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

REGULATIONS

COUNCIL REGULATION (EC, EURATOM) No 105/2009

of 26 January 2009

amending Regulation (EC, Euratom) No 1150/2000 implementing Decision 2000/597/EC, Euratom on the system of the Communities' own resources

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 279(2) thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 183 thereof,

Having regard to Council Decision 2007/436/EC, Euratom of 7 June 2007 on the system of the European Communities' own resources [1], and in particular Article 8(2) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament [2],

Having regard to the opinion of the Court of Auditors [3],

Whereas:

(1) The European Council meeting in Brussels on 15 and 16 December 2005 issued a number of conclusions concerning the system of the Communities' own resources, which led to the adoption of Decision 2007/436/EC, Euratom.

(2) Under Article 2(1)(a) of Decision 2007/436/EC, Euratom there is no distinction between agricultural levies and customs duties.

(3) According to the second subparagraph of Article 2(5) of Decision 2007/436/EC, Euratom, for the period 2007-2013, the Netherlands and Sweden shall benefit from a gross reduction of their respective gross national income (GNI) contributions to be financed by all Member States. There shall be no subsequent revision of the financing of that gross reduction in the event of subsequent modifications of the GNI figure.

(4) Taking into account the fact that Decision 2007/436/EC, Euratom makes reference to GNI instead of gross national product (GNP), it is appropriate to align Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000 implementing Decision 94/728/EC, Euratom on the system of the Communities' own resources [4]. The system of the European Communities' own resources no longer provides for the GNP financial contributions, therefore there is no longer any need to refer to them in Regulation (EC, Euratom) No 1150/2000.

(5) With a view to the efficient management of the Commission's own resources accounts, specific provisions should be laid down in order to align the transmission of data and reporting periods with current banking practice.

(6) From the 2007 budget onwards, the Interinstitutional Agreement between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management [5] no longer envisages a specific financing mechanism for the reserve relating to loans and loan guarantees and the reserve for emergency aid. The emergency aid reserve is entered in the budget as a provision and the reserve for loans and loan guarantees is considered a compulsory expenditure of the general budget.

[1] OJ L 163, 23.6.2007, p. 17.
[2] Opinion of the European Parliament of 21 October 2008 (not yet published in the Official Journal).
[3] OJ C 192, 29.7.2008, p. 1.
[4] OJ L 130, 31.5.2000, p. 1.
[5] OJ C 139, 14.6.2006, p. 1.

(7) Regulation (EC, Euratom) No 1150/2000 should therefore be amended accordingly.

(8) Taking account of Article 11 of Decision 2007/436/EC, Euratom, this Regulation should enter into force on the same day as that Decision and should apply from 1 January 2007,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC, Euratom) No 1150/2000 is hereby amended as follows:

1. in the title the term 'Decision 2000/597/EC, Euratom on the system of the Communities' own resources' shall be replaced by the following:

'Decision 2007/436/EC, Euratom on the system of the European Communities own resources';

2. Article 1 shall be replaced by the following:

'*Article 1*

The European Communities' own resources provided for in Decision 2007/436/EC, Euratom (*) hereinafter referred to as "own resources", shall be made available to the Commission and inspected as specified in this Regulation, without prejudice to Regulation (EEC, Euratom) No 1553/89 (**), Regulation (EC, Euratom) No 1287/2003 (***) and Directive 89/130/EEC, Euratom (****).

(*) OJ L 163, 23.6.2007, p. 17.

(**) Council Regulation (EEC, Euratom) No 1553/89 of 29 May 1989 on the definitive uniform arrangements for the collection of own resources accruing from value added tax (OJ L 155, 7.6.1989, p. 9).

(***) Council Regulation (EC, Euratom) No 1287/2003 of 15 July 2003 on the harmonisation of gross national income at market prices (OJ L 181, 19.7.2003, p. 1).

(****) OJ L 49, 21.2.1989, p. 26.';

3. in Article 2(1) the term 'Article 2(1)(a) and (b) of Decision 2000/597/EC, Euratom' shall be replaced by the following:

'Article 2(1)(a) of Decision 2007/436/EC, Euratom';

4. in Article 3 the second paragraph shall be replaced by the following:

'The supporting documents relating to the statistical procedures and bases referred to in Article 3 of Regulation (EC, Euratom) No 1287/2003 shall be kept by the Member States until 30 September of the fourth year following the financial year in question. The supporting documents relating to the VAT resources base shall be kept for the same period';

5. Article 5 shall be replaced by the following:

'*Article 5*

The rate referred to in Article 2(1)(c) of Decision 2007/436/EC, Euratom which shall be set within the budgetary procedure, shall be calculated as a percentage of the sum of the forecast of the gross national income, (hereinafter referred to as GNI) of the Member States in such a manner that it fully covers that part of the budget not financed from the revenue referred to in Article 2(1)(a) and (b) of Decision 2007/436/EC, Euratom, from financial contributions to supplementary research and technological development programmes and other revenue.

That rate shall be expressed in the budget by a figure containing as many decimal places as is necessary to fully divide the GNI-based resource among the Member States.';

6. in Article 6(3), point (c) shall be replaced by the following:

'(c) VAT resources and the additional resource, taking into account the effect on these resources of the correction granted to the United Kingdom for budgetary imbalances and to the gross reduction granted to the Netherlands and to Sweden shall, however, be recorded in the accounts as specified in point (a) as follows:

— the 12th referred to in Article 10(3) shall be recorded on the first working day of each month,

— the balances referred to in Article 10(4) and (6) and the adjustments referred to in Article 10(5) and (7) shall be recorded annually, except for the particular adjustments referred to in the first indent of Article 10(5), which shall be recorded in the accounts on the first working day of the month following agreement between the Member State concerned and the Commission.';

7. Article 9(1a) shall be replaced by the following:

'1a. Member States or the bodies appointed by them shall transmit to the Commission, by electronic means:

(a) on the working day on which the own resources are credited to the account of the Commission, a statement of account or a credit advice showing the entry of the own resources;

(b) without prejudice to point (a), at the latest on the second working day following the crediting of the account, a statement of account showing the entry of the own resources.';

8. Article 10 shall be replaced by the following:

'*Article 10*

1. After deduction of collection costs in accordance with Article 2(3) and Article 10(3) of Decision 2007/436/EC, Euratom entry of the own resources referred to in Article 2(1)(a) of that Decision shall be made at the latest on the first working day following the 19th day of the second month following the month during which the entitlement was established in accordance with Article 2 of this Regulation.

However, for entitlements shown in separate accounts under Article 6(3)(b) of this Regulation, the entry must be made at the latest on the first working day following the 19th day of the second month following the month in which the entitlements were recovered.

2. If necessary, Member States may be invited by the Commission to bring forward by one month the entry of resources other than VAT resources and the additional resource on the basis of the information available to them on the 15th of the same month.

Each entry brought forward shall be adjusted the following month when the entry mentioned in paragraph 1 is made. This adjustment shall entail the negative entry of an amount equal to that given in the entry brought forward.

3. VAT resources and the additional resource, taking into account the effect on these resources of the correction granted to the United Kingdom for budgetary imbalances and of the gross reduction granted to the Netherlands and to Sweden shall be credited on the first working day of each month, the amounts being one-twelfth of the relevant totals in the budget, converted into national currencies at the rates of exchange of the last day of quotation of the calendar year preceding the budget year, as published in the *Official Journal of the European Union*, C Series.

For the specific needs of paying EAGF expenditure, pursuant 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 depending on the Community's cash position, Member States may be invited by the Commission to bring forward by one or two months in the first quarter of the financial year the entry of one-twelfth or a fraction of one-twelfth of the amounts in the budget for VAT resources and/or the additional resource, taking into account the effect on these resources of the correction granted to the United Kingdom for budgetary imbalances and of the gross reduction granted to the Netherlands and to Sweden.

After the first quarter, the monthly entry requested may not exceed one-twelfth of VAT and GNI-based resources, while remaining within the limit of the amounts entered in the budget for that purpose.

The Commission shall notify the Member States thereof in advance, no later than two weeks before the entry requested.

The eighth subparagraph concerning the amount to be entered in January each year and the ninth subparagraph applicable if the budget has not been finally adopted before the beginning of the financial year shall apply to these advance entries.

