, combine the invoice with a 1 øre/kWh (increased as of 1 July 2004 from former 0,3 øre/KWh) supplement for each withdrawal (see also section 4-4 Energy Act).

The licensee shall then pay a contribution to the Energy Fund of 1 øre/kWh multiplied by the amount of energy for which the end user in the distribution network is invoiced. As can be seen from the table under section I.7 of this Decision, the Energy Fund has been increasingly financed by the levy alone. However, that does not rule out the possibility that the Energy Fund might receive budgetary appropriations again, in future years.

ad 2.3 The administration of the Energy Fund by Enova

On 22 June 2001, Enova SF was established ([12]). Enova is a new administrative body, organised as a state enterprise (*statsforetak*, SF) ([13]). It is owned by the Norwegian State via the Ministry of Petroleum and Energy. Enova has been operating since 1 January 2002, *i.e.* the date when the Energy Fund was established.

Enova's principal task is to implement the support schemes, administer the Energy Fund and reach the energy policy objectives which the Norwegian Parliament approved in 2000. These principal tasks are further specified in an Agreement between the Norwegian State (the Ministry of Petroleum and Energy) and Enova SF (hereinafter 'the Agreement') ([14]). According to Enova's own description, *'the establishment of Enova SF signals a shift in Norway's organization and implementation of its energy efficiency and renewable energy policy'*.

([10]) *'Forskrift om innbetaling av påslag på nettariffen til Energifondet'* (regulation relating to the payment of a levy on the electricity distribution tariff to the Energy Fund, hereinafter 'Energy Fund Regulation').

([11]) *Lov av 29 Juni 1990 nr. 50 om produksjon, omforming, overføring, omsetning og fordeling av energi m.m, energiloven.*

([12]) Initial thoughts on the establishment of a central body dealing with energy efficiency measures were already presented by an expert committee in 1998, NOU 1998:11. The Norwegian Government took up this idea in the White paper St.meld.nr.29 (1998-99). The change from NVE to the Energy Fund was then finally presented in the fiscal budget for 2001, St.prp.nr.1 (2000-2001).

([13]) *Lov av 30 August 1991 om statsforetak.*

([14]) Revised Agreement of 22 September 2004, *'Avtale mellom den norske stat v/Olje- og energidepartementet og Enova SF om forvaltningen av midlene fa Energifondet i perioden 2002-2005'*.

3. **National legal basis for the support measures**

The national legal basis for the support measures is a Parliamentary Decision of 5 April 2001 ([15]) on the basis of a proposition by the Ministry of Petroleum and Energy of 21 December 2000 ([16]). The Parliamentary Decision amends the Energy Act of 29 June 1990 No 50 (*Energiloven*). The principal tasks of Enova are specified in the above mentioned Agreement between the Ministry and Enova.

Of further relevance is the newly adopted Regulation No 1377 of 10 December 2001, concerning the levy on the electricity distribution tariff (*Forskrift om innbetaling av påslag på nettariffen til Energifondet*). A regulation on the Energy Fund (*Vedteker for energifondet*) places the Energy Fund under the Ministry of Petroleum and Energy and stipulates its administration by Enova.

4. **The objective of the aid measure**

The establishment of the merged schemes under the newly established Energy Fund and the administrative body Enova was done with a view to achieve a more cost-effective use of public funding for energy saving measures and the production of environmentally sound energy. Enova and the Energy Fund should achieve the new energy objectives adopted by Parliament ([17]).

According to the Agreement mentioned above, energy savings and new environmentally sound energy shall make up together a minimum of 12 TWh by the end of 2010, of which:

— a minimum of 4 TWh shall be from increased access to water-borne heating based on new renewable energy sources, heating pumps and thermal heating, and

— a minimum of 3 TWh shall be from increased use of wind energy.

The Agreement stipulates as a secondary objective that the Fund's resources shall contribute to the saving of energy and to new, environmentally sound energy, which together shall make up a minimum of 5,5 TWh (originally 4,5 TWh) by the end of 2005. By supporting new renewable energy forms and contributing to more energy saving, Norway also wishes to become less dependent on the predominant source for electricity production used, hydropower. The figures below, communicated by the Norwegian authorities, show Norway's ongoing reliance on hydropower, despite the increasing use of wind energy and thermal electricity in recent years.

([15]) *Odelstingets vedtak til lov om endringar i lov 29. juni 1990 nr. 50 om produksjon, omforming, overføring, omsetning og fordeling av energi m.m. (energilova). (Besl.O.nr.75 (2000-2001), jf. Innst.O.nr.59 (2000-2001) og Ot.prp.nr.35 (2000-2001)).*

([16]) Ot.prp.nr.35 (2000-2001).

([17]) See above fn. 15.

Table 1

Production, consumption, import and export of electricity, Norway, in GWh, 2000-2005

	2000	2001	2002	2003	2004	Jan-May 2005
Total production	142 816	121 608	130 473	107 273	110 427	60 976
Hydro	142 289	121 026	129 837	106 101	109 280	na
Wind	31	27	75	220	260	na
Thermal electricity	496	555	561	952	887	na
Consumption	123 761	125 206	120 762	115 157	121 919	56 665
Import	1 474	10 760	5 334	13 471	15 334	1 923
Export	20 529	7 162	15 045	5 587	3 842	6 234
Net import	– 19 055	3 598	– 9 711	7 884	11 492	– 4 311
Net import/consumption	0,0 %	2,9 %	0,0 %	6,8 %	9,4 %	0,0 %
Net export/consumption	15,4 %	0,0 %	8,0 %	0,0 %	0,0 %	7,6 %

5. **The Energy Fund system as notified**

5.1. *General remarks on the Energy Fund*

Enova can give investment support for energy saving systems and for production and use of renewable energy sources as well as initial investment aid for new energy technologies.

The level of subsidy is determined by a technical and financial evaluation of each project. Priority is given to those projects which give the highest kilowatt-hour (kWh), saved or produced, per subsidised NOK. This leads to a competition of projects for the receipt of public funds with the goal being to choose the most efficient projects.

Calls for project proposals are announced in major national and regional newspapers at least biannually and for most programmes four times a year.

5.2. *Renewable energy*

The eligible projects

As regards the investment support for the production and use of *renewable energy*, Norway supports energy projects which are defined in Article 2 of Directive 2001/77/EC ([18]) as renewable energy sources (see point 7 of the Authority's State Aid Guidelines on Environmental Aid, hereinafter 'the Environmental Guidelines', which covers wind and solar energy, geothermal energy, wave energy, tidal energy and hydroelectric installations with a capacity below 10 MW as well as biomass). Hydropower, which is — as explained — the traditional source for electricity production used in Norway, has so far not been given any support ([19]). Funds for the introduction of natural gas are not part of the Energy Fund ([20]).

Enova regards the following projects as qualifying for support in general terms: wind energy, bioenergy, tidal energy, geothermal energy, ocean wave energy. Solar energy comprises passive solar building integrated solutions, solar heating systems and PV (photovoltaic) production.

When it comes to the notion of 'bioenergy', the Norwegian authorities have clarified that this term is used for renewable energy (electricity or heat) *based on* biomass as defined by Directive 2001/77/EC. Bioenergy is a wider notion than biomass and covers e.g. projects which convert biomass to electricity and/or heat in contrast to biomass projects which only concern the production and processing of biomass itself. Such projects are dependent on extra investment in back-up and peak load capacity based on other sources of energy. Therefore, the costs of investments in these projects might not only cover biomass, but also other sources of energy besides biomass. The Authority understands that there could be situations in which the bioenergy consists only of a fraction of biomass.

([18]) OJ L 283, 27.10.2001, p. 33. The Directive as such has not yet been incorporated into the EEA Agreement.

([19]) The Regulation for the Energy Fund (*Vedteker for Energifondet*, § 4) states that the Energy Fund should be used for energy saving, production of new renewable energy and other environmentally friendly energy.

([20]) See Authority's Decision 302/05/COL, which approved a research and development aid scheme for gas technology.

The Norwegian authorities have specified that the notion of 'use' of renewable energy sources will cover situations in which the investment is made for internal production, whereby the producer and the user is the same entity (which is often the case for heat production).

The calculation of the support — the net present value calculation method

Enova calculates the support that can be given to a project as the discounted present value of the difference between current production costs of the project and current revenues based on the market price of the relevant energy source. In other words, it uses a net present value calculation (hereinafter referred to as NPV calculation).

The market price for the relevant energy

In order to choose the market price, the Norwegian authorities distinguish between three different situations:

Firstly, they consider the case of renewable energy production which is fed into the transmission grid and, therefore, competes with traditional generation of electricity as quoted on the Nordpool power exchange. This is the case for wind, bio, waste, solar, tidal and ocean wave energy and the price quoted in Nordpool serves as a reference. On the Nordpool power exchange, both spot prices and forward prices up to three years can be observed. As investments are based on the expectations of future electricity prices, Enova refers to forward contracts which are traded on a daily basis. To cancel out random price fluctuations, a six-month average of the latest tradable future contracts is used. The price is quoted on the submission date of the project application, which occurs four times a year.

The second case is that of district heat, which is distributed on a local distribution net and competes with heat from fossil fuels or from electricity. In this situation, Enova refers to the actual contract price ([21]) paid by the consumer (the price of the ordinary energy — from fossil fuels and electricity).

The third scenario covers energy production which is not fed into any distribution net (e.g. on-site power generation based on residual steam not fed into the power grid). In this case, the price the end user is facing in the market is used, including taxes.

([21]) Large customers profit often from discounts because of their large delivery contracts. This is taken into account by Enova when comparing prices of competing energy sources.

The 'triggering off' effect

The objective of the aid scheme is to encourage investment into renewable energies which would otherwise not take place, due to the fact that the energy price obtainable in the market does not cover the costs and thus makes the net present value negative. For that reason, according to the Norwegian authorities, the subsidy shall only compensate the extra costs of the production of renewable energy. Moreover, the support granted by Enova shall not exceed the amount deemed necessary in order to trigger the project, i.e. to encourage a positive investment decision.

However, when the Energy Fund and Enova were established, there were, according to the Authority's information, no precise specifications as to when the triggering effect would be considered to have been reached. It was e.g. not specified when the project would reach — with the support from the Energy Fund included — a zero net present value. Admittedly, analyses were made to establish when the project would break even. Still, there were no explicit limitations which prevented State support above that point. As further illustrated in the Authority's decision to open the formal investigation procedure, in some instances the support granted by Enova might have led to project support which resulted in a calculated positive net present value ([22]).

When projects are granted support, Enova and the aid recipient enter into an aid contract, which regulates the terms on which disbursement will take place. The disbursements might be adjusted in accordance with any cost reduction during the construction period. After the investment is realised, there is a follow-up on the realised costs against costs estimated in the application. If these factors differ to the advantage of the applicant, Enova may adjust the financial aid downward to reflect the actual cost structure ([23]).

The fair return on capital

The basis for the trigger off requirement includes a fair return on capital. The discount rate used was set at a rate of 7 % per annum (nominal, pre-tax rate) for all projects to which certain percentage points were added as a risk premium. The Norwegian Government stated that Enova will base its analysis on theoretical values suggested in public reports from acknowledged government institutions in Norway, whereby the risk premium would vary between 2,5 to 4,5 %, depending on the type of energy and project.

([22]) See the example on page 7 of the Authority's decision to open the formal investigation procedure (Decision 122/05/COL) as well as page 9 thereof, in particular fn. 17.

([23]) In the Authority's understanding, there is no upwards adjustment in case of a disadvantage to the applicant.

5.3. *Energy saving measures*

According to the system as notified ([24]), support for the investment in energy saving measures is calculated according to the same net present value calculation method used for renewable energy projects.

5.4. *New energy technology*

In this category, Enova supports technologies which still need some development and which need to be further tested before they are economically viable, although they are past the stage of research and development projects covered by Chapter 14 on research and development aid of the Authority's State Aid Guidelines. Examples of such technologies are tidal or wave energy installations. The projects might be linked to achieve energy efficiency or foster renewable energy production.

During the formal investigation, the Norwegian authorities clarified that this category could be considered as a subcategory of the investment support for renewable energy production and energy saving described above. In the past, 95,3 % of the supported projects under this category concerned renewable energy production, 4,3 % concerned energy saving measures ([25]).

Enova has signed an agreement with the Norwegian Research Council on the 'introduction of innovative energy solutions' for energy saving and heat production from solar energy and biomass. According to the Norwegian authorities, this agreement does not constitute a new aid scheme, but only an enhanced focus on an area where the cooperation between Enova and the Research Council is expected to give synergy effects. According to the Norwegian authorities, this mechanism functions as a common entry door for projects which might either be in a pre-competitive stage (and thus might receive support from the Research Council) or generate revenues (and might receive support from Enova). The project will not receive funding from both support agencies. However, the Norwegian authorities underline that, in any event, the cumulation rules guarantee that section G (66) of the Environmental Guidelines are to be respected. This section of the Environmental Guidelines states that support under these guidelines may not be combined with other forms of State aid within the meaning of Article 61(1) of the EEA Agreement, if such overlapping produces an aid intensity higher than that laid down in the Environmental Guidelines.

Since only projects generating revenues are to be supported by Enova, Enova uses the net present value calculation mentioned above equally for the support of new technology projects. The income of the projects is based on the generation of electricity and heat for sale, which, according to the Norwegian authorities, constitutes an income which makes the projects viable for the net present value calculation approach.

5.5. *Energy audits*

Enova also offers **advisory and consultancy services to achieve energy efficiency** free of charge to undertakings. The purpose of the support is to increase the number of enterprises that perform energy audits and analyses and help them to reduce the respective costs. As notified, these services were legally neither limited to aid below the *de minimis* threshold nor aid to small and medium-sized enterprises. They were targeted to certain undertakings. In the programme text for 2003, the target groups were described as owners of private and public buildings with a total surface area over 5 000 square metres and industrial enterprises, as well as tenants of large areas. As of 2003, Enova has granted money to firms to purchase such advisory and consultancy services, rather than rendering the service itself.

The Norwegian authorities stress that support under these programmes should be distinguished from the teaching and educational measures. This is so as the funding goes directly to companies for performing energy audits and energy analyses and to identify either energy saving investments or behavioural changes within the enterprises. The Authority will, therefore, consider this support separately in the present decision. The Norwegian authorities further argue that the programmes are similar to energy audits under a Finnish scheme, approved by the Commission ([26]).

In the past, grants might have been handed out which covered up to 50 % of eligible costs. According to the Norwegian authorities, as of 1 January 2004, only 40 % of the eligible costs have been supported.

5.6. *Information and educational programmes in the field of energy efficiency*

Enova operates an energy **information helpline**, whereby information and advice are provided free of charge to anyone interested in achieving more energy efficiency. In as far as Enova does not have the capacity to undertake these activities itself, the Norwegian authorities state that services have been bought in line with the public procurement rules. Enova does not exercise any discretion regarding to whom such advice and information is provided.

([24]) See, however, the Norwegian authorities' suggestion for the future handling of energy saving measures, section I.9.2 of this Decision.

([25]) As to the 0,4 %, the Norwegian authorities specified that they concern Enova's own administrative costs for managing such project applications.

([26]) N 75/2002 — Finland, *Modification of aid scheme for the energy sector*.

Until 1 January 2003, Enova offered a widely publicised programme by which queries regarded energy efficiency which required concrete follow-up in households and undertakings **on-site** were handled by twenty regional efficiency centres which represented Enova in this field. The support was provided free of charge and approximately two hours were reserved for each request. The Norwegian authorities state that Enova did not enjoy any discretion regarding the recipients to whom to provide this service.

For **educational measures**, the following programmes are to be mentioned. The Norwegian authorities stress that competition among bidders and cost-effectiveness of the projects are essential.

Until 1 January 2005, Enova provided a programme ([27]) for the development of **teaching material and learning concepts** to stimulate and preserve knowledge concerning renewable energies, in companies. The programme was organised as a tendering process, and Enova paid 50 % of the total development costs of the project. The objective of the programme was to stimulate the development of teaching material on energy efficiency (books, software, etc.), as well as to support the development of energy related courses, e.g. at colleges/universities or developed by trade unions, etc. The programme was open to public, private and non-profit entities. The programme texts for 2003 and 2004 contained a prioritisation list (e.g. projects for the construction business, projects involving public/private partnerships and projects to be marketed until 1 August 2003). For the 2003 programme, the supplementary education was particularly geared towards universities, unions, trade organisations and private educational operators (phase 1) and architects, suppliers, entrepreneurs and other personnel working with energy systems in commercial buildings (phase 2) or aimed at the construction business (programme text 2004).

In order to promote the 2004 education programme, Enova offered a programme on **developing education courses in energy for technical personnel and engineers**. This was organised by a tendering process. Only the first 50 persons to have completed the course got the course paid for by Enova. According to the Norwegian authorities, this support was given directly to individuals and not to undertakings.

The above mentioned teaching material programmes ended on 31 December 2004. According to the Norwegian authorities, new programmes would be notified to the Authority. Altogether, some 33 projects have received support under the programme. The Norwegian authorities state that some of the projects might fall under the *de minimis* threshold. Moreover, some of the support went to public sector entities, universities and other educational entities and to non-profit organisations. The Norwegian authorities claim that for these entities, the support given by Enova did not concern an economic activity carried out by an undertaking falling within the ambit of Article 61(1) of the EEA Agreement, but rather the support of an educational activity.

The scheme as such did not contain any limitation specifying that the aid should only be given to certain types of entities or activities. Nor did it state that the support should not exceed the *de minimis* threshold as stipulated in the Act referred to under point 1(e) of Annex XV to the EEA Agreement ([28]). The support was neither limited to small and medium-sized undertakings ([29]), as mentioned in the Act referred to under point 1(f) of Annex XV to the EEA Agreement, nor was it structured to meet the requirements of the Act referred to in point 1(d) in Annex XV to the EEA Agreement ([30]) (training aid).

In addition, Enova runs a programme to improve **energy planning skills in local municipalities**, in particular public planning and area planning according to the Norwegian Planning and Building Act. The programme, which is offered free of charge, is aimed at high level decision makers and technical personnel in the municipalities. The Norwegian authorities state that Enova carries out an assessment as to whether the municipality is performing a service in competition with other operators in the market. If so, such an activity will not be supported.

6. **Recipients/aid intensities for investment support for renewable energy production**

The Authority's investigation concerns an ongoing aid scheme. Thus, the indication of potential aid recipients cannot be finally established with this Decision and is only indicative. In their letter dated 15 July 2005, the Norwegian authorities identified until the end of 2004; 236 recipients of energy audit and

([27]) The programme was named 'teaching material and education concepts' in 2003 and changed its name to 'education programme' in 2004.

([28]) Incorporating Commission Regulation (EC) No 69/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid, OJ L 10, 13.1.2001, p. 30, into the EEA Agreement.

([29]) Incorporating Commission Regulation (EC) No 70/2001 of 12 January 2001 on aid to small and medium-sized undertakings, OJ L 10, 13.1.2001, p. 33, as amended by Commission Regulation (EC) No 364/2004 of 25 February 2004, OJ L 63, 28.2.2004, p. 22, into the EEA Agreement.

([30]) Incorporating 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, OJ L 10, 13.1.2001, p. 20, as amended by Commission Regulation (EC) No 363/2004 of 25 February 2004, OJ L 63, 28.2.2004, p. 20, into the EEA Agreement.

investment aid support (the latter both for renewable energy production and energy saving measures), which received State support exceeding the *de minimis* threshold and which was not support given to public entities for carrying out their public functions. The Norwegian authorities further identified 33 projects supported under the educational/teaching material programme.

The Norwegian authorities claim that another estimated 875 projects either concern support to public entities or support for the purchase by Enova of a certain service according to the public procurement rules.

For renewable energy projects, the Norwegian authorities submitted the following table showing aid intensities, based on total investment costs, for the renewable energy projects granted between 2002-2004:

Renewable energy		Aid intensity in % of total investment costs, support calculated according to the net present value approach	
	Number of projects	Average	Maximum
Wind	10	23 %	68 %
District heating	19	20 %	31 %
Bio	31	20 %	50 %
New renewable	1	25 %	25 %

7. **Budget and duration**

The Agreement 2002-2005 (see above section I.2.3 of this Decision) was prolonged until the end of 2006. It is foreseen that the Agreement will further be prolonged until 31 December 2010. The Norwegian authorities have submitted the following overview of the scheme's budget:

	State budget million NOK	Levy on tariff million NOK	Total budget million NOK	Total budget million euro [1]
2002	270	161	431	57,3
2003	259	192	451	56,4
2004	60	470	530	63,3
2005	0	650	650	79,3

[1] Exchange rates (NOK/Euro) used by the Norwegian authorities: 2002:7.51, 2003:8.00, 2004:8.37, 2005:8.20.

8. **Cumulation**

As to the cumulation of the support granted by Enova with other government support, the Authority notes that, in principle, the projects might receive aid from other sources. The Norwegian authorities stated in the notification that they would ensure that the aid granted would never exceed the thresholds of section G. (66) of the Environmental Guidelines. As already mentioned, this section stipulates that aid authorised under the Environmental Guidelines may not be combined with other forms of State aid, if such overlapping leads to an aid intensity which is higher than laid down in the Environmental Guidelines. Applicants have to notify Enova if applications for additional government aid have been submitted.

9. **Suggested amendments by the Norwegian authorities**

With a view to making the system compatible with the Environmental Guidelines, the Norwegian authorities have suggested certain amendments to its system, which are described below. During the Authority's investigation, the Norwegian authorities started implementing these amendments.

9.1. *Amendments for the investment support relating to renewable energy production*

1. Norway will limit the support to projects falling within the definition of renewable energy sources in Article 2a and b (for biomass) of Directive 2001/77/EC. Moreover, no support will be given for existing hydropower plants.

2. The amount of aid will be calculated according to a net present value calculation to be based on the difference between the production costs and the market price. The aid will be given as a lump sum. The calculation method applied is as follows (demonstrated with the example of an actual wind energy project, amounts expressed in NOK):

Eligible investment cost [1]	123 000 000
Production kWh/year	45 700 000
Price NOK/kWh	0,25
Annual Income [2]	11 425 000
Operating cost NOK/kWh	0,10
Annual operating cost	4 570 000
Annual net income	6 855 000
Economic lifetime Years	25
Return on capital	6,33 %
NPV	– 38 000 000
Investment aid	38 000 000

[1] The investment cost occurs at the beginning of year 0.
[2] The income occurs first time at the end of year 1.

Compared to the system as notified, the model calculation above will be based on the 'eligible' investment costs and not on full costs. As stated by the Norwegian authorities, financial costs, miscellaneous costs and indemnity costs are not included in the eligible costs, at least not since 1 January 2004.

3. The market price for electricity used in the above calculation will be taken from the relevant Nordpool prices. In the case of district heating, it will be the relevant price that the end user of oil or electricity (whichever is lowest) faces when the decision about the State support is made. If the project economy is based on large customer contracts with prices deviating from the observable end user price of electricity and oil, the contract prices will be the relevant price. Regarding electricity production not fed into the grid, the end user price including taxes will be used.

4. The aid may cover a fair return on capital. However, the discount rate and the risk premium will be established for Enova by an external expert for each renewable industry concerned.

It should be noted that the Norwegian authorities submitted a report by the appointed independent expert, First Securities ASA ([31]), to the Authority. The expert uses a Capital Asset Pricing Model ([32]) and calculated discount rates of 7 % for wind energy, 6 % for distant heating, bio energy and energy use respectively. The calculation is understood to be a framework which enables Enova to discuss the use of equity discount rates for individual projects. In particular, the so-called beta value might be higher depending on the project's risk ([33]) and lead to higher discount rates.