Any change in the uniform rate of VAT resources, in the rate of the additional resource, in the correction granted to the United Kingdom for budgetary imbalances and in its financing referred to in Articles 4 and 5 of Decision 2007/436/EC, Euratom and in the financing of the gross reduction granted to the Netherlands and to Sweden shall require the final adoption of an amending budget and shall give rise to readjustments of the twelfths which have been entered since the beginning of the financial year.

These readjustments shall be carried out when the first entry is made following the final adoption of the amending budget if it is adopted before the 16th of the month. Otherwise they shall be carried out when the second entry following final adoption is made. By way of derogation from Article 8 of the Financial Regulation, these readjustments shall be entered in the accounts in respect of the financial year of the amending budget in question.

Calculation of the twelfths for January of each financial year shall be based on the amounts provided for in the draft budget, referred to in Article 272(3) of the EC Treaty and Article 177(3) of the EAEC Treaty and converted into national currencies at the rates of exchange of the first day of quotation following 15 December of the calendar year preceding the budget year; the adjustment shall be made with the entry for the following month.

If the budget has not been finally adopted before the beginning of the financial year, the Member States shall enter on the first working day of each month, including January, one-twelfth of the amount of VAT resources, and the additional resource taking into account the effect on these resources of the correction granted to the United Kingdom for budgetary imbalances and of the gross reduction granted to the Netherlands and to Sweden, entered in the last budget finally adopted; the adjustment shall be made on the first due date following final adoption of the budget if it is adopted before the 16th of the month. Otherwise, the adjustment shall be made on the second due date following final adoption of the budget.

4. Each Member State shall, on the basis of the annual statement on the VAT resources base provided for in Article 7(1) of Regulation (EEC, Euratom) No 1553/89, be debited with an amount calculated from the information contained in the said statement by applying the uniform rate adopted for the previous financial year and credited with the 12 payments made during that financial year. However each Member State's VAT resources base to which the above rate is applied may not exceed the percentage determined by Article 2(1)(b) of Decision 2007/436/EC, Euratom of its GNI as referred to in the first sentence of paragraph 7 of that Article. The Commission shall work out the balance and shall inform the Member States in time for them to enter it in the account referred to in Article 9(1) of this Regulation on the first working day of December of the same year.

5. Any corrections to the VAT resources base under Article 9(1) of Regulation (EEC, Euratom) No 1553/89 shall give rise for each Member State concerned whose base, allowing for these corrections, does not exceed the percentages determined by Articles 2(1)(b) and 10(2) of Decision 2007/436/EC, Euratom to the following adjustments to the balance referred to in paragraph 4 of this Article:

— the corrections under the first subparagraph of Article 9(1) of Regulation (EEC, Euratom) No 1553/89 made by 31 July shall give rise to a general adjustment to be entered in the account referred to in Article 9(1) of this Regulation on the first working day of December of the same year. However a particular adjustment may be entered before that date if the Member State concerned and the Commission are in agreement,

— where the measures which the Commission takes under the second subparagraph of Article 9(1) of Regulation (EEC, Euratom) No 1553/89 to correct the base lead to an adjustment of the entries in the account referred to in Article 9(1) of this Regulation, that adjustment shall be made on the date specified by the Commission pursuant to the said measures.

The changes to GNI referred to in paragraph 7 of this Article shall also give rise to an adjustment of the balance of any Member State whose base, allowing for those corrections, is capped at the percentages determined by Articles 2(1)(b) and 10(2) of Decision 2007/436/EC, Euratom.

The Commission shall inform the Member States of these adjustments in time for them to enter them in the account referred to in Article 9(1) on the first working day of December of the same year.

However, a particular adjustment may be entered at any time if the Member State concerned and the Commission are in agreement.

6. On the basis of figures for aggregate GNI at market prices and its components from the preceding year, supplied by the Member States in accordance with Article 2(2) of Regulation (EC, Euratom) No 1287/2003, each Member State shall be debited with an amount calculated by applying to GNI the rate adopted for the previous financial year and credited with the payments made during that previous financial year. The Commission shall work out the balance and shall inform the Member States in time for them to enter it in the account referred to in Article 9(1) of this Regulation on the first working day of December of the same year.

7. Any changes to the GNI of previous financial years pursuant to Article 2(2) of Regulation (EC, Euratom) No 1287/2003 subject to Article 5 thereof, shall give rise for each Member State concerned to an adjustment to the balance established pursuant to paragraph 6 of this Article. This adjustment shall be established in the manner laid down in the first subparagraph of paragraph 5 of this Article. The Commission shall inform the Member States of these adjustments so that they can enter them in the account referred to in Article 9(1) of this Regulation on the first working day of December of the same year. After 30 September of the fourth year following a given financial year, any changes to GNI shall no longer be taken into account, except on points notified within this time limit either by the Commission or by the Member State.

8. The operations referred to in paragraphs 4 to 7 constitute modifications to revenue in respect of the financial year in which they occur.

9. The gross reduction granted to the Netherlands and to Sweden shall be financed by all Member States. There shall be no subsequent revision of the financing of that gross reduction in the event of subsequent modification of the GNI figure.

10. In conformity with Article 2(7) of Decision 2007/436/EC, Euratom, for the purposes of applying that Decision "GNI" shall mean GNI for the year at market prices as defined by Regulation (EC, Euratom) No 1287/2003, except for the years prior to 2002, for which GNP at market prices, as defined by Directive 89/130/EEC, Euratom, continues to be the reference for calculation of the additional resource.

(*) OJ L 270, 21.10.2003, p. 1.';

9. In Article 10a the references to 'GNP' shall be replaced by the following:

'GNI';

10. Article 11(4) shall be replaced by the following:

'4. for the payment of interest referred to in paragraph 1, Article 9(1a) and (2) shall apply *mutatis mutandis*.';

11. Article 12(5) shall be amended as follows:

(a) the first sentence shall be replaced by the following:

'The Member States, or the bodies appointed by them, shall execute the Commission's payment orders following the Commission's instructions and within not more than three working days of receipt.';

(b) the following subparagraph shall be added:

'The Member States, or the bodies appointed by them, shall send to the Commission, by electronic means and on the second working day following the completion of each transaction at the latest, a statement of account showing the related movements.';

12. in the heading of Title VI, the term 'Decision 2000/597/EC, Euratom' shall be replaced by the following:

'Decision 2007/436/EC, Euratom';

13. in the introductory sentence of Article 15 the term 'Decision 2000/597/EC, Euratom' shall be replaced by the following:

'Decision 2007/436/EC, Euratom';

14. in Article 16 the reference to 'Article 10(4) to (8)' shall be replaced by the following:

'Article 10(4) to (7)';

15. Article 18 shall be amended as follows:

(a) in paragraph 1, the first sentence shall be replaced by the following:

'1. Member States shall conduct the checks and enquiries concerning the establishment and the making available of the own resources, referred to in Article 2(1)(a) of Decision 2007/436/EC, Euratom.';

(b) paragraph (4)(c) shall be replaced by the following:

'(c) the inspection arrangements made pursuant to Article 279(1)(b) of the EC Treaty and Article 183(1)(b) of the EAEC Treaty.';

16. in Article 19 the reference to 'GNP' shall be replaced by the following:

'GNI'.

Article 2

This Regulation shall enter into force on the day of entry into force of Decision 2007/436/EC, Euratom.

It shall apply from 1 January 2007.

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

Done at Brussels, 26 January 2009.

For the Council
The President
A. VONDRA

COMMISSION REGULATION (EC) No 106/2009

of 4 February 2009

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 5 February 2009.

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

Done at Brussels, 4 February 2009.

For the Commission
Jean-Luc DEMARTY
Director-General for Agriculture and Rural Development

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[1] OJ L 299, 16.11.2007, p. 1.
[2] OJ L 350, 31.12.2007, p. 1.

ANNEX

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

(EUR/100 kg)

CN code	Third country code (1)	Standard import value
0702 00 00	JO	73,2
	MA	46,2
	TN	134,4
	TR	94,0
	ZZ	87,0
0707 00 05	JO	155,5
	MA	134,2
	TR	172,1
	ZZ	153,9
0709 90 70	MA	114,4
	TR	150,8
	ZZ	132,6
0709 90 80	EG	84,3
	ZZ	84,3
0805 10 20	EG	48,3
	IL	51,0
	MA	60,0
	TN	47,0
	TR	58,5
	ZZ	53,0
0805 20 10	IL	148,2
	MA	96,1
	TR	49,1
	ZZ	97,8
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	CN	72,2
	IL	76,4
	JM	75,5
	MA	136,4
	PK	73,9
	TR	70,9
	ZZ	84,2
0805 50 10	EG	48,0
	MA	67,1
	TR	58,8
	ZZ	58,0
0808 10 80	CA	86,3
	CL	67,8
	CN	69,8
	MK	32,6
	US	114,6
	ZZ	74,2
0808 20 50	AR	104,9
	CL	73,7
	CN	33,6
	US	118,1
	ZA	118,6
	ZZ	89,8

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

COMMISSION REGULATION (EC) No 107/2009

of 4 February 2009

implementing Directive 2005/32/EC of the European Parliament and of the Council with regard to ecodesign requirements for simple set-top boxes

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Directive 2005/32/EC of the European Parliament and of the Council of 6 July 2005 establishing a framework for the setting of ecodesign requirements for energy-using products and amending Council Directive 92/42/EEC and Directives 96/57/EC and 2000/55/EC of the European Parliament and of the Council [1], and in particular Article 15(1) thereof,

After consulting the Ecodesign Consultation Forum,

Whereas:

(1) Under Directive 2005/32/EC ecodesign requirements should be set by the Commission for energy-using products representing significant volumes of sales and trade, having a significant environmental impact and presenting significant potential for improvement in terms of their environmental impact without entailing excessive costs.

(2) Article 16(2) first indent of Directive 2005/32/EC provides that in accordance with the procedure referred to in Article 19(3) and the criteria set out in Article 15(2), and after consulting the Consultation Forum, the Commission will as appropriate introduce implementing measures targeting consumer electronics.

(3) The Commission has carried out a preparatory study which analysed the technical, environmental and economic aspects of simple set-top boxes (hereinafter SSTBs). The study has been developed together with stakeholders and interested parties from the EU and third countries, and the results have been made publicly available.

(4) It has been stated in the preparatory study that the number of SSTBs placed on the Community market will grow from 28 million in 2008 to 56 million in 2014, and the annual electricity consumption of SSTBs will grow from 6 TWh in 2010 to 14 TWh in 2014, but that the electricity consumption of SSTBs can be significantly reduced in a cost effective manner.

(5) The electricity consumption of SSTBs can be reduced by implementing existing non-proprietary design solutions, which, despite being cost-effective, are not introduced onto the market in a satisfactory way because end-users are unaware of the running costs of SSTBs, providing manufacturers with no incentive to integrate such solutions to reduced power consumption during use.

(6) Ecodesign requirements for the power consumption of SSTBs should be set with a view to harmonising ecodesign requirements for these devices throughout the Community and contributing to the functioning of the internal market and to the improvement of the environmental performance of these devices.

(7) This Regulation should increase the market penetration of technologies yielding improved energy efficiency of SSTBs, leading to estimated annual energy savings of 9 TWh in 2014, compared to a business as usual scenario.

(8) The ecodesign requirements should not have a negative impact on the functionality of the product and should not negatively affect health, safety and the environment.

(9) A staged entry into force of the ecodesign requirements should provide an appropriate timeframe for manufacturers to redesign products. The timing of the stages should be set in such a way that negative impacts related to the functionalities of equipment on the market are avoided and cost impacts for manufacturers, in particular SMEs, are taken into account, while ensuring timely achievement of the policy objectives.

(10) Measurements of power consumption should be performed taking into account the generally recognised state of the art; manufacturers may apply harmonised standards established in accordance with Article 9 of Directive 2005/32/EC.

(11) The requirements laid down in this Regulation should prevail over the requirements laid down in Commission Regulation (EC) No 1275/2008 implementing Directive 2005/32/EC with regard to ecodesign requirements for the standby and off mode power consumption of electrical and electronic household and office equipment [2].

[1] OJ L 191, 22.7.2005, p. 29.

[2] OJ L 339, 18.12.2008, p. 45.

(12) Pursuant to Article 8(2) of Directive 2005/32/EC, this Regulation should specify that the applicable conformity assessment procedures are the internal design control set out in Annex IV to Directive 2005/32/EC and the management system set out in Annex V to Directive 2005/32/EC.

(13) In order to facilitate compliance checks manufacturers should be requested to provide information in the technical documentation referred to in Annexes IV and V of Directive 2005/32/EC in so far as it relates to the requirements laid down in this implementing measure.

(14) Benchmarks for currently available SSTBs with low power consumption should be identified. The availability of a '0 W-mode' on SSTBs could support consumers' behaviour and decisions to reduce unnecessary loss of energy. Benchmarks help to ensure wide availability and easy access to information, in particular for SMEs and very small firms, which further facilitates the integration of best design technologies for reducing the energy consumption of SSTBs.

(15) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 19(1) of Directive 2005/32/EC,

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter and scope

This Regulation establishes ecodesign requirements for simple set-top boxes.

Article 2

Definitions

For the purposes of this Regulation, the definitions set out in Directive 2005/32/EC shall apply. The following definitions shall also apply:

1. 'Simple set-top box' (SSTB) means a stand-alone device which, irrespectively of the interfaces used,

   (a) has the primary function of converting standard-definition (SD) or high-definition (HD), free-to-air digital broadcast signals to analogue broadcast signals suitable for analogue television or radio;

   (b) has no 'conditional access' (CA) function;

   (c) offers no recording function based on removable media in a standard library format.

   A SSTB can be equipped with the following additional functions and/or components which do not constitute a minimum specification of an SSTB:

   (a) time-shift and recording functions using an integrated hard disk;

   (b) conversion of HD broadcast signal reception to HD or SD video output;

   (c) second tuner.

2. 'Standby mode(s)' means a condition where the equipment is connected to the mains power source, depends on energy input from the mains power source to work as intended and provides *only* the following functions, which may persist for an indefinite time:

   (a) reactivation function, or reactivation function and only an indication of enabled reactivation function; and/or

   (b) information or status display.

3. 'Reactivation function' means a function enabling the activation of other modes, including active mode, by remote switch, including remote control, internal sensor, timer to a condition providing additional functions, including the main function.

4. 'Information or status display' means a continuous function providing information or indicating the status of the equipment in a display, including clocks.

5. 'Active mode(s)' means a condition in which the equipment is connected to the mains power source and at least one of the main function(s) providing the intended service of the equipment has been activated.

6. 'Automatic power down' means a function which switches the active mode of an SSTB into standby mode after a period in the active mode following the last user interaction and/or channel change.

7. 'Second tuner' means a part of the SSTB available for independent recording while allowing to watch a different programme.

8. 'Conditional access' (CA) means a provider-controlled broadcasting service requiring a market subscription television service.

Article 3

Ecodesign requirements

The ecodesign requirements for SSTBs are set out in Annex I.

Article 4

Relationship with Regulation (EC) No 1275/2008

The requirements laid down in this Regulation shall prevail over the requirements laid down in Regulation (EC) No 1275/2008.

Article 5

Conformity assessment

The procedure for assessing conformity referred to in Article 8(2) of Directive 2005/32/EC shall be the internal design control system set out in Annex IV to Directive 2005/32/EC or the management system set out in Annex V to Directive 2005/32/EC.

Article 6

Verification procedure for market surveillance purposes

Surveillance checks shall be carried out in accordance with the verification procedure set out in Annex II.

Article 7

Benchmarks

The indicative benchmarks for best-performing products and technology currently available on the market are identified in Annex III.

Article 8

Revision

No later than five years after the entry into force of this Regulation the Commission shall review it in the light of technological progress and present the result of this review to the Consultation Forum.

Article 9

Entry into force

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

Point 1 of Annex I shall apply as from one year after the date referred to in the first paragraph.

Point 2 of Annex I shall apply as from three years after the date referred to in the first paragraph.

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

Done at Brussels, 4 February 2009.

For the Commission

Andris PIEBALGS

Member of the Commission

ANNEX I

Ecodesign requirements

1. One year after this Regulation has come into force, SSTBs placed on the market shall not exceed the following power consumption limits; SSTBs with an integrated hard disk and/or second tuner are exempt from that requirement:

	Standby mode	Active mode
Simple STB	1,00 W	5,00 W
Allowance for display function in standby	+ 1,00 W	—
Allowance for decoding HD signals	—	+ 3,00 W

2. Three years after this Regulation has come into force SSTBs, placed on the market shall not exceed the following power consumption limits:

	Standby mode	Active mode
Simple STB	0,50 W	5,00 W
Allowance for display function in standby	+ 0,50 W	—
Allowance for hard disk	—	+ 6,00 W
Allowance for second tuner	—	+ 1,00 W
Allowance for decoding HD signals	—	+ 1,00 W

3. **Availability of standby mode**

One year after this Regulation has come into force, SSTBs shall provide standby mode.