The interest rate and the risk premium will be reviewed and updated annually by the Norwegian authorities. If there are unexpected changes that significantly affect the discount rate which occur between annual updates the Norwegian authorities will carry out an extraordinary adjustment of the discount rate accordingly. However, this applies only if there is reason to believe that the change is of permanent character.

5. The eligible investment costs shall be those listed in Commission Decision N 75/2002 — Finland ([34]). The Norwegian authorities state that since 1 January 2005 Enova has accepted only such costs as being eligible.

6. No aid in excess of the amount necessary to trigger the project will be given. This means that in case of a *negative* net present value, resulting from a net present value calculation which is calculated according to the parameters stipulated in number (2) above, State support will only be given to ensure that the project breaks even, i.e. to bring the net present value up to zero.

7. A project with a calculated zero rate or a positive net present value without aid will not be entitled to any aid.

8. With the exception of support for biomass, the support granted under this scheme shall never exceed the threshold stipulated under section D.3.3.1 (54) of the Environmental Guidelines. Section D.3.3.1 (54) of the Environmental Guidelines limits the support to the difference between market price and production costs, capped at plant depreciation, whereby plant depreciation is to be understood as investment costs only. The aid may also cover a fair rate of return, where Norway can show that this is indispensable given the poor competitiveness of certain renewable energy sources.

([31]) First Securities is an important player in the Norwegian securities market.

([32]) A method which shows the risk adjusted return on capital as a function of the risk of the market portfolio and the risk of the asset (project) in question.

([33]) The formula used by First Securities is $R_E = R_F + \beta (R_M – R_F)$, R_F being Norwegian long bonds, β constituting the individual project risk, R_M is the expected return on market portfolio, $(R_M – R_F)$ is the equity risk premium). R_E is the required return on capital invested.

([34]) (A) Preparation and design costs, (B) costs of buildings, machinery and equipment, installation costs or costs incurred for the adjustment and repair work of existing buildings, machinery and equipment (C) Up to the limit of 10 % of the projects' eligible expenditure, costs arising from the purchase of land directly related to the investment and from the construction of electric lines. (D) Costs ensuing from the construction of a pipe to be connected to a district heating network. Costs incurred by the construction of a heat distribution network are eligible only in network projects involving new technology, (E) Costs of civil engineering work and supervision of construction work, (F) Costs of clearance and earth works, (G) Commissioning costs and costs arising from training of operating personnel required for commissioning. In this context, commissioning refers to the act of operating, testing and adjusting a system of unit for the first time to ensure that it functions according to the specified performance, (H) Costs of project-related information dissemination, (I) Costs of monitoring the investment, (J) Costs related to feasibility studies for the various types of projects (salaries of the participants in the project and indirect labour costs, equipment, accessories, software, travel, information dissemination, other direct or overhead expenses). The aid recipient's overhead costs, interests paid during construction, adherence fees and deductible taxes will not be eligible. See above fn. 26.

9. Within Enova's methodology for calculating aid levels, the maximum amount of aid granted from Enova will be limited to the investment cost. Projects generating a negative EBITDA ([35]) under normal operating conditions, at the time of investment, will not be in a position to receive any aid at all. The discount rate used for that purpose will be the discount rate used by Enova, as mentioned in number 4 of section 9.I of this Decision.

10. For biomass, operating aid exceeding the investment costs might be granted. However, under no circumstances will more operating aid be granted than foreseen in section D.3.3.1 (55) ([36]) of the Environmental Guidelines.

11. For support under the system, biomass will be defined as the 'biodegradable fraction of products, waste and residues from agriculture (including vegetal and animal substances), forestry and related industries, as well as the biodegradable fraction of industrial and municipal waste' (see Article 2(b) of Directive 2001/77/EC). In case of support of bioenergy which contains sources other than biomass, operating aid as stipulated above in number 10 shall only be given for that part which contains biomass. The support of the other parts was limited to investment support as defined under number 5.

12. The scheme will be limited until 1 January 2011.

The Norwegian authorities have also submitted the following operating cost data for renewable and conventional energy production data:

Total running costs, NOK/kWh

Technology	Operating and maintenance costs	Fuel	Total running costs
Figures from the IEA report: Projected costs of generating Electricity 2005 update			
Coal	0,034-0,068	0,076-0,152	0,11-0,22
Gas	0,023-0,031	0,187-0,249	0,21-0,28
Combined heat and power production			0,17-0,44
Figures from NVE report: Costs of the production of energy and heat in 2002			
Wind	0,05		0,05
Figures from the Enova project portfolio (examples)			
Wind	0,05-0,10	0	0,05-0,10
Bio	0,07-0,15	0,2-0,3	0,27-0,45
New renewable			0,05
District heating			0,05-0,10

9.2. *Energy saving measures*

As for the system notified, the Norwegian authorities argue that the net present value calculation should also be accepted for the calculation of support for energy saving measures. However, the Norwegian authorities proposed changes to the future application of the support measures for energy saving, as follows:

The Norwegian authorities will calculate the investment aid for energy saving measures according to section D.1.3 (25) ([37]) of the Environmental Guidelines in combination with section D.1.7 (32) of the Environmental Guidelines, i.e. the investment costs of the project will be strictly confined to the extra investment costs necessary to meet the environmental objectives. This means that the costs of the energy saving investment will be compared to the costs of a technically comparable investment that does not provide the same degree

([35]) EBITDA is Earnings Before Interest, Taxes, Depreciation and Amortization. This comprises net cash inflow from operating activities, before working capital movements.

([36]) According to section D.3.3.1 (55) of the Environmental Guidelines, biomass — which has higher operating costs — may receive operating aid which exceeds the amount of investment, if the EFTA State can show that the aggregate costs borne by the firms after plant depreciation are still higher than the market prices of the energy.

([37]) According to section D.1.3 (25) of the Environmental Guidelines, energy saving measures can be supported at the basic rate of 40 % of eligible costs. According to section D.1.7 (32) of the Environmental Guidelines the support must be limited to the extra investment costs. Eligible costs are calculated net of the benefits accruing from any increase in capacity, cost savings engendered during the first five years of the life of the investment and additional ancillary production during that five-year period.

of environmental protection. In cases of investment in additional equipment and procedures with no other function than energy saving, where no alternative comparable investment exists, the comparable investment costs are set at zero. Replacement costs of machines to meet Norwegian required standards are not eligible for support.

1. The costs will be calculated net of the benefits accruing from any increase in capacity, costs savings engendered during the first five years of the life of the investment and additional ancillary production during that five-year period.

2. The eligible costs will be confined to investment costs. In that respect, eligible costs will be the same as those listed by the European Commission in its Decision N 75/2002 — Finland ([38]). As of 1 January 2005, the Norwegian authorities have only considered such costs as eligible.

3. The amount of aid will be limited to 40 % of the extra costs, calculated according to the above parameters and no operating aid will be given under that scheme. According to section D.1.5 (30) of the Environmental Guidelines, for small and medium-sized enterprises the aid might be increased by 10 percentage points. For that purpose, small and medium-sized enterprises will be defined according Chapter 10.2 of the Authority's Guidelines on aid to micro, small and medium-sized enterprises.

4. The Norwegian Government will ensure that, if combined with other public subsidies, the total aid will not exceed the above mentioned limits.

5. The scheme will be limited until 1 January 2011.

9.3. *Support for new energy technologies*

The Norwegian authorities state that new technologies projects, as far as renewable energy projects are concerned, are to be supported according to the rules for supporting the production and use of renewable energy production (NPV approach). As far as energy efficiency technologies are concerned, the calculation mechanisms for energy saving mechanisms will be applied. The support will, *inter alia*, include projects which earlier have only been tested in laboratories, have limited exploitation or are developed for conditions different from that in Norway and need adaptation.

Pre-competitive projects, falling under the Authority's State Aid Guidelines for Research and Development, will be notified individually. Projects which are an upgrading of existing products or production line will not be supported. The same goes for projects which have already started or for which the start up decision has been made.

9.4. *Information and education measures in the field of energy efficiency*

The Norwegian authorities confirmed that the programmes for teaching material and learning concepts, education courses for technical personnel and on-site follow-up ended on 1 January 2005. If these or similar projects are to be taken up in the future, they will be notified in advance to the Authority.

The Norwegian authorities further confirmed that the training programme for public entities only relates to the public function of the local municipalities (see also section I.5.6 of this Decision).

9.5. *Miscellaneous*

The Norwegian authorities further confirmed that the support is applied in a non-discriminatory manner also to foreign investors and that they will regularly report to the Authority on the application of the scheme. The Norwegian authorities submitted a list to the Authority showing eight examples of foreign operators having received support under the Energy Fund.

10. **Grounds for initiating the formal investigation procedure**

In its decision to open the formal investigation procedure, the Authority took the view that the measures concerning energy saving, the support of new energy technologies and the support for the investment in renewable energy production constituted State aid within the meaning of Article 61(1) of the EEA Agreement. As for the information and educational measures (including advisory and consultancy services) the Authority noted that with the exception of the information helpline and possibly the on-site visits, the Fund enjoyed ample discretion. It, moreover, found that this discretion turned the support measures into selective, rather than general, measures. All the measures were found to distort or threaten to distort competition and affect trade between the Contracting Parties. Since the aid in relation to the Energy Fund was not notified in time to the Authority, it constituted unlawful aid within the meaning of Article 1(f) in Part II of Protocol 3 to the Surveillance and Court Agreement.

As to the compatibility assessment, the Authority made a distinction between the Energy Fund as notified and a system with the amendments suggested by the Norwegian authorities.

([38]) See section I 9.1. number 5 and fn. 35 of this Decision.

The system as notified

The Authority expressed doubts in the decision to open the formal investigation procedure as to whether the investment support for renewable energy production could be justified under the Environmental Guidelines. In particular, the Authority noted that the support was not based on the 'extra cost' methodology of section D 1.3 (27) and section D.1.7 (32) of the Environmental Guidelines. Rather, it identified the need for aid by carrying out a net present value calculation of the project. The Authority found that there were no sufficient guarantees that only costs related to the investment would be supported. Further, there was no mechanism to preclude any overcompensation. For energy saving measures, the Authority noted that contrary to renewable energy projects, the Environmental Guidelines stuck strictly to a support of 40 % of eligible investment costs. With the net present value calculation applied by the Norwegian authorities it was not certain that this threshold would be respected. For energy technology projects as well as for energy audits, the Authority required more information. On the information and educational support measures, the Authority noted that the aid scheme in this respect was not limited to *de minimis* support (although support for some of the projects might have stayed below the threshold) or limited to small or medium-sized enterprises. On that basis, the Authority came to the initial conclusion in the decision to open the formal investigation procedure that the system as notified was not compatible with the EEA State aid provisions.

The system with the amendments suggested by the Norwegian authorities

In the decision to open the formal investigation procedure, the Authority also dealt with the amendments suggested by the Norwegian authorities. It stated that it would investigate further whether the Norwegian approach to base the support on a net present value calculation of the project concerned could be accepted, if the Norwegian authorities decided to limit the support to the difference between the market price and the production costs, see section D.3.3.1 (54) of the Environmental Guidelines. The Authority was also concerned about how the requirement of section D.3.3.1 (54), third sentence of the Environmental Guidelines was going to be applied in practice by the Norwegian authorities. This section prescribes that once supported, any further energy produced by the plant would no longer qualify for any further assistance. The Authority also expressed doubts about the support of projects whose net present value would still be negative, due to high operating costs, after having received support from Enova.

The Authority could not form a final view on the support for new energy technologies and on educational measures, as well as on the advisory and consultancy services (energy audits).

11. **Comments from third parties**

The Authority received one comment from third parties to its opening decision. The German Ministry for the Environment, Nature Conservation and Nuclear safety states that there is no possibility of clearly identifying the relevant market and establishing whether the supported undertakings would indeed be in competition with non supported undertakings and would receive an advantage. Further, the German Ministry states that the principle of establishing the extra costs of renewable energy production is not very suitable for determining the aid amount, as long as there is no general applicable and clearly defined definition of the concept of extra costs. With regard to the 40 % threshold for aid intensities, the German Ministry finds that this will often not give a sufficient incentive for a private investor to act, as he would have to take over 60 % of the costs. One might therefore consider whether the support should be based rather on a proportion of the total investment costs. The German Ministry states that some shortcomings of the Environmental Guidelines in this respect have been overcome by the Commission's case practice.

12. **Comments by the Norwegian authorities**

As to the existence of State aid, in their reply of 15 July 2006, the Norwegian authorities take the view that the Authority applies a too strict selectivity test, which does not leave an opening for any discretion for programmes which are basically open for all companies. As to the support for teaching material, Enova enjoyed discretion to dismiss only such projects which did not meet the objectives of the programme or could ensure sufficient quality. These minimum criteria were therefore of an objective character.

The Norwegian authorities further claim in the above letter that the Authority should have made a compatibility assessment of the Energy Fund directly under Article 61(3)(c) of the EEA Agreement, as the Commission did in the UK WRAP lease fund scheme ([39]).

As to the compatibility assessment of the investment support for renewable energy production, the Norwegian authorities state that for renewable energy production as notified, the system's element of competition between different projects excludes any overcompensation. Further, the agreement between Enova and the Ministry states that any aid given has to be compatible with the EEA Agreement. As to the inclusion of costs which might not have been eligible, the Norwegian authorities state that this would only concern a small fraction of the costs.

([39]) Commission Decision of 11 November 2003 on the State aid which the United Kingdom is planning to provide under the WRAP Environmental Grant Fund and the WRAP Lease Guarantee Fund (OJ L 102, 7.4.2004, p. 59).

Throughout the preliminary investigation phase and in their reply of 15 July 2006, the Norwegian authorities point out that Norway faces a different energy situation than most European states as more than 99 % of its domestic electricity production stems from hydropower. Hydropower has a different cost structure and different cost levels than the traditional energy production in the rest of Europe based on coal, gas and nuclear energy. A comparison with hydropower for calculating the extra costs of new renewable energy production under the Guidelines is, in the Norwegian authorities' view, not feasible. There are further important advantages in applying the chosen methodology. Firstly, the net present value method is the commonly used methodology in the energy sector as well as in other industrial sectors. By referring to the market price, objective and easily available criteria are chosen. Using this method for all projects applying for support, Enova can compare different projects competing for State support on an equal basis and grant support to those projects which have the best aid/environmental benefit ratio. Secondly, the method will ensure that a project will only be granted the amount necessary to enable the project to get to the market.

Norway states that if one were to follow verbatim the Environmental Guidelines, the Norwegian authorities would have to supplement the investment aid scheme with an operating aid scheme, for which the aid would also be decided, in the end, on the basis of a net present value calculation. The operating aid so given would *de facto* be an investment aid scheme where the grant would be paid in instalments rather than in a lump sum, without any significant difference in the possibility of support, but with less transparent and, administratively, a more complicated system ([40]). In the system as notified, Enova would only be involved in the investment phase of the project.

The Norwegian authorities agree in their reply of 15 July 2006 with the Authority's finding in the opening decision that Enova's method in general results in investment aid which is below or equal to the extra investment costs of the renewable energy plant. However, the Norwegian authorities object to a ceiling of plant depreciation. This would ignore the fact that the projects are also entitled to a fair rate of return, as stipulated in the Authority's Environmental Guidelines (section D.3.3.1 (54)) and applied in the Commission's Decision regarding the Q7 offshore wind project ([41]). As the appropriate level of the rate of return will be established on the basis of the findings of an independent expert, the Norwegian authorities argue that there is no danger of overcompensation resulting from rates of return being too generous.

As to the requirement that a supported project should not receive any further assistance, see section D.3.3.1 (54) of the Environmental Guidelines, the Norwegian authorities agree that there should a limitation of the support given by the Energy Fund. The Norwegian authorities state that two mechanism will ensure such a limitation. Firstly when Enova assesses a project, all known income (cash flow) will be taken into account, regardless of e.g. other government support being qualified as State aid. These elements will be taken into account on the income or cost side, where relevant, and will consequently reduce the need for further support by Enova. Secondly, with regard to the possible introduction of a green certificate system, the Norwegian authorities refer to a clause in the contract to be concluded with the aid recipient that he has to pay back, with interest, any aid received by the Energy Fund, if he enters the certificate market.

The Norwegian authorities have suggested — during the formal investigation of the scheme — an amendment with regard to projects which, even with the support received from the Energy Fund, would have a negative net present value. This amendment is now contained in section I.9.1 number 9 of this Decision and states that projects generating a negative EBIDTA, under normal operating conditions at the time of investment, are not in a position to receive any aid at all.

II. APPRECIATION

1. State aid within the meaning of Article 61(1) EEA Agreement

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

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

1.1. *Presence of State resources*

According to Article 61 of the EEA Agreement, the measure must be granted by the State or through State resources. In the present case, the support of the various investment projects is done by way of grants, which are financed from the State budget and from the levy on the distribution tariff. The financing via direct budgetary allocations fulfils the criterion of 'State resources'.

([40]) See also section 'information submitted by Norway' in Authority's Decision 122/05/COL, page 12 seq.

([41]) State aid N 707/2002 — *the Netherlands*, MEP Stimulating Renewable Energy.

With regard to the proceeds of the levy on the distribution tariff, the Authority notes that according to established case law and European Commission practice, State resources are involved where money is transferred by a fund and when the fund is established by the State and the fund is fed by contributions imposed or managed by the State ([42]). In this regard it will have to be established, whether the State exercised control over the money in question ([43]). In order to be considered as State resources, it is sufficient that the assets are permanently under the control of public authorities ([44]).

The Energy Fund was established by the Norwegian State. The Energy Fund is administered by a public body, Enova, which is owned by the Norwegian State via the Ministry of Petroleum and Energy. The Fund was established in order to fulfil a policy objective by the Norwegian State and to help meet the Norwegian States' energy targets in relation to the Kyoto Protocol. For that purpose, the Norwegian State imposes a compulsory levy by way of regulation (see I.3 of this Decision) which shall finance the Fund. The level of the levy is equally determined by the State. The proceeds of the levy are poured directly into the Energy Fund which allocates them to the chosen projects. The Authority, therefore, considers that the Norwegian State exercises permanent control over the levy and that it qualifies as State resources in the meaning of Article 61(1) of the EEA Agreement.

1.2. *Favouring certain undertakings or the production of certain goods*

In order to qualify as aid within the meaning of Article 61(1) of the EEA Agreement, the measure must in addition, firstly, confer on the recipient advantages that relieve it of charges that are normally borne from its budget. Secondly, the aid measure must be selective in that it favours '*certain undertakings or the production of certain goods*'. In the following, a distinction will be made between the investment aid schemes, including energy audits, and the educational/teaching measures.

1.2.1. General remark: Assessment of the Energy Fund scheme as such, not of individual grants under the scheme

In the present case, the support measures described below might, in some situations, have been given to individuals rather than to undertakings (e.g. for some of the teaching and educational measures) or might concern an educational rather than an economic activity. However, none of the various support measures were formally (law or administrative guidelines) limited to individuals or certain types of activities ([45]). Support could e.g. be given to e.g. private educational operators, which might carry out economic activities or be geared towards certain industrial sectors (e.g. the construction business).

The current notification and assessment deals with the Energy Fund *as such*, not with individual grants under it. Therefore, there is no need for the Authority to assess– for its evaluation of the Energy Fund scheme as such ([46]) — e.g. whether the support in individual cases given to non-profit organisations and educational entities concerned the (economic) activity of an undertaking. As the Energy Fund scheme did not contain any limitations in that regard, the findings of the Authority, therefore, is that — with the exception below — the support under the scheme went to undertakings.

Support granted to the public sector for carrying out energy efficiency measures as part of the public function of that entity does not constitute State aid. This concerns, in particular, the programme on energy efficiency measures for municipalities. This support does not contain State aid within the meaning of Article 61(1) of the EEA Agreement, as long as it is limited, as confirmed by the Norwegian authorities, to the public entity function of the supported recipient.

1.2.2. Investment support (renewable energy production, energy saving measures, new energy technology and energy audits)

The grants for the above-mentioned investments give the recipients an advantage in the sense of Article 61(1) of the EEA Agreement by either enabling them to invest in renewable energy production or to invest in measures which reduce their energy consumption or enable the company (in the case of audits via increased competence and energy analysis) to use energy more efficiently, thereby further reducing the company's ordinary running costs.

([42]) Case 173/73 *Italy* v *Commission* [1974] ECR 709, Case 78/76 *Steinike* v *Germany* [1977] ECR 595, Commission Decision N 707/2002 — *the Netherlands*, see above, fn. 42; N 490/2000 — *Italy*, Stranded costs of the electricity sector.

([43]) Advocate General Jacobs in Case C-379/98 *Preussen Elektra* v *Schleswag AG* [2001] ECR I-2099 paragraph 165.

([44]) See Case T-67/94 *Ladbroke Racing Ltd* v *Commission of the European Communities* [1998] ECR II-1, paragraph 105 seq. In that respect there is no doubt that the measure can be imputed to the State, who introduced the levy. This is a different situation from the system discussed in Case C-345/02 *Pearle BV, Hans Prijs Optiek Franchise BV and Rinck Opticiëns BV* v *Hoofdbedrijfschap Ambachten* [2004] ECR I-7139, which concerned a charge decided by a board of professionals.

([45]) The Authority would, however, like to point out that for the finding whether the support went to an 'undertaking' one does not consider the entity's legal status or organisational form, but decides the quality of an undertaking according to the activity which is supported, Case C-41/90 *Höfner and Elser* v *Macotron* [1991] ECR, I-979; e.g. also non-profit organisations can carry out economic activities and compete with others, see e.g. Case 78/76 *Steinike & Weinlig*, see above fn. 43, and Case C-67/96 *Albany, International BV* v *Stichting Bedrijfspensionfonds Textielindustrie*, [1999] ECR I-5751.

([46]) If the support constitutes aid, which will be established below, the Energy Fund will constitute an aid scheme. See the definition of an aid scheme in Article 1(d) in Part II of Protocol 3 to the Surveillance and Court Agreement.

The support is also selective. As for the investment support for renewable energy production, the support refers to a particular category of energy producers.

Selectivity also exists for the other measures, as the grants are allocated to only certain companies chosen by Enova after comparing the projects during the application process and deciding which is the most efficient project of the application round to be supported. As established by case law ([47]), in a situation in which a fund enjoys *'a degree of latitude which enables it to adjust its financial assistance having regard to a number of considerations such as, in particular, the choice of the beneficiaries, the amount of financial assistance and the conditions under which it is provided, (…) the system is liable to place certain undertakings in a more favourable situation than others'* ([48]). Each project fulfilling the application criteria can not be certain to be granted support, as this depends on the other projects competing with it in the application process and the amount of money Enova is willing to allocate within the concrete round of project evaluations. As Enova is free to choose how often and which kinds of calls for submitting project proposals it organises, the system gives Enova a sufficient margin of discretion to make the support measures selective ([49]).

In addition, for energy audits, there is an additional element of selectivity in that the programme (programme text 2003, see above section I. 5.6 of this Decision) was targeted at owners of private and public buildings with a total surface of over 5 000 square metres and at industrial enterprises.

1.2.3. Information and educational programmes in the field of energy efficiency

The Authority takes the view that no selectivity is involved for Enova's **information helpline** where advice on energy efficiency would be granted to anyone interested in advice on energy efficiency, without Enova being able to exercise any discretion to that end.