4. **Automatic power-down**

One year after this implementing measure has come into force, SSTBs shall be equipped with an 'automatic power-down' or similar function with the following characteristics:

— the SSTB shall be automatically switched from active mode into standby after less than three hours in active mode following the last user interaction and/or a channel change with an alert message two minutes before going into standby mode.

— the 'automatic power-down' function shall be set as default.

5. **Measurements**

The power consumption referred to in Points 1 and 2 shall be established by a reliable, accurate and reproducible measurement procedure, which takes into account the generally recognised state of the art.

Measurements of power of 0,50 W or greater shall be made with an uncertainty of less than or equal to 2 % at the 95 % confidence level. Measurements of power of less than 0,50 W shall be made with an uncertainty of less than or equal to 0,01 W at the 95 % confidence level.

6. **Information to be provided by the manufacturers for the purposes of conformity assessment**

For the purposes of conformity assessment pursuant to Article 5, the technical documentation shall contain the following elements:

(a) *For standby and active modes*

— The power consumption data in Watts rounded to the second decimal place including consumption data for the different additional functions and/or components

— The measurement method used

— Period of measurement

— Description of how the appliance mode was selected or programmed

— Sequence of events to reach the mode where the equipment automatically changes modes

— Any notes regarding the operation of the equipment

(b) *Test parameters for measurements*

— Ambient temperature

— Test voltage in V and frequency in Hz

— Total harmonic distortion of the electricity supply system

— The fluctuation of the power supply voltage during the tests

— Information and documentation on the instrumentation, set-up and circuits used for electrical testing

— Input signals in RF (for digital terrestrial broadcasts) or IF (for satellite broadcasts)

— Audio/video test signals as described in the MPEG-2 transport stream

— Adjustment of controls

The power requirements of peripheral devices powered by the STB for broadcast reception, such as active terrestrial antenna, satellite LNB or any cable or telecom modem are not required to be included in the technical documentation.

7. **Information to be provided by the manufacturers for the purposes of consumer information**

Manufacturers shall ensure that consumers of SSTBs are provided with the power consumption in Watts rounded to the first decimal place of standby and active modes of the SSTB.

ANNEX II

Verification procedure

When performing the market surveillance checks referred to in Article 3(2) of Directive 2005/32/EC the authorities of the Member States shall apply the following verification procedure for the applicable requirements set out in Annex I, Points 1, 2 and 4, as applicable.

For power consumption larger than 1,00 W:

Member State authorities shall test one single unit.

The model shall be considered to comply with the provisions set out in Annex I, Points 1 and 2, as applicable, of this Regulation if the results for active and standby mode conditions, as applicable, do no exceed the limit values by more than 10 %.

Otherwise, three more units shall be tested. The model shall be considered to comply with this Regulation if the average of the results of the latter three tests for active and standby mode conditions, as applicable, does not exceed the limit values by more than 10 %.

For power consumption smaller than, or equal to, 1,00 W:

Member State authorities shall test one single unit.

The model shall be considered to comply with the provisions set out in Annex I, Points 1 and 2, as applicable, of this Regulation if the results for active and/or standby mode conditions, as applicable, do not exceed the limit values by more than 0,10 W.

Otherwise, three more units shall be tested. The model shall be considered to comply with this Regulation if the average of the results of the latter three tests for active and/or standby conditions, as applicable, does not exceed the limit values by more than 0,10 W.

Otherwise, the model shall be considered not to comply.

ANNEX III

Benchmarks

The following indicative benchmarks are identified for the purpose of Annex I, part 3, point 2, of Directive 2005/32/EC. They refer to the best available technology at the date of adopting this Regulation:

SSTB without any additional features:

— Active mode: 4,00 W

— Standby mode excluding the display function: 0,25 W

— Off-mode: 0 W

SSTB with an integrated hard drive:

— Active mode: 10,00 W

— Standby mode excluding the display function: 0,25 W

— Off-mode 0 W:

The above benchmarks are established on the basis of a SSTB with a basic configuration, an 'automatic power down' function and a hard-off switch.

DIRECTIVES

COMMISSION DIRECTIVE 2009/6/EC

of 4 February 2009

amending Council Directive 76/768/EEC, concerning cosmetic products, for the purpose of adapting Annexes II and III thereto to technical progress

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 76/768/EEC of 27 July 1976 on the approximation of the laws of the Member States relating to cosmetic products [1], and in particular Article 8(2) thereof,

After consulting the Scientific Committee on Consumer Products,

Whereas:

(1) Following restrictive measures taken by one Member State on the basis of Article 12 of Directive 76/768/EEC regarding the use of diethylene glycol (DEG) in cosmetic products, the SCCP was consulted. Considering that this scientific committee is of the opinion that DEG should not be used as an ingredient in cosmetic products, but that a maximum concentration of up to 0,1 % of DEG from impurities in the finished cosmetic products can be considered to be safe, this substance should be banned for use in cosmetic products and its traces limit should be fixed at 0,1 %.

(2) Following restrictive measures taken by one Member State on the basis of Article 12 of Directive 76/768/EEC regarding the use of phytonadione in cosmetic products, the SCCP was consulted. The scientific committee is of the opinion that use of phytonadione in cosmetic products is not safe, since it may cause cutaneous allergy and individuals so affected may be denied an important therapeutic agent. Therefore the substance should be banned.

(3) Directive 76/768/EEC prohibits the use in cosmetic products of substances classified as carcinogenic, mutagenic or toxic for reproduction (hereinafter, CMR substances), of category 1, 2 and 3, under Annex I to Council Directive 67/548/EEC of 27 June 1967 on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances [2]. However, the use of substances classified in category 3 pursuant to Directive 67/548/EEC may be allowed subject to evaluation and approval by the Scientific Committee on Consumer Products (SCCP).

(4) The SCCP considers that toluene, a substance classified as a CMR substance of category 3 under Annex I to Directive 67/548/EEC, is safe from the general toxicological point of view when present up to 25 % in nail products; however its inhalation by children should be avoided.

(5) Following restrictive measures decided by one Member State on the basis of Article 12 of Directive 76/768/EEC regarding the use of diethylene glycol monobutyl ether (DEGBE) and ethylene glycol monobutyl ether (EGBE) in cosmetic products, the SCCP was consulted. This scientific committee is of the opinion that the use of DEGBE as a solvent in hair dye products at a concentration up to 9,0 % does not pose a risk to the health of consumer. Moreover, the committee considers that the use EGBE as a solvent at a concentration up to 4,0 % in oxidative hair dye products and up to 2,0 % in non-oxidative hair dye products does not pose a risk to the health of the consumer. However, the SCCP did not consider the use of these substances safe when the product is presented in aerosol/spray; this potential use should therefore be banned.

(6) Directive 76/768/EEC should therefore be amended accordingly.

(7) The measures provided for in this Directive are in accordance with the opinion of the Standing Committee on Cosmetic Products,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Annexes II and III to Directive 76/768/EEC are amended in accordance with the Annex to this Directive.

[1] OJ L 262, 27.9.1976, p. 169.

[2] OJ 196, 16.8.1967, p. 1.

Article 2

1. Member States shall adopt and publish, by 5 August 2009 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions from 5 November 2009.

However, they shall apply the provisions concerning the substance toluene as set out in point 2 of the Annex under reference number 185 from 5 February 2010.

When Member States adopt the provisions referred to in the first subparagraph, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 3

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

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 4 February 2009.

For the Commission
Günter VERHEUGEN
Vice-President

ANNEX

Directive 76/768/EEC is amended as follows:

1. In Annex II, the following reference numbers are added:

Reference number	Chemical name	CAS number EC number
‘1370	Diethylene glycol (DEG), for traces level see Annex III 2,2′-oxydiethanol	CAS No 111-46-6 EC No 203-872-2
1371	Phytonadione [INCI], phytomenadione [INN]	CAS No 84-80-0/81818-54-4; EC No 201-564-2’

2. In Part 1 of Annex III, the following reference numbers 185 to 188 are added:

Reference number	Substance	Restrictions			Conditions of use and warnings which must be printed on the label
		Field of application and/or use	Maximum authorised concentration in the finished cosmetic product	Other limitations and requirements	
a	b	c	d	e	f
‘185	Toluene CAS No 108-88-3 EC No 203-625-9	Nail products	25 %		Keep out of reach of children To be used by adults only
186	Diethylene glycol (DEG) CAS No 111-46-6 EC No 203-872-2 2,2′-oxydiethanol	Traces in ingredients	0,1 %		
187	Butoxydiglycol CAS No 112-34-5 EC No 203-961-6 diethylene glycol monobutyl ether (DEGBE)	Solvent in hair dye products	9 %	No use in aerosol dispensers (sprays)	
188	Butoxyethanol CAS No 111-76-2 EC No 203-905-0 ethylene glycol monobutyl ether (EGBE)	Solvent in oxidative hair dye products Solvent in non-oxidative hair dye products	4,0 % 2,0 %	No use in aerosol dispensers (sprays) No use in aerosol dispensers (sprays)’	

II

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

DECISIONS

COUNCIL

COUNCIL DECISION

of 24 July 2008

on the signing and provisional application of a Memorandum of Cooperation between the International Civil Aviation Organisation and the European Community regarding security audits/inspections and related matters

(2009/97/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 80(2), in conjunction with the first sentence of the first subparagraph of Article 300(2) thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) The Council authorised the Commission on 30 November 2007 to open negotiations on an agreement regarding aviation security audits/inspections and related matters between the European Community and the International Civil Aviation Organisation (ICAO).

(2) On behalf of the Community, the Commission has negotiated a Memorandum of Cooperation with ICAO regarding security audits/inspections and related matters in accordance with the directives set out in Annex I, and the ad hoc procedure set out in Annex II, of the Council Decision authorising the Commission to open negotiations.

(3) Subject to its possible conclusion at a later date, the Memorandum should be signed and provisionally applied,

HAS DECIDED AS FOLLOWS:

Article 1

The signing of the Memorandum of Cooperation between the International Civil Aviation Organisation and the European Community regarding security audits/inspections and related matters is hereby approved on behalf of the Community, subject to the Council Decision concerning the conclusion of the said Memorandum.

The text of the Memorandum is attached to this Decision.

Article 2

The President of the Council is hereby authorised to designate the person(s) empowered to sign the Memorandum on behalf of the Community subject to its conclusion.

Article 3

Subject to reciprocity, the Memorandum shall be applied on a provisional basis as from the signature thereof, pending the completion of the procedures for its formal conclusion.

Done at Brussels, 24 July 2008.

For the Council
The President
B. HORTEFEUX

MEMORANDUM OF COOPERATION

between the European Communuty and the International Civil Aviation Organisation regarding security audits/inspections and related matters

THE INTERNATIONAL CIVIL AVIATION ORGANISATION (ICAO),

and

THE EUROPEAN COMMUNITY (EC),

hereinafter referred to as 'the Parties',

RECALLING the Convention on International Civil Aviation signed at Chicago on 7 December 1944 (hereinafter referred to as the Chicago Convention) and in particular Annex 17 thereto (hereinafter referred to as Annex 17),

BEARING IN MIND ICAO Assembly Resolution A35-9, which directed the Secretary General to continue the ICAO Universal Security Audit Programme (USAP), comprising regular, mandatory, systematic and harmonised security audits of all Contracting States to the Chicago Convention (hereinafter referred to as the Contracting States),

RECALLING Regulation (EC) No 2320/2002 of the European Parliament and of the Council of 16 December 2002 establishing common rules in the field of civil aviation security [1], (hereinafter referred to as Regulation (EC) No 2320/2002), and Regulation (EC) No 300/2008 of the European Parliament and of the Council of 11 March 2008 on common rules in the field of civil aviation security and repealing Regulation (EC) No 2320/2002 [2], (hereinafter referred to as Regulation (EC) No 300/2008) which will replace Regulation (EC) No 2320/2002 upon the adoption of the necessary implementing measures,

NOTING Commission Regulation (EC) No 1486/2003 of 22 August 2003 laying down procedures for conducting Commission inspections in the field of civil aviation security [3], and in particular Article 16 thereof establishing that the European Commission shall take into consideration the planned or recently undertaken security audits of intergovernmental organisations in order to ensure the overall effectiveness of the various security inspection and audit activities,

TAKING INTO ACCOUNT the application of relevant Community law, in particular Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to Parliament, Council and Commission documents [4]; and Commission Decision 2001/844/EC, ECSC, Euratom of 29 November 2001 amending its internal Rules of Procedure, (hereinafter referred to as Decision 2001/844/EC, ECSC, Euratom), in particular sections 10 and 26 thereof, and its amendments [5],

BEARING IN MIND the fact that most standards contained in Annex 17 are also covered by Regulation 2320/2002 and that the European Commission conducts inspections in Member States of the European Union (hereinafter referred to as the EU) to monitor the application of this Regulation,

CONSIDERING that the primary objectives of the ICAO audit programme and the European Commission's inspection programme are to enhance aviation security by evaluating the implementation of respective standards, identifying deficiencies, if any, and ensuring the rectification of deficiencies, where necessary,

CONSIDERING that it is desirable to establish mutual cooperation in the area of aviation security audits/inspections and related matters in a manner ensuring better use of limited resources and avoiding duplication of efforts, while preserving the universality and integrity of the ICAO USAP programme,

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[1] OJ L 355, 30.12.2002, p. 1.
[2] OJ L 97, 9.4.2008, p. 72.
[3] OJ L 213, 23.8.2003, p. 3.
[4] OJ L 145, 31.5.2001, p. 43.
[5] Decisions 2005/94/EC, Euratom, 2006/70/EC, Euratom and 2006/548/EC, Euratom.

CONSIDERING that the European Commission has enforcement powers to ensure the implementation of Community legislation on civil aviation security,

CONSIDERING that the Council of ICAO during its 176th Session directed that, wherever possible, ICAO aviation security audits should be focussed on a State's capability to provide appropriate national oversight; and further requested the Secretary General to explore cooperative arrangements and the most effective use of resources in regions where mandatory regional governmental audit programmes exist,

1. General provisions

1.1. Those Standards contained in Annex 17 that are not covered by EC legislation shall fall outside the scope of this Memorandum of Cooperation.

1.2. Regarding Standards contained in Annex 17 which are covered by EC legislation, ICAO shall assess the European Commission inspections of the national appropriate authorities of EU Member States in order to verify compliance with these Standards in accordance with paragraph 3 of this Memorandum of Cooperation, of Contracting States bound by Community legislation on civil aviation security.

1.3. The implementation of ICAO assessments in the European Community shall be discussed at the request of one of the Parties, but at least once a year.

1.4. ICAO auditors may occasionally join the European Commission inspections of EU airports as observers, after an explicit agreement of the EU Member State concerned has been received by the European Commission.

2. Information to be provided to ICAO on European Commission inspections in the European Community

2.1. In accordance with Decision 2001/844/EC, ECSC, Euratom, the following EU classified information at level of 'RESTREINT UE' shall be provided to ICAO authorised personnel:

A. Common rules and standards in the field of aviation security, adopted in accordance with Article 4(2) of Regulation (EC) No 2320/2002 or Article 4 of Regulation (EC) No 300/2008; and

B. As regards European Commission inspections of appropriate authorities of the EU Member States:

(a) general information on the planning of European Commission inspections including the schedule of inspections of national appropriate authorities, and any amendment thereof or changes thereto, as soon as they become available;

(b) the status of inspection activities of both national appropriate authorities and airports, dates of issuance of the final inspection reports and dates of reception of the action plans from the State concerned;

(c) the European Commission inspection methodology;

(d) the report of the inspection of the national appropriate authorities together with the action plan received from the State concerned on the inspection of the national appropriate authority, specifying actions and deadlines to remedy any identified deficiencies; and

(e) follow-up actions taken by the European Commission on the inspection of the national appropriate authority.

2.2. ICAO shall restrict access to EU classified information provided by the European Commission in the context of this cooperation to authorised personnel on a need to know basis only. The authorised personnel shall not disclose this information to any third party. ICAO shall implement any necessary legal and internal mechanisms to protect the confidentiality of the information provided by the European Commission.