No State aid is further involved for the **on-site visits** as far as private households are concerned, as the support in these situation are not granted to undertakings in the sense of Article 61(1) of the EEA Agreement. Moreover, even for efficient use of energy in commercial buildings, the Authority does not find State aid in the meaning of Article 61(1) EEA Agreement involved, as the measure was open to anyone interested in it, without granting Enova and its efficiency centres any discretion. In other words, the measure does not fulfil the condition relating to selectivity.

A selective advantage exists in relation to the support programme for the development of **teaching material and educational courses**, as it reduces the developer's costs of creating such material or programme, compared to others who do not receive such support. The Authority does not agree with the Norwegian authorities that it applies too strict a selectivity test for the teaching/educational programmes. The support is, firstly, targeted towards certain sectors, e.g. in the 2003 programme *inter alia* to private providers of educational services or in the 2004 programme to the construction business. The programme texts underline that offers of study should meet the needs of business, partially with private industry participating in the programme's financing. This leaves room for the development of sectoral solutions. Secondly, the respective programmes still leave Enova a great margin of discretion. The Norwegian authorities themselves stress that the competition of projects is essential. Consequently, some projects might not be guaranteed support even though they fulfil certain objective criteria, as they might lose out if other projects in the respective assessment round score better. There is also no guarantee that a rejected project would be supported in the next round. Further, the programme texts of 2003 and 2004 contain a priority list, which further demonstrates that certain projects, in particular those which are not among the projects to be prioritised, will have a lesser chance of being supported. The Authority, therefore, considers the support to be selective.

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

To be aid in the meaning of Article 61(1) of the EEA Agreement, the measures must distort or threaten to distort competition and affect trade between the Contracting Parties.

In the present case, the measures are strengthening the competitive situation of the supported enterprises within the energy and electricity markets in the European Economic Area, where they actually or potentially compete with other energy producers ([50]).

([47]) Case C-241/94 *Commission* v *France* [1996] ECR I-4551, paragraph 23.

([48]) See also Advocate General Jacobs in Case C-256/97 *DM Transport S.A* [1999] ECR I-3913, paragraphs 39 and 40.

([49]) This is supported by Enova's own assessment of its role on its webpage, where it is stated: *'Enova SF enjoys considerable freedom with regard to the choice and composition of its strategic foci and policy measures'*.

([50]) E.g. in relation to electricity producers relying on traditional sources or — currently — in relation to hydropower producers or other renewable energy producers which are not supported by Enova; or companies which are not supported for applying energy efficiency measures.

Quite a number of projects supported in the past (see section I.6 of this Decision) might have fallen under the Act mentioned in point 1(e) of Annex XV to the EEA Agreement (Commission Regulation (EC) No 69/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid), because the allocated grants are below the *de minimis* threshold. However, not all of the supported projects had the character of *de minimis* aid. Nor was it a condition of the scheme that this should be so.

As the electricity market is largely liberalised and there is trade flow in energy products and electricity between the EEA States (e.g. Norway imports and exports a certain percentage of its electricity), the described (potential) distortion of competition takes place in relation to other EEA undertakings. This is further demonstrated by the fact that various types of electricity are traded in Nordpool, a common framework between the Nordic countries. The Energy Fund system is, therefore, distorting or threatening to distort competition and affect trade between the Contracting Parties.

2. **New aid**

As shown above in section II.1 of this Decision, the system provided by the Energy Fund entails aid within the meaning of Article 61(1) of the EEA Agreement. It needs to be determined whether it also constitutes new aid, which should have been notified in sufficient time for the Authority to make an assessment, see Article 2 in Part II of Protocol 3 to the Surveillance and Court Agreement. New aid is defined as all aid (…), *'which is not existing aid, including alterations to existing aid'*, see Article 1(c) in Part II of Protocol 3 to the Surveillance and Court Agreement.

The Norwegian Government states that the programmes merged under the Energy Fund mechanism existed before the entry of Norway into the European Economic Area. Therefore, the schemes originally constituted existing aid within the meaning of Article 1(b)(ii) in Part II of Protocol 3 to the Surveillance and Court Agreement.

With the notification, the Norwegian authorities notified the Authority of alterations to the existing aid schemes. These consist mainly of:

(i) the 2002 merger of the existing schemes under the newly established Energy Fund;

(ii) the new administration of the support with the creation of the new administrative body Enova, thereby replacing the formerly responsible Norwegian Water Resources and Energy Directorate;

(iii) the development of new energy objectives by Parliament, which means that the measures under the schemes should now achieve measurable energy efficiency and production goals;

(iv) and finally a new financing mechanism (levy on the distribution tariff).

These changes were accompanied by a new set of legal provisions on Enova, which have an impact on the support granted in that the measures should now achieve new policy objectives agreed in 2002 between the Norwegian State and Enova.

These alterations were not purely of a technical or administrative nature [see Article 4(1) in the Authority's Decision of 14 July 2004 ([51])], but significantly changed the previously existing system and its legal framework. Firstly, in line with the Court's judgment in *Namur Les Assurances* ([52]), the existence of new aid must be determined by reference to the provisions providing for it. In this regard, it should be noted that with the establishment of the Energy Fund and Enova, a whole new set of rules governing the support under the Energy Fund and its financing was adopted. Firstly, there was a Parliamentary decision of 5 April 2001, by which the Energy Act of 29 June 1990 was amended. The decision authorised the Government to oblige the distributor of energy (by a licence, '*omsetningskonsesjoner*') to add a levy to the electricity distribution tariff paid by the end consumer. This levy shall then contribute to the financing of the Energy Fund. A then newly adopted Government regulation of 10 December 2001 lays down the details of how this levy should be collected and transferred to the Energy Fund. In the propositions leading up to the parliamentary decision, the Government had defined new and concrete energy objectives (see I.4 of this Decision), whose fulfilment should be achieved within a given time frame by the establishment of the Energy Fund and Enova. The objectives and their achievements were further specified in the Agreement between the Ministry and Enova. A new regulation on the Energy Fund placed the Fund under the Ministry of Petroleum and Energy and stipulated its administration by Enova. This demonstrates that in the years 2000/2001 the legal provisions governing the support of energy efficiency measures were significantly altered and supplemented.

([51]) Decision 195/04/COL.

([52]) Case C-44/93 *Namur-Les Assurances du Crédit* v *Office National du Duccroire and the Belgian State* [1994] ECR I-3829.

These legislative and administrative changes were done with the intention to substantially alter the current support regime and create a completely new way to fund energy saving measures and renewable energy production ([53]). The merger of the two new schemes was more than a mere technical formality as their combination under one heading was effectuated in order to provide for better targeted State support and achieve more tangible results in terms of sustainable energy policies. Support decisions for projects will now have to take into account whether the projects can contribute to the new objectives defined by Parliament in 2000/2001, which is a substantive alteration to the previous support mechanisms.

A completely new administrative structure substitutes the formerly responsible Norwegian Water Resources and Energy Directorate's (NVE) competence with that of the newly founded administrative body Enova. Enova is bound by an Agreement with the Ministry to administer the Energy Fund to achieve Parliament's newly defined energy objective and to manage the Fund according to the newly adopted legislation. It further is called upon to promote — through the administration of the funds — competition in the market. This shows that Enova does not simply continue the NVE's work, but is entrusted with new tasks and obligations, which is a substantial alteration of the previous schemes.

Finally, it is of importance that a new financing mechanism has been set up. Instead of budgetary allocations, the support measures are (increasingly) financed via the means of a levy on the distribution tariff, which is used for financing the Energy Fund. While Norway pointed out that the levy as such has been introduced prior to the entry into force of the EEA Agreement, this does not alter the Authority's finding that the introduction of the new financing mechanism resulted in a substantial change. Before 2002, the levy was managed by the grid companies to mainly finance their own information activities on energy efficiency. Now the levy is set up and controlled by the Norwegian State, which earmarks it for financing the Energy Fund. The Fund can apply the finances to all different kind of support measures, not limited to information activities ([54]). In light of the above, the Authority concludes that the alterations to the funding system are of a substantial nature.

([53]) See in this respect the interpretation by Advocate General Fennelly in Cases C-15/98 and C-105/99 in *Italian Republic* v *Commission of the European Communities* [2000] ECR II-8855, paragraphs 61 seq, who claims that the legislative changes must alter the system significantly, i.e. represent more than just a formal change.

([54]) In the respective Government proposals, the Norwegian authorities themselves labelled the financing mechanism as 'new'.

The described changes alter the aid scheme as such, without being a severable part from the existing schemes ([55]). The new financing and administrative mechanism as well as Enova's obligation to achieve newly defined energy objectives concern the very structure of the support programme and apply to all measures supported under the Energy Fund. The alterations were undertaken with a view to make better use of public resources and achieve more sustainable energy efficiency results, which made it necessary to introduce new structures and new objectives. These new structures and objectives determine each support decision and cannot be considered as severable from the formerly existing aid measures.

Consequently, the notified alterations are to be classified as new aid within the meaning of Article 1(c) in Part II to Protocol 3 of the Surveillance and Court Agreement.

The Energy Fund became operational on 1 January 2002, i.e. before June 2003, when the scheme was notified to the Authority. The Energy Fund system was therefore belatedly notified to the Authority and thereby infringed the standstill obligation in Article 1(3) in Part I of Protocol 3 to the Surveillance and Court Agreement. The aid is thus to be classified as '*unlawful aid*' within the meaning of Article 1 (f) in Part II of Protocol 3 to the Surveillance and Court Agreement. Any unlawful aid which is not declared compatible with Article 61(3)(c) of the EEA Agreement is subject to recovery.

3. **Compatibility of the aid**

In the Authority's view, the aid measures do not comply with any of the exemptions provided for under Article 61(2) or (3)(a), (b) and (d) of the EEA Agreement. Therefore, one has to assess whether the aid could be justified under Article 61(3)(c) of the EEA Agreement. Under this provision aid may be declared compatible if '*it facilitates the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest*'.

The Authority will assess the Energy Fund according to Article 61(3)(c) of the EEA Agreement in conjunction with the Authority's Environmental Guidelines. These Guidelines required the EFTA States to bring their environmental aid schemes into line with these Environmental Guidelines by 1 January 2002.

([55]) Cases T-195/01 and T-207/01 *Government of Gibraltar* and *Kingdom of Spain* v. *European Commission* [2001] ECR II-3915, paragraph 111.

In the following assessment, the Authority will make a distinction between the Energy Fund system as notified to the Authority and as applied since 1 January 2002 (see section II 3.1 of this Decision) and the future changes envisaged by the Norwegian authorities which intend to make the support compatible with the EEA State aid provisions (see section II 3.2 of this Decision).

3.1. *Assessment of the Energy Fund as notified to the Authority*

3.1.1. The investment support (renewable energy production, energy saving investment, new energy technology, energy audits)

In its decision of 18 May 2005 to open the formal investigation procedure, the Authority expressed doubts as to whether the investment support granted by the Energy Fund could be declared compatible under the Environmental Guidelines.

In their comments of 15 July 2005 to the opening decision, the Norwegian authorities argued that the system should be authorised directly under Article 61(3) (c) of the EEA Agreement. The Authority does not follow the view, at least as far as the support concerned is covered by the Environmental Guidelines. In the Authority's opinion, the European Commission's WRAP decision ([56]) is not relevant in this regard. The difference between the two cases is that in the case of recycling, the Guidelines do not provide for any provision on investment aid, whereas renewable energy investment support is covered by the Environmental Guidelines. The Authority is bound by its own guidelines ([57]). It therefore, finds that it cannot ignore the investment aid chapter of the Guidelines (section D.1.3, in particular point (27) and section D.1.7 (32) or the operating aid chapter (section D.3.3.1 (54)), which cover the situation of renewable energy sources) and the aid intensities contained therein.

1. ***Investment support for renewable energy production***

Investment for renewable energy production can be supported up to an aid intensity of 40 % or, where necessary, of 100 % of eligible costs, see section D.1.3 (27) of the Environmental Guidelines. Section D.1.6 (31) clarifies what constitutes the eligible investment, namely investment in land, buildings, plants and equipment, and, under certain conditions, intangible assets. Section D.1.7 (32) establishes that eligible costs are the difference between the investment costs of a renewable energy production plant and the investment costs of a conventional power plant (hereinafter 'extra cost approach').

([56]) See above, fn. 40.

([57]) Case C-351/98 *Kingdom of Spain* v. *the European Commission* [2002] ECR I-8031, paragraph 76.

The Authority noted in its Decision to open the formal investigation procedure ([58]) that the support for renewable energy sources was not based on an extra cost approach as laid down in D.1.7 (32) of the Guidelines. It also found that without the amendments later suggested by the Norwegian authorities, there would be no guarantee that the support would stay within the boundaries of the 40 % threshold. There was, furthermore, no guarantee that it would stay within the higher threshold of 100 % of extra costs nor that the scheme would not lead to overcompensation. There were, e.g., no guarantees that only eligible investment costs would be supported and that no more aid than necessary to trigger the project would be given to an undertaking. Hence, the Authority took the preliminary view that the Energy Fund, as notified, could not be justified according to the investment aid chapter (section D.1.3 of the Environmental Guidelines) and constituted incompatible State aid.

The comments by the Norwegian authorities have not removed these doubts. As to the support of costs, which might not have been eligible, the Norwegian authorities state that as of 1 January 2005, Enova has only accepted the support of costs listed in the Commission's Decision regarding Finland N 75/2002, whereas in the past, other costs (e.g financial costs) have been supported, even if this might constitute only a small fraction of the total costs. Since the Energy Fund, as notified, did not contain any clear rules on which costs are eligible, the danger to include non eligible costs has indeed materialised. Likewise, the Norwegian argument that the aid scheme's element of competition *restricts* the possibilities of over-compensation, cannot alter the Authority's findings that the scheme did not have any functioning legal restrictions in place which would *guarantee* that the support stays within the threshold of the investment aid chapter of the Guidelines. Without any such rules in place, it would be a matter of chance for overcompensation to be avoided.

The Authority upholds its view expressed in the Decision to open the formal investigation procedure that also the conditions of section D.3.3.1 (54) are not met for the system as notified. The Authority could not establish that there were parameters in place which would ensure that the threshold of section D.3.3.1 (54) would never be exceeded. There was neither a guarantee that only investment costs would be included in the calculation (section D.3.3.1 (54) is limited to plant depreciation), nor was there sufficient certainty on how the discount rate should be established and that the aid would never exceed the amount necessary to reach a zero net present value.

In conclusion, the Energy Fund system as notified does not meet the compatibility standards of the Environmental Guidelines.

([58]) Section II 3.1.1 of Authority's Decision 122/05/COL.

2. ***Energy saving support***

Investment for energy saving (the notion of energy saving is defined in section B(7) of the Environmental Guidelines), can be supported up to an aid intensity of 40 % of eligible costs according to section D.1.3 (25) of the Environmental Guidelines. Section D.1.6 (31) of the Environmental Guidelines defines the investment concerned, i.e. land, buildings, plants and equipment and, under certain conditions, intangible assets. Section D.1.7 (32) of the Environmental Guidelines limits the support to eligible costs, which are defined as the extra investment costs necessary to meet the environmental objectives. No aid can be given for an adaptation to a European Community standard ([59]), if the undertaking is not a small or medium-sized undertaking.

In its Decision to open the formal investigation procedure, the Authority found that the support is not calculated according to the extra cost method as laid down in section D.1.7 (32) of the Environmental Guidelines. In particular, it does not stay within the 40 % threshold of section D.1.3 (25) of the Environmental Guidelines. Contrary to the investment support for renewable energy production, the 40 % threshold cannot be exceeded for energy saving measures ([60]).

The Norwegian authorities state that in practice they have followed the approach of the Guidelines. The Authority would not dispute that individual grants under the Energy Fund scheme might in themselves have been compatible with the Environmental Guidelines. However, that does not make the Energy Fund scheme as such — which did not contain any thresholds as to the aid intensities nor did it follow the extra cost approach — compatible with the Environmental Guidelines.

Consequently, as there were no mechanisms in place which would exclude that aid granted under that support measure would exceed the 40 % threshold of support, whereby the costs would be compared with the costs of traditional power production, the Energy Fund scheme, as notified, is to be considered as incompatible aid.

3. ***New energy technology***

In its decision to open the formal investigation procedure, the Authority found that it did not have sufficient information in order to assess whether the projects in this category would be projects relating to renewable energy production ([61]). Likewise, the Authority was not certain whether the projects concerned research and development projects, which should have been assessed according to Chapter 14 on aid for research and development of the Authority's State Aid Guidelines.

During the formal investigation procedure, the Norwegian authorities clarified that support under this category would not concern projects at the stage of research and development, but mainly renewable energy production projects and to a lesser extent energy saving measures. The data demonstrated by the Norwegian authorities of projects grouped under this heading showed that so far only these categories have been supported. The project of 'new energy technology support' is, therefore, to be considered as a subgroup of the investment support for energy saving measures or renewable energy production.

However, for the Energy Fund, as notified, the Authority finds that the system did firstly not establish clearly that the new energy technology projects are subgroups of the other support categories and should therefore be assessed according to the same rules. In any event, as for the other support measures, the Authority finds that the system as notified did not contain any restrictions which guaranteed that the respective thresholds for investment support for renewable energy production and energy saving measures would be respected, or that only the eligible investment costs would be supported. The Authority, therefore, comes to the conclusion that the support as notified does not fulfil the requirements of the Environmental Guidelines.

4. ***Energy audits***

In the Decision to open the formal investigation procedure, the Authority found that it did not have sufficient information to assess whether support under this heading would be compatible with the Environmental Guidelines, in particular under section D.2 (36) of the Environmental Guidelines (support for small and medium-sized enterprises).

Regarding this support category, the Norwegian authorities referred, during the formal investigation procedure, to a Finnish scheme, which allows for costs of energy audits to be taken into account for state support (i.e. not limited to small and medium-sized companies). The Norwegian authorities stress that, like the Finnish system, the Norwegian Energy Fund allows firms to receive financial support to perform energy audits and analyses, either to help achieve feasible energy efficiency or for energy saving investments or behavioural changes. The Finish scheme had allowed for aid covering 40 % of the eligible costs. The Norwegian scheme granted up to 50 % of eligible costs.

([59]) The reference to a Community standard in the context of the EEA Agreement is explicitly provided for by the Environmental Guidelines, see section A(5) thereof.

([60]) Section II 3.1.2 of Authority's Decision to open the formal investigation procedure, Decision 122/05/COL.

([61]) Section II 3.1.3 of the Authority's decision to open the formal investigation procedure, Decision 122/05/COL.

The Authority, firstly, finds that the Energy Fund scheme as notified did not contain any limitations which would guarantee that the support of such measures does not exceed the 40 % threshold for energy saving measures as laid down in section D.1.3 (25) of the Environmental Guidelines. In particular, a support of up to 50 % of eligible costs is not compatible with the Environmental Guidelines.

Secondly, the Authority does not find that a support of energy audits in relation to purely behavioural changes, without any envisaged investment, can be based on section D.1.3 of the Environmental Guidelines, which aims at investment support only. The Commission's authorisation in relation to a Finnish support scheme was limited to such investment support ([62]). It might be that further support for advisory and consultancy services would be considered compatible with section D.2 (36) of the Environmental Guidelines, in conjunction with the Act referred to under point 1(f) of Annex XV to the EEA Agreement ([63]) (aid to small and medium-sized enterprises). However, this is not decisive for the compatibility of the aid scheme as the Energy Fund as notified did not contain any limitations to that end. It can, therefore, not be declared compatible with the Environmental Guidelines.

3.1.2. Teaching material and educational measures

The Authority notes that the teaching material and educational programmes as notified were not limited to small and medium-sized companies, as stipulated in the Act mentioned in point 1(f) in Annex XV to the EEA Agreement (aid to small and medium-sized enterprises) ([64]). Neither was the support limited to support falling under the Act referred to in point 1(d) in Annex XV to the EEA Agreement (training aid) ([65]). The Authority, therefore, does not have to assess whether the support measures could be justified under these block exemptions. This type of support is also not covered by the Environmental Guidelines.

The Norwegian authorities argue that the aid under Energy Fund, in general or for parts, should be assessed directly under Article 61(3)(c) of the EEA Agreement.

In order to establish whether such a measure can be authorised by directly applying Article 61(3)(c) of the EEA Agreement, the Authority has to establish whether the support is necessary for and proportionate to fulfilling its objective.

The objective of the support measure was to enhance knowledge and competence about energy saving possibilities and energy efficiency. Energy saving measures, although related to investment, are explicitly laid down in the Environmental Guidelines as an objective open for State support. In general, energy efficiency measures contribute to achieving the Kyoto goals to reduce greenhouse gases, and knowledge and competence play an important role in the introduction and implementation of energy efficiency measures. As regards the necessity of the support at hand, the programme was aimed at the development of *new* material and courses and has excluded maintenance and revision of existing courses, as these costs were meant to be covered by course fees. The support under the programme was meant to give an incentive for the creation of new material, for which there was a need, as the Norwegian authorities argued that there was a lack of up-to-date teaching materials and learning courses in Norway.

The aid can be considered proportionate and not distorting trade to an extent contrary to the common interest. In this respect it is important for the Authority's finding that the scheme has been terminated and only covered 33 projects (one went to individuals), each with a limited amount of aid being granted. For 12 of the projects, dealing with support to entities which are registered as non-profit organisations, the support ranged between NOK 50 000 and 918 000, i.e. EUR 6 900 and 126 970 ([66]), with only two projects receiving support of around NOK 1 300 000 (EUR 180 555). For support to universities and colleges, the support ranged between NOK 200 000 and 450 000 (EUR 27 662 and 62 240), with only one supported project receiving NOK 875 000 (EUR 121 023). Enova, moreover, never assumed the total project costs, but limited its contribution to 50 % thereof. Further, an open 'aid' tender procedure was used to select the beneficiaries and determine the amount of aid. The tendering procedure also guaranteed that the aid would be limited to the necessary amount and would be proportionate. The aid was also project related and did, thus not constitute operating aid to reduce the operator's ordinary running costs. It can, therefore, be concluded that the aid did not distort competition to an extent contrary to the common interest. Consequently, the aid was compatible with Article 61(3)(c) of the EEA Agreement.

3.1.3. Conclusion for the system as notified

The Authority finds that the Norwegian authorities have unlawfully implemented the Energy Fund scheme in breach of Article 1(3) of Part I to Protocol 3 to the Surveillance and Court Agreement.

([62]) State aid N 75/2002 — Finland, see above fn. 26 of this Decision.
([63]) See fn. 29 of this Decision.
([64]) See fn. 29 of this Decision.
([65]) See fn. 30 of this Decision.
([66]) Exchange rate as published on the Authority's webpage, set at 7.23 for 2003.

Enova's information helpline and the on-site visits do not constitute aid within the meaning of Article 61(1) of the EEA Agreement.

The investment support measures (renewable energy production, energy savings, energy audits) as notified are not compatible with Article 61(3)(c) of the EEA Agreement in conjunction with the Environmental Guidelines.

The support granted for the development of teaching material and educational courses between 1 January 2002 until 31 December 2003 is compatible under direct application of Article 61(3)(c) of the EEA Agreement.

3.2. *The Energy Fund with the envisaged amendments by the Norwegian authorities*

3.2.1. Investment support

1. ***Investment support for renewable energy production***

The aid intensities stipulated by the Environmental Guidelines

As a starting point for assessing the Norwegian investment aid scheme, the maximum aid available to a project, as stipulated in the Guidelines, will have to be determined. Section D.1.3 (27) of the Environmental Guidelines sets out the threshold for investment aid, which is to be limited to 40 % of the extra investment costs necessary to meet the environmental objectives. If necessary, 100 % of eligible costs may be supported.