2.3. The European Commission and ICAO shall agree on further procedures for the protection of classified information provided by the European Commission pursuant to this Memorandum of Cooperation. Such procedures shall include the possibility for the European Commission to verify which protection measures have been put in place by ICAO.

3. ICAO assessments of the European Commission aviation security inspection system

3.1. ICAO assessments of the European Commission aviation security inspection system shall consist of an analysis of European Commission requirements and information provided under paragraph 2. Where necessary, ICAO shall visit the European Commission, Directorate-General for Energy and Transport, at its Headquarters in Brussels, Belgium.

3.2. Specific terms of reference and practical arrangements for ICAO assessments of the European Commission aviation security inspection system shall be agreed upon through an Exchange of Letters between ICAO and the European Commission.

4. Dispute Resolution

4.1. Any difference or dispute concerning the interpretation or the application of this Memorandum of Cooperation shall be resolved by negotiation between the Parties.

4.2. Nothing in or relating to this Memorandum of Cooperation shall be deemed a waiver of any of the privileges and immunities of the Parties.

5. Other agreements

5.1. This Memorandum of Cooperation does not supersede or prejudge other forms of cooperation between the Parties.

6. Revision — Entry into force

6.1. The parties shall review the implementation of this Memorandum of Cooperation at the end of the current phase of the USAP programme, and earlier, if felt necessary by either of the Parties.

6.2. Pending its entry into force, this Memorandum of Cooperation shall be applied provisionally from the date of signature.

6.3. This Memorandum of Cooperation shall enter into force on the first day of the second month following the last of the two notifications through which the Parties inform each other of the termination of their respective internal procedures.

Done at Montreal on the seventeenth day of September in the year two thousand and eight, in duplicate, in the English language.

For the European Community

Patrick GANDIL

For the International Civil Aviation Organisation

Roberto KOBEH GONZÁLEZ

Eckard SEEBOHM

EUROPEAN CENTRAL BANK

DECISION OF THE EUROPEAN CENTRAL BANK

of 11 December 2008

amending Decision ECB/2006/17 on the annual accounts of the European Central Bank

(ECB/2008/22)

(2009/98/EC)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank, and in particular Article 26.2 thereof,

Whereas:

(1) Decision ECB/2006/17 of 10 November 2006 on the annual accounts of the European Central Bank [1] needs to be amended to reflect policy decisions and market developments.

(2) The European Central Bank (ECB) has revised its disclosure policy for securities transactions with a view to enhance further the transparency of the ECB's annual accounts. As part of the revised policy, securities that previously qualified as financial fixed assets should be reclassified from the balance sheet item 'Other financial assets' to the appropriate item under the heading 'asset' depending on the origin of the issuer, the currency denomination and on whether the securities are held-to-maturity. Moreover, all financial instruments that are part of an earmarked portfolio should be included under the item 'Other financial assets'.

(3) Decision ECB/2006/17 does not contain specific rules on the accounting of forward interest rate swaps, foreign exchange futures and equity futures. Such instruments are increasingly used in the financial markets and may be relevant to the management of the ECB's foreign reserves. While forward interest rate swaps should be accounted for in the same manner as 'plain vanilla' interest rate swaps, foreign exchange futures and equity futures should be accounted for in the same manner as interest rate futures,

HAS DECIDED AS FOLLOWS:

Article 1

Amendments

Decision ECB/2006/17 is amended as follows:

1. Article 8 is amended as follows:

(a) Paragraph 2 is replaced by the following:

'2. The revaluation of gold, foreign currency instruments, securities other than those classified as held-to-maturity and non-marketable securities, as well as financial instruments, both on-balance-sheet and off-balance-sheet, shall be performed at the year-end at mid-market rates and prices.'

(b) The following paragraph 4 is added:

'4. Securities classified as held-to-maturity and non-marketable securities shall be valued at amortised costs and shall be subject to impairment.'

[1] OJ L 348, 11.12.2006, p. 38.

2. Article 10 is replaced by the following:

'*Article 10*

Marketable equity instruments

Marketable equity instruments shall be accounted for in accordance with Article 9 of Guideline ECB/2006/16.'

3. Article 16 is replaced by the following:

'*Article 16*

Future contracts

Future contracts shall be accounted for in accordance with Article 16 of Guideline ECB/2006/16.'

4. In Article 17 the following sentence is added:

'In the case of forward interest rate swaps the amortisation shall begin from the value date of the transaction.'

5. Annexes I and III to Decision ECB/2006/17 are amended in accordance with the Annex to this Decision.

Article 2

Final provision

This Decision shall enter into force on 31 December 2008.

Done at Frankfurt am Main, 11 December 2008.

The President of the ECB

Jean-Claude TRICHET

ANNEX

Annexes I and III to Decision ECB/2006/17 are amended as follows:

1. The table entitled 'Assets' in Annex I is replaced by the following:

'ASSETS

Balance sheet item	Categorisation of contents of balance sheet items	Valuation principle
	Assets	
1 **Gold and gold receivables**	Physical gold, i.e. bars, coins, plates, nuggets, in storage or "under way". Non-physical gold, such as balances in gold sight accounts (unallocated accounts), term deposits and claims to receive gold arising from the following transactions: (i) upgrading or downgrading transactions; and (ii) gold location or purity swaps where there is a difference of more than one business day between release and receipt	Market value
2 **Claim on non-euro area residents denominated in foreign currency**	Claims on counterparties resident outside the euro area including international and supranational institutions and central banks outside the euro area denominated in foreign currency	
2.1 **Receivables from the International Monetary Fund (IMF)**	(a) *Drawing rights within the reserve tranche (net)* National quota minus balances in euro at the disposal of the IMF. The No 2 account of the IMF (euro account for administrative expenses) may be included in this item or under the item "Liabilities to non-euro area residents denominated in euro" (b) *Special drawing rights* Holdings of special drawing rights (gross) (c) *Other claims* General arrangements to borrow, loans under special borrowing arrangements, deposits within the framework of the Poverty Reduction and Growth Facility	(a) *Drawing rights within the reserve tranche (net)* Nominal value, translation at the foreign exchange market rate (b) *Special drawing rights* Nominal value, translation at the foreign exchange market rate (c) *Other claims* Nominal value, translation at the foreign exchange market rate
2.2 **Balances with banks and security investments, external loans and other external assets**	(a) *Balances with banks outside the euro area other than those under asset item "Other financial assets"* Current accounts, fixed-term deposits, day-to-day money, reverse repo transactions	(a) *Balances with banks outside the euro area* Nominal value, translation at the foreign exchange market rate

Balance sheet item	Categorisation of contents of balance sheet items	Valuation principle
	(b) *Security investments outside the euro area other than those under asset item "Other financial assets"* Notes and bonds, bills, zero bonds, money market paper, equity instruments held as part of the foreign reserves, all issued by non-euro area residents	(b)(i) *Marketable securities other than held-to-maturity* Market price and foreign exchange market rate Any premiums or discounts are amortised
		(b)(ii) *Marketable securities classified as held-to-maturity* Cost subject to impairment and foreign exchange market rate Any premiums or discounts are amortised
		(b)(iii) *Non-marketable securities* Cost subject to impairment and foreign exchange market rate Any premiums or discounts are amortised
		(b)(iv) *Marketable equity instruments* Market price and foreign exchange market rate
	(c) *External loans (deposits) to non-euro area residents other than those under asset item "Other financial assets"*	(c) *External loans* Deposits at nominal value, translated at the foreign exchange market rate
	(d) *Other external assets* Non-euro area banknotes and coins	(d) *Other external assets* Nominal value, translation at the foreign exchange market rate
3 **Claims on euro area residents denominated in foreign currency**	(a) *Security investments inside the euro area other than those under asset item "Other financial assets"* Notes and bonds, bills, zero bonds, money market paper, equity instruments held as part of the foreign reserves, all issued by euro area residents	(a)(i) *Marketable securities other than held-to-maturity* Market price and foreign exchange market rate Any premiums or discounts are amortised
		(a)(ii) *Marketable securities classified as held-to-maturity* Cost subject to impairment and foreign exchange market rate Any premiums or discounts are amortised
		(a)(iii) *Non-marketable securities* Cost subject to impairment and foreign exchange market rate Any premiums or discounts are amortised