In addition, sections D.3.3.1 (53) and (54) of the Environmental Guidelines also allow for operating aid, in order to compensate for higher unit investment costs. Point (54) allows support to compensate for the difference between the production cost of renewable energy and the market price of the power concerned. However, the aid must be limited to plant depreciation, which is to be understood as investment depreciation. If the EFTA state can show that the aid is indispensable given the poor competitiveness of certain renewable energy sources, a fair return on capital may also be included.

Operating aid is normally understood as aid intended to relieve an undertaking of the expenses which it would normally have had to bear in its day-to-day management or its usual activities. However, for renewable energy sources, operating costs are generally lower than for conventional technology. On a day-to-day basis, renewable energy production is, therefore, expected to generate a positive cash flow, i.e. not be in need of any aid to relieve them of operating costs.

Section D.3.3.1 (54) of the Environmental Guidelines limits the support for plant depreciation (i.e. investment). What is compensated for, in effect, are the higher unit investment costs, rather than ordinary running costs. Consequently, aid granted under point (54) is, in effect, given to support an undertaking's investment. If the aid would cover a fair rate of return on capital in addition to depreciation of the capital, all capital costs would be covered, and the aid would in present value terms amount to the full investment. Future capital depreciations augmented by the required rate of return would in present value terms be discounted by the same rate. The discounted costs would be the upper ceiling for the aid.

The Environmental Guidelines allow for a combination of investment and operating aid. When calculating the operating aid available, account should be taken of any investment aid granted to the firm in question, see D.3.3.1 (54) of the Environmental Guidelines. Thus, any investment aid granted will be deducted from the eligible amount for operating aid. This shows that the threshold in section D.3.3.1 (54) of the Environmental Guidelines functions as the maximum threshold for giving investment aid to a renewable energy project.

Aid granted under the NPV approach applied by Enova

As described in section I 9.1, points (4) and (7) of this Decision, the NPV approach used by Enova calculates the aid amount so that projects reach an NPV of zero, which, for a rational investor, would be the triggering off point for when a project is realized in the market. No aid will be given in excess of the amount necessary to reach the zero net present value. The aid element can thus be expressed as:

(Discounted Cash Flows (DCF)) – (Investment costs) + (Aid) = 0

As expressed above, the cash flows from the operations of the renewable project are used to pay off the original investment costs. Renewable energy projects generally have higher unit investment costs than traditional technology. Hence, the net income generated (the DCF component above) will, in many cases, not be high enough to pay off the necessary investment. These projects are then eligible for an aid component, in order to bring the NPV to 0.

The Authority has had, however, one concern with the use of this method for calculating aid. The reason for that has been that projects that do not generate a positive cash flow may also be considered eligible for aid. Such projects will generate a negative DCF, which will lead to the aid component exceeding the investment costs, and consequently the maximum aid intensities.

However, as long as the DCF component remains positive, the aid given to any project will never exceed the investment costs. To address this concern, the Norwegian authorities have agreed to amend the scheme, as expressed in number section I.9.1 number 9 of this Decision, so that projects which have a negative DCF are not eligible for any aid from Enova. This ensures that the maximum ceiling is not exceeded, by limiting aid to investment costs.

However, for projects which generate a relatively low DCF, the aid component will be relatively large, resulting in high aid intensities. For this to be justifiable, it must be demonstrated that the aid given is 'indispensable' for the realization of the projects.

No rational investor can be expected to launch a project with a negative NPV. For that reason, the Authority is of the view that a NPV calculation, preformed on the basis of the best available information when granting the aid, will serve as a sufficient demonstration of the indispensability of the aid given. When applying the NPV method, due account must be taken of the individual risk involved in each project when setting the discount rates for an investment. Following discussions with the Authority, Norway commissioned an independent analysis from First Securities ([67]) in order to determine the discount rates to be used when assessing project applications under the scheme. In this report, the method for arriving at the correct discount rates is set out, based on best practice financial methodologies.

Further, the Norwegian authorities have underlined that Enova would only be involved in the investment phase of the projects. Projects which have received investment aid from Enova will not be eligible for any further support under the Environmental Guidelines once the lump sum payment has been made. Another positive element is that the aid is 'tendered out', i.e. that different projects compete for support and that only the most efficient projects which provide the best aid/energy efficiency ratio will be supported. This approach will contribute to support only projects which are promising and give support only to the extent necessary.

([67]) Letter from First Securities to Enova dated 16 December 2004.

Special provisions for biomass

An exception to the above is biomass projects. For such projects, the provisions of D.3.3.1 (55) of the Environmental Guidelines allow for a higher total ceiling than investment costs. The reason for that is that these projects typically have low investment, but high running costs. In the case of these projects, the Authority is of the view that aid may be distributed according to the NPV calculations, without the investment costs as a limit.

Likely aid intensities

The above discussion has dealt with the maximum aid intensities. However, for most of the projects eligible for aid from Enova, the actual aid intensities will be considerably lower. This is due to the fact that renewable energy projects in general have low operating costs, which will lead to DCFs which are higher than for conventional technology. Given that Enova allocates aid to the most cost effective projects based on internal competition, the majority of projects can be expected to result in aid components within the threshold of 100 % of extra investment costs as stipulated in section D.1.3 (27), with the ceiling resulting from the application of section D.3.3.1 (54) rarely being reached. This is confirmed by an assessment of the renewable energy production projects supported so far. On average, the aid intensities for the supported wind, district heating and bio energy projects was around 24 % of total investment costs, with a maximum aid intensity for one wind project of 68 % and for a bio energy project of 50 % of the total investment costs ([68]). However, as it can be demonstrated that the NPV method in any case does not lead to overcompensation with respect to the guidelines, there is no need to demonstrate this in detail.

In conclusion, the Authority is of the view that following the amendments by the Norwegian authorities, the NPV method of distribution aid respects the thresholds laid down in the Environmental Guidelines, in particular section D.3.3.1 (54).

No further assistance

In its Decision to open the formal investigation procedure, the Authority was also concerned about whether the projects which were financed by the Energy Fund would receive further assistance by the State, regardless of whether this support would qualify as State aid in the meaning of Article 61(1) of the EEA Agreement or not, see section D.3.3.1 (54) of the Environmental Guidelines. The Authority was concerned that such further assistance could result in unnecessary funding, as the projects support by Enova would already lead to a zero net present value, including a fair rate of return, and should thus be sufficient to trigger the project realisation.

([68]) See above section I.6 of this Decision.

The Norwegian authorities stressed that Enova would only be involved in the investment phase of the project and that the project would only receive the minimal lump sum to trigger off the investment, but not more. During the formal investigation procedure, the Norwegian authorities further clarified that in the cash flow calculation of the project, *all* income would be taken into account. This would include income from other types of state intervention, even if not qualified as State aid. If the State support qualifies as State aid, this would have to be notified to the Authority in order to establish the project's financial needs.

With regard to the possible introduction of a Norwegian green certificates market ([69]), the contract with the aid beneficiary explicitly contains a repayment clause for the support granted by the Energy Fund in order to avoid support from two sources. The project's support is further paid out in instalments which can be adjusted if the project has lower costs than expected. Upon the closure of the aid contract (i.e. when the last instalment is paid), Enova will make a final assessment and a possible adjustment can be made, either if Enova finds out that the aid recipient provided misleading information or that the project received other state support. On the basis of the foregoing, the Authority considers section D.3.3.1 (54) of the Environmental Guidelines to be fulfilled.

No support of projects with a negative net present value

In the Decision to open the formal investigation procedure, the Authority was concerned that the Energy Fund would also support projects which still have a negative net present value, even with the support granted by the Energy Fund. The Norwegian authorities have now stated (see number 9 in section I.9.1 of this Decision) that projects generating a negative EBITDA, under normal operating conditions at the time of investment, are not in a position to receive any aid at all. The Authority's concerns have, consequently, been taken into consideration.

2. ***Energy saving measures***

The Norwegian authorities suggest amending the notified system (see section I.9.2 of this Decision) and intend to apply, for the support of energy saving measures, the 'extra cost approach' as stipulated in section D.1.3 (25), section D.1.6 (30), (31), and section D.1.7 (32) of the Environmental Guidelines. The aid intensities of 40 % of eligible costs with the possibility of a top up of 10 percentage points for small and medium-sized enterprises are equally respected.

([69]) A green certificate is normally understood to be a minimum price fixed by the State which a producer of 'green energy' obtains from the distributor. Such green certificates, may, depending on the individual case, not constitute State aid within the meaning of Article 61(1) of the EEA Agreement. The Norwegian authorities gave up on a joint green certificate market with Sweden in February 2006.

The Authority notes that this approach is in line with the Environmental Guidelines and thus compatible with the functioning of the EEA Agreement.

3. ***New energy technologies***

The Norwegian authorities confirm that the support under this category is just a subgroup under the investment support in renewable energy production and energy saving measures respectively.

As long as the respective calculation criteria used for the investment support for renewable energy production (section I.9.1) and energy saving measures (see I.9.2 of this Decision) are to be used for this support category, the support under this category is to be assessed according to the same criteria. It will thus be compatible with the Environmental Guidelines.

4. ***Energy audits***

The Authority finds that costs for energy audits and energy analyses can be supported according to section D.1.3 (25) in conjunction with section D.1.6 (31) and section D.1.7 (32) of the Environmental Guidelines. The Authority accepts that energy audits, feasibility studies and energy analyses are often necessary assessments for finding out which energy saving measures merit an investment and which do not ([70]). As long as directly linked to an energy saving investment, the Authority accepts that costs for energy audits are eligible. Aid granted on this basis cannot exceed a threshold of 40 % of the eligible costs concerned, with the possibility of a top up of 10 percentage points for small and medium-sized undertakings, see section D.1.5 (30) of the Environmental Guidelines.

When it comes to energy audits, which are made in order to put a behavioural or system change into place, the Authority does not find that there is any possibility for authorising such a support, which is not directly linked with energy saving investments. Such a possibility can only be envisaged for small and medium-sized companies. Section D.2 (36) of the Environmental Guidelines allows for support of advisory and consultancy services for small and medium-sized enterprises in conjunction with Article 5 of the Act referred to in point 1(e) of Annex XV to the EEA Agreement (aid to small and medium-sized companies) ([71]).

([70]) Such costs were also accepted by the European Commission in State aid N 75/2002 — *Finland*, see above fn. 26.

([71]) See above, fn. 29 of this Decision.

3.2.2. Teaching and educational measures

The Authority notes that, for the time being, no such support scheme is in place and that any new scheme would be notified to the Authority, so that there is no need to outline the acceptability of such future and, for the moment hypothetical, support measures under the EEA State aid provisions.

3.2.3. The financing mechanism

According to established case law, one cannot separate an aid measure from the method by which it is financed. As the European Court of Justice has held, the financing mechanism of a support scheme might render the whole aid incompatible with the common market ([72]), in particular if it entails discriminatory aspects. The need to consider the financing mechanism together with the aid scheme is, in particular, required when a levy has been explicitly created for the financing of the aid scheme, as it is the case for the Energy Fund. Such a charge might be considered a measure having equivalent effect to a quantitative restriction, if it totally offsets the burden on the domestic product (which is not the case here) or it might constitute a discriminatory internal tax if it partly offsets this burden ([73]). When it comes to assessing such an offsetting effect, the financial equivalence between the charge and advantages afforded to domestic products must be established ([74]). In some cases, the Court has not only analysed the levying of the charge, but also its use ([75]). As the Energy Fund is financed via a levy on the distribution tariff which also affects imported energy, the financing of the aid scheme by way of a parafiscal charge needs to be assessed in this case.