Balance sheet item	Categorisation of contents of balance sheet items	Valuation principle
		(a)(iv) *Marketable equity instruments* Market price and foreign exchange market rate
	(b) *Other claims on euro area residents other than those under asset item "Other financial assets"* Loans, deposits, reverse repo transactions, sundry lending	(b) *Other claims* Deposits and other lending at nominal value, translated at the foreign exchange market rate
4 **Claims on non-euro area residents denominated in euro**		
4.1 **Balances with banks, security investments and loans**	(a) *Balances with banks outside the euro area other than those under asset item "Other financial assets"* Current accounts, fixed-term deposits, day-to-day money, reverse repo transactions in connection with the management of securities denominated in euro	(a) *Balances with banks outside the euro area* Nominal value
	(b) *Security investments outside the euro area other than those under asset item "Other financial assets"* Equity instruments, notes and bonds, bills, zero bonds, money market paper, all issued by non-euro area residents	(b)(i) *Marketable securities other than held-to-maturity Market price* Any premiums or discounts are amortised (b)(ii) *Marketable securities classified as held-to-maturity* Cost subject to impairment Any premiums or discounts are amortised (b)(iii) *Non-marketable securities* Cost subject to impairment Any premiums or discounts are amortised (b)(iv) *Marketable equity instruments* Market price
	(c) *Loans to non-euro area residents other than those under asset item "Other financial assets"*	(c) *Loans outside the euro area* Deposits at nominal value
	(d) *Securities issued by entities outside the euro area other than those under asset item "Other financial assets"* Securities issued by supranational or international organisations, e.g. the European Investment Bank, irrespective of their geographical location	(d)(i) *Marketable securities other than held-to-maturity* Market price Premiums/discounts are amortised (d)(ii) *Marketable securities classified as held-to-maturity* Cost subject to impairment Any premiums or discounts are amortised

Balance sheet item	Categorisation of contents of balance sheet items	Valuation principle
		(d)(iii) *Non-marketable securities* Cost subject to impairment Any premiums or discounts are amortised
4.2 **Claims arising from the credit facility under ERM II**	Lending according to the ERM II conditions	Nominal value
5 **Lending to euro area credit institutions related to monetary policy operations denominated in euro**	Items 5.1 to 5.5: transactions according to the respective monetary policy instruments described in Annex I to Guideline ECB/2000/7 of 31 August 2000 on monetary policy instruments and procedures of the Eurosysten [1]	
5.1 **Main refinancing operations**	Regular liquidity-providing reverse transactions with a weekly frequency and normally a maturity of one week	Nominal value or repo cost
5.2 **Longer-term refinancing operations**	Regular liquidity-providing reverse transactions with a monthly frequency and normally a maturity of three months	Nominal value or repo cost
5.3 **Fine-tuning reverse operations**	Reverse transactions, executed as ad hoc transactions for fine-tuning purposes	Nominal value or repo cost
5.4 **Structural reverse operations**	Reverse transactions adjusting the structural position of the Eurosystem vis-à-vis the financial sector	Nominal value or repo cost
5.5 **Marginal lending facility**	Overnight liquidity facility at a pre-specified interest rate against eligible assets (standing facility)	Nominal value or repo cost
5.6 **Credits related to margin calls**	Additional credit to credit institutions, arising from value increases of underlying assets regarding other credit to these credit institutions	Nominal value or cost
6 **Other claims on euro area credit institutions denominated in euro**	Current accounts, fixed-term deposits, day-to-day money, reverse repo transactions in connection with the management of security portfolios under the asset item "Securities of euro area residents denominated in euro", including transactions resulting from the transformation of former foreign currency reserves of the euro area, and other claims. Correspondent accounts with non-domestic euro area credit institutions. Other claims and operations unrelated to monetary policy operations of the Eurosystem	Nominal value or cost

Balance sheet item	Categorisation of contents of balance sheet items	Valuation principle
7 **Securities of euro area residents denominated in euro**	Securities other than those under asset item "Other financial assets": Equity instruments, notes and bonds, bills, zero bonds, money market paper held outright including government securities stemming from before EMU denominated in euro; ECB debt certificates purchased for fine-tuning purposes	(i) *Marketable securities other than held-to-maturity* Market price Any premiums or discounts are amortised (ii) *Marketable securities classified as held-to-maturity* Cost subject to impairment Any premiums or discounts are amortised (iii) *Non-marketable securities* Cost subject to impairment Any premiums or discounts are amortised (iv) *Marketable equity instruments* Market price
8 **General government debt denominated in euro**	Claims on government stemming from before EMU (non-marketable securities, loans)	Deposits/loans at nominal value, non-marketable securities at cost
9 **Intra-Eurosystem claims**		
9.1 **Claims related to promissory notes backing the issuance of ECB debt certificates**	Only an ECB balance sheet item Promissory notes issued by NCBs, due to the back-to-back agreement in connection with ECB debt certificates	Nominal value
9.2 **Claims related to the allocation of euro banknotes within the Eurosystem**	Claims related to the ECB's banknote issue, according to Decision ECB/2001/15 of 6 December 2001 on the issue of euro banknotes [2]	Nominal value
9.3 **Other claims within the Eurosystem (net)**	Net position of the following sub-items: (a) net claims arising from balances of TARGET2 accounts and correspondent accounts of NCBs, i.e. the net figure of claims and liabilities — see also liability item "Other liabilities within the Eurosystem (net)" (b) other intra-Eurosystem claims that may arise, including the interim distribution of ECB seigniorage income to NCBs	(a) Nominal value (b) Nominal value
10 **Items in course of settlement**	Settlement account balances (claims), including the float of cheques in collection	Nominal value

Balance sheet item	Categorisation of contents of balance sheet items	Valuation principle
11 **Other assets**		
11.1 **Coins of euro area**	Euro coins	Nominal value
11.2 **Tangible and intangible fixed assets**	Land and buildings, furniture and equipment including computer equipment, software	Cost less depreciation Depreciation is the systematic allocation of the depreciable amount of an asset over its useful life. The useful life is the period over which a fixed asset is expected to be available for use by the entity. Useful lives of individual material fixed assets may be reviewed on a systematic basis, if expectations differ from previous estimates. Major assets may comprise components with different useful lives. The lives of such components should be assessed individually The cost of intangible assets includes the price for the acquisition of the intangible asset. Other direct or indirect costs are to be expensed Capitalisation of expenditure: limit based (below EUR 10 000 excluding VAT: no capitalisation)
11.3 **Other financial assets**	— Participating interests and investments in subsidiaries, equities held for strategic/policy reasons — Securities including equities, and other financial instruments and balances including fixed-term deposits and current accounts held as an earmarked portfolio — Reverse repo transactions with credit institutions in connection with the management of securities portfolios under this item	(a) *Marketable equity instruments* Market price (b) *Participating interests and illiquid equity shares, and any other equity instruments held as permanent investments* Cost subject to impairment (c) *Investment in subsidiaries or significant interests* Net asset value (d) *Marketable securities other than held-to-maturity* Market price Premiums/discounts are amortised (e) *Marketable securities classified as held-to-maturity or held as a permanent investment* Cost subject to impairment Any premiums or discounts are amortised (f) *Non-marketable securities* Cost subject to impairment (g) *Balances with banks and loans* Nominal value, translated at the foreign exchange market rate if the balances/deposits are denominated in foreign currencies

Balance sheet item	Categorisation of contents of balance sheet items	Valuation principle
11.4 **Off-balance-sheet instruments revaluation differences**	Valuation results of foreign exchange forwards, foreign exchange swaps, interest rate swaps, forward rate agreements, forward transactions in securities, foreign exchange spot transactions from trade date to settlement date	Net position between forward and spot, at the foreign exchange market rate
11.5 **Accruals and prepaid expenditure**	Income not due in, but assignable to the reported period. Prepaid expenditure and accrued interest paid (i.e. accrued interest purchased with a security)	Nominal value, foreign exchange translated at market rate
11.6 **Sundry**	(a) Advances, loans and other minor items. Loans on a trust basis	(a) Nominal value or cost
	(b) Investments related to customer gold deposits	(b) Market value
	(c) Net pension assets	(c) As per Article 22(3)
12 **Loss for the year**		Nominal value

([1]) OJ L 310, 11.12.2000, p. 1.
([2]) OJ L 337, 20.12.2001, p. 52.'