The Energy Fund does not discriminate between foreign and national producers of renewable energy or undertakings which would like to invest in energy saving measures, new energy technology or carrying out energy audits. The Norwegian authorities have demonstrated that so far eight projects by other EEA producers have received support from the Energy Fund. Further, there is no automatic equivalence between the activity charged with the levy (energy production stemming from hydropower and imports) and the projects aided under the Energy Fund. The levy is charged on the distribution level of the energy, i.e. not directly on the production ([76]). However, even if one argued that it indirectly affects the costs of production, the aid paid out by Enova does not automatically favour those producers whose energy is indirectly charged with the fee. The aid goes mainly to new renewable energies, currently with the exclusion of hydropower. For the energy saving measures and energy audits, every undertaking might profit from these support measures. It can not, therefore, be established that imported energy pays for the advantages of domestic producers and that as a result levy paid by the domestic (hydro) power producers is offset by corresponding advantages.

The use of the levy's proceeds is linked to aid which the Authority considers compatible, as can be seen from the above section II 3.2 of this Decision. It has been accepted that a levy based on volume is in line with the polluter pays principle and can, therefore, be accepted under Article 61(3)(c) of the EEA Agreement together with the Environmental Guidelines, which lay down that principle. The Authority consequently does not find any fault with a system which is volume based ([77]).

3.2.4. Conclusion on the Energy Fund with the amendments suggested by the Norwegian authorities

The Authority finds that the investment support for renewable energy production, energy saving measures and for new energy technologies as well as for the support of energy audits, is compatible with the functioning of the EEA Agreement, subject to the condition that the Norwegian authorities apply the Energy Fund scheme as outlined:

— in section I.9.1, number (1)-(12) of this Decision for investment support for renewable energy production;

— in section I.9.2, number (1)-(5) of this Decision for energy saving measures;

— in section I.9.3 of this Decision for new energy technology;

— in section II.3.2.1 (4) of this Decision for energy audits.

4. **Recovery**

As the Authority has found, under section II.3.1.3 of this Decision, the investment support measures for renewable energy production, energy savings and new energy technologies, as well as the support for energy audits, as notified, are not compatible with the functioning of the EEA Agreement.

([72]) Cases C-261/01 and C-262/0, *Belgische Staat* v *Calster, Cleeren, Openbaar Slachthuis NV*, [2003] ECR I-12249, paragraph 46, Case C-47/69 *France* v *Commission* [1970] ECR 487, paragraph 4.

([73]) Case C-72/92 *Firma Herbert Scharbatke GmbH* v *Federal Republic of Germany* [1993] ECR I-5509, referring to Article 95, now 90 of the EC Treaty. Article 14 of the EEA Agreement is identical to Article 90 of the EC Treaty.

([74]) Case C-266/91 *Celulose Beira Industrial SA* v *Fazenda Pública* [1993] ECR I-4337.

([75]) Cases C-78/90 to C-83/90 *Compagnie Commerciale de l'Ouest and Others* [1992] ECR I-1847.

([76]) The European Commission authorised a similar structure in Commission Decision N 707/2002, above fn. 42.

([77]) See the comments in Commission Decision N 707/2002, above fn. 42 and N 533/01 — *Ireland, aid to promote renewable energy sources in Ireland*.

According to Article 14 in Part II of Protocol 3 to the Surveillance and Court Agreement, in cases of unlawful aid, should it be found incompatible, the Authority orders, as a rule, the EFTA State concerned to reclaim aid from the recipient.

The Authority is of the opinion that no general principles preclude repayment in the present case. According to settled case-law, abolishing unlawful aid by means of recovery is the logical consequence of a finding that it is unlawful. Consequently, the recovery of State aid unlawfully granted, for the purpose of restoring the previously existing situation, cannot in principle be regarded as disproportionate to the objectives of the EEA Agreement in regard to State aid. By repaying the aid, the recipient forfeits the advantage which it had enjoyed over its competitors on the market, and the situation prior to payment of the aid is restored ([78]). It also follows from that function of repayment of aid that, as a general rule, save in exceptional circumstances, the Authority will not exceed the bounds of its discretion, recognised by the case-law of the Court, if it asks the EFTA State concerned to recover the sums granted by way of unlawful aid since it is only restoring the previous situation ([79]). Moreover, in view of the mandatory nature of the supervision of State aid by the Authority under Protocol 3 of the Surveillance and Court Agreement, undertakings to which aid has been granted cannot, in principle, entertain a legitimate expectation that the aid is lawful unless it has been granted in compliance with the procedure laid down in the provisions of that Protocol ([80]). There are no exceptional circumstances visible in this case, which would have led to legitimate expectations on the side of the aid beneficiaries.

The recovery should include compound interests, in line with Article 14(2) in Part II of Protocol 3 to the Surveillance and Court Agreement and Article 9 and 11 of the Authority's Decision 195/04/COL of 14 July 2004.

The Authority would also point out that the recovery order of this Decision is without prejudice as to whether individual grants awarded under the above mentioned four measures do not constitute State aid or may be considered, in full or in part, as compatible with the functioning of the EEA Agreement on their own merits, either in a subsequent Authority Decision or under block exemption regulations.

If individual grants awarded under the above mentioned four measures, as notified by the letter of 5 June 2003, already respected the conditions, which the Authority imposes on the notified support measures in this Decision (see below Article 4 of this Decision), they are compatible with the functioning of the EEA Agreement and are then not subject to the recovery order.

5. **Annual Reporting obligation/Energy Fund Guidelines**

The Norwegian authorities should submit annual reports to the Authority according to Article 21(1) in Part II of Protocol 3 to the Surveillance and Court Agreement and Article 5(1) in combination with Annex III of the Authority's Procedural Decision 195/04/COL of 14 July 2004.

The Norwegian authorities should further provide information, according to Article 5(2) of the Authority's Procedural Decision 195/04/COL of 14 July 2004 on each of the five biggest supported projects for:

(a) investment support for renewable energy production;

(b) energy saving investment;

(c) new energy technology; and

(d) energy audits.

The report should, in particular, contain the respective net present value calculation and demonstrate how the market price of that energy has been established. In addition, a list of investment costs for the projects should be provided.

As far as support for biomass projects is concerned, the reporting should also contain information which demonstrates that the aggregate costs borne by the firms after plant depreciation are still higher than the market price of the energy.

Guidelines for the support by Enova/Energy Fund

The Authority further finds that the conditions stipulated by the Authority in this Decision should enter Enova's/the Energy Fund's aid book, which sets out the rules for granting the support or be put in any other appropriate form of guidelines on the application of the support measures. A version of these guidelines should be submitted to the Authority no later than six months after the adoption of this Decision,

([78]) Case C-350/93 *Commission v Italy* [1995] ECR I-699, paragraph 22.
([79]) Case C-75/97 *Belgium v Commission* [1999] ECR I-3671, paragraph 66, and Case C-310/99 *Italy v Commission* [2002] ECR I-2289, paragraph 99.
([80]) Case C-169/95 *Spain v Commission* [1997] ECR I-135, paragraph 51.

HAS ADOPTED THIS DECISION:

Article 1

The following measures under the Energy Fund, as notified by the Norwegian authorities by letter dated 5 June 2003 (Doc. No 03-3705-A, registered under case SAM 030.03006), constitute State aid within the meaning of Article 61(1) of the EEA Agreement:

(a) the investment support for renewable energy production;

(b) the investment support for energy saving measures;

(c) the investment support for new energy technologies;

(d) the support for energy audits; and

(e) the support for teaching material and education from 1 January 2002 until 31 December 2003.

Article 2

(a) The information helpline and the on-site visit programme under the Energy Fund scheme, as notified by letter dated 5 June 2003 (Doc. No 03-3705-A), do not constitute State aid within the meaning of Article 61(1) of the EEA Agreement.

(b) The programme for energy efficiency in municipalities does not constitute State aid, as long as the support is limited to the public entity function of the municipality.

Article 3

The measure referred to under Article 1, point (e) of this Decision is compatible with the functioning of the EEA Agreement.

Article 4

The investment support measures for renewable energy production, energy saving, new energy technology and energy audits are compatible with the functioning of the EEA Agreement within the meaning of Article 61(1) of the EEA Agreement, subject to the conditions set out in this Article.

(a) Support for renewable energy production investment

The aid must cumulatively fulfil the criteria as laid down in section I.9.1, number (1)-(12) of this Decision in order to be in line with section D.3.3.1 (54) of the Environmental Guidelines.

(b) Support for energy saving investment

The aid must cumulatively fulfil the criteria as laid down in section I.9.2, number (1)-(5) of this Decision in order to be line with sections D.1.3 (25), D.1.6. (30), (31) and D.1.7 (32) of the Environmental Guidelines.

(c) Support for new energy technology

Aid for the support for new energy technology can be granted according to the criteria set out in Article 4(a) of this Decision, as far as the technology involving investment support for renewable energy production is concerned and Article 4(b) of this Decision, as far as the aid support for new energy technology relates to energy saving investment.

(d) Support for energy audits/energy analyses

Aid for energy audits must be directly linked to an investment relating to energy saving and not exceed 40 % of eligible costs, with the possibility of a top up of 10 percentage points for small and medium-sized undertakings. Eligible costs are the costs described in section I. 9.1, fn. 35 of this Decision.

Support given for energy audits, which are not linked to energy saving investment and e.g. concern behavioural or system changes, can only be supported according to the conditions stipulated in section D.2. (36) of the Environmental Guidelines in conjunction with the Act referred to under point 1(e) of Annex XV to the EEA Agreement.

Article 5

(a) The Norwegian authorities should submit annual reports to the Authority according to Article 21(1) in Part II of Protocol 3 to the Surveillance and Court Agreement and Article 5(1) in combination with Annex III of the Authority's Procedural Decision 195/04/COL of 14 July 2004.

(b) The Norwegian authorities should further provide information, according to Article 5(2) of the Authority's Procedural Decision 195/04/COL of 14 July 2004, on each of the five biggest supported projects for:

1. investment support for renewable energy production;

2. energy saving investment;

3. new energy technology; and

4. energy audits.

The report should, in particular, contain the respective net present value calculation, including the discount rate applied by the Energy Fund, and demonstrate how the market price of that energy has been established. In addition, a list of investment costs for the projects under Article 5(b) of this Decision should be provided.

As far as biomass projects are receiving support, the reporting should also contain information which demonstrates that the aggregate costs borne by the firms after plant depreciation are still higher than the market price of the energy.

(c) The Norwegian authorities should further submit a new version of the guidelines for the application of the Energy Fund support to the Authority, within six months from adoption of this Decision.

Article 6

(a) The measures referred to under Article 1(a)(d) of this Decision as notified by letter dated 5 June 2003 (Doc. No 03-3705-A) are not compatible with the functioning of the EEA Agreement.

(b) Individual grants awarded under the above measures, which already fulfil the criteria laid down in Article 4 of this Decision, are compatible with the functioning of the EEA Agreement.

Article 7

Where it has not already done so, Norway shall repeal the measures referred to in Article 6(a) of this Decision with immediate effect and replace them with measures which fulfil the conditions set out in Article 4 of this Decision.

Article 8

The Norwegian authorities shall take all necessary measures to recover from the beneficiaries the aid referred to in Article 6(a) of this Decision and unlawfully made available to the beneficiaries, deducting any repayment already made.

Recovery shall be affected without delay and in accordance with the procedures of national law provided that they allow the immediate and effective execution of the decision. The aid to be recovered shall include interest and compound interest from the date on which it was at the disposal of the aid beneficiary until the date of its recovery. Interest shall be calculated on the basis of Articles 9 and 11 in the EFTA Surveillance Authority Decision No 195/04/COL.

Article 9

The Norwegian authorities shall inform the EFTA Surveillance Authority, within two months of notification of this Decision, of the measures taken to comply with it.

Article 10

This Decision is addressed to the Kingdom of Norway.

Article 11

Only the English version is authentic.

Done at Brussels, 3 May 2006.

For the EFTA Surveillance Authority

Bjørn T. GRYDELAND	Kurt JÄGER
President	*College Member*