2. In Annex III, the words 'Transfer to/from provisions for foreign exchange rate and price risks' in the first column of the table under subheading 2.3 are replaced by the words 'Transfer to/from provisions for foreign exchange rate, interest rate and gold price risks'.

GUIDELINES

EUROPEAN CENTRAL BANK

GUIDELINE OF THE EUROPEAN CENTRAL BANK

of 23 October 2008

amending Guideline ECB/2000/7 on monetary policy instruments and procedures of the Eurosystem

(ECB/2008/13)

(2009/99/EC)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Treaty establishing the European Community and in particular to the first indent of Article 105(2),

Having regard to the Statute of the European System of Central Banks and of the European Central Bank and in particular Article 12.1 and Article 14.3 in conjunction with the first indent of Article 3.1, Article 18.2 and the first paragraph of Article 20,

Whereas:

(1) Achieving a single monetary policy entails defining the instruments and procedures to be used by the Eurosystem, consisting of the national central banks (NCBs) of Member States that have adopted the euro (hereinafter the participating Member States) and the European Central Bank (ECB), in order to implement such a policy in a uniform manner throughout the participating Member States.

(2) The ECB has the authority to establish the necessary guidelines to implement the Eurosystem's single monetary policy and the NCBs have an obligation to act in accordance with such guidelines.

(3) Current market events require certain changes to the definition and implementation of the Eurosystem's monetary policy. Appropriate amendments should therefore be made to Guideline ECB/2000/7 of 31 August 2000 on monetary policy instruments and procedures of the Eurosystem [1], in particular to reflect the following: (i) changes to the risk control framework and to the rules on collateral eligibility for Eurosystem credit operations; (ii) the acceptance of non-euro denominated collateral in certain contingencies; (iii) the need for provisions on the treatment of entities subject to the freezing of funds and/or other measures imposed by the European Community or by a Member State under Article 60(2) of the Treaty; and (iv) harmonisation with new provisions of Regulation (EC) No 1745/2003 of the European Central Bank of 12 September 2003 on the application of minimum reserves (ECB/2003/9) [2],

HAS ADOPTED THIS GUIDELINE:

Article 1

Amendments to Annexes I and II

Guideline ECB/2000/7 is amended as follows:

1. Annex I is amended in accordance with Annex I to this Guideline;

2. Annex II is amended in accordance with Annex II to this Guideline.

Article 2

Verification

The NCBs shall forward details of the texts and means by which they intend to comply with this Guideline to the ECB by 30 November 2008 at the latest.

[1] OJ L 310, 11.12.2000, p. 1.
[2] OJ L 250, 2.10.2003, p. 10.

Article 3

Entry into force

This Guideline shall enter into force on 1 November 2008. Article 1 shall apply from 1 February 2009.

Article 4

Addressees

This Guideline is addressed to the NCBs of participating Member States.

Done at Frankfurt am Main, 23 October 2008.

For the Governing Council of the ECB
The President of the ECB
Jean-Claude TRICHET

ANNEX I

Annex I to Guideline ECB/2000/7 is amended as follows:

1. in the table of contents the title of Section 6.7 'Acceptance of non-euro-denominated collateral in contingencies' is inserted;

2. Section 1.3.1 is amended as follows:

   (a) in the first paragraph the fourth sentence of footnote 5 is replaced by the following:

   '*Quick tenders* are normally executed within a time frame of 90 minutes.';

   (b) the final sentence of the first indent of the first paragraph is replaced by the following:

   'The main refinancing operations play a pivotal role in pursuing the objectives of the Eurosystem's open market operations.';

3. in Section 2.2 the first two sentences of the fourth paragraph are replaced by the following:

   'In quick tenders and bilateral operations, the national central banks deal with the counterparties which are included in their respective set of fine-tuning counterparties. Quick tenders and bilateral operations may also be executed with a broader range of counterparties.';

4. the title of Section 2.4 is replaced by the following:

   '2.4. **Suspension or exclusion on grounds of prudence or events of default';**

5. in Section 3.1.2 the final sentence of the first paragraph is deleted;

6. in Section 3.1.3 the second sentence of the first paragraph is deleted;

7. Section 4.1 is amended as follows:

   (a) under the heading 'Access conditions' the first paragraph is replaced by the following:

   'Institutions fulfilling the general counterparty eligibility criteria specified in Section 2.1 may access the marginal lending facility. Access to the marginal lending facility is granted through the NCB in the Member State in which the institution is established. Access to the marginal lending facility is granted only on days when TARGET2 (*) is operational (**). On days when the SSSs are not operational, access to the marginal lending facilities is granted on the basis of underlying assets which have already been pre-deposited with the NCBs.

(*) From 19 November 2007, the decentralised technical infrastructure of TARGET has been replaced by the single shared platform of TARGET2 through which all payment orders are submitted and processed and through which payments are received in the same technical manner. Migration to TARGET2 has been arranged in three country groups, allowing TARGET users to migrate to TARGET2 in different waves and on different pre-defined dates. The composition of the country groups was the following: Group 1 (19 November 2007): Austria, Cyprus, Germany, Luxembourg, Malta and Slovenia; Group 2 (18 February 2008): Belgium, Finland, France, Ireland, Netherlands, Portugal and Spain; and Group 3 (19 May 2008): Greece, Italy, and the ECB. A fourth migration date (15 September 2008) was held in reserve as a contingency measure. Certain non-participating NCBs are also connected to TARGET2 on the basis of a separate agreement: Latvia and Lithuania (in Group 1), as well as Denmark, Estonia and Poland (in Group 3).

(**) In addition, access to the marginal lending facility is only granted when the requirements of the payment system infrastructure in the RTGS have been fulfilled.';

(b) under the heading 'Access conditions' in the third paragraph footnote 4 is replaced by the following:

'([4]) TARGET2 closing days are announced on the ECB's website (www.ecb.europa.eu), and on the Eurosystem websites (see Appendix 5).';

(c) under the heading 'Access conditions' in the third paragraph footnote 5 is deleted;

8. in Section 4.2, under the heading 'Access conditions' in the second paragraph footnote 12 is deleted;

9. in Section 5.1.3 the final sentence of the second paragraph is replaced by the following:

'In a quick tender which is not announced publicly in advance the selected counterparties are contacted directly by the NCBs. In a quick tender, which is announced publicly, the NCB may contact the selected counterparties directly.';

10. in Section 5.3.3 in the first paragraph footnote 12 is deleted;

11. Section 6.2 the second paragraph is replaced by the following:

'The Eurosystem shall only provide counterparties with advice regarding eligibility as Eurosystem collateral if already issued marketable assets or outstanding non-marketable assets are submitted to the Eurosystem as collateral. There shall thus be no pre-issuance advice.';

12. Section 6.2.1, under the heading 'Type of asset', is amended as follows:

(a) the following footnote 5 is inserted in point (a) of the first paragraph after the words 'unconditional principal amount':

'([5]) Bonds with warrants or other similar rights attached are not eligible.';

(b) the fourth paragraph is replaced by the following:

'The cash flow-generating assets backing the asset-backed securities must fulfil the following requirements:

(a) the acquisition of such assets must be governed by the law of an EU Member State;

(b) they must be acquired from the originator or an intermediary by the securitisation special-purpose vehicle in a manner which the Eurosystem considers to be a "true sale" that is enforceable against any third party, and be beyond the reach of the originator and its creditors, including in the event of the originator's insolvency; and

(c) they must not consist, in whole or in part, actually or potentially, of credit-linked notes or similar claims resulting from the transfer of credit risk by means of credit derivatives.';

(c) the fifth paragraph is replaced by the following:

'Within a structured issue, in order to be eligible, a tranche (or sub-tranche) may not be subordinated to other tranches of the same issue. A tranche (or sub-tranche) is considered to be non-subordinated vis-à-vis other tranches (or sub-tranches) of the same issue if, in accordance with the priority of payment applicable after the delivery of an enforcement notice, as set out in the offering circular, no other tranche (or sub-tranche) is given priority over that tranche (or sub-tranche) in respect of receiving payment (principal and interest), and thereby such tranche (or sub-tranche) is last in incurring losses among the different tranches or sub-tranches of a structured issue.';

13. in Section 6.2.1, under the heading 'Place of issue' the first sentence of footnote 7 is replaced by the following:

'Since 1 January 2007, international debt securities in global bearer form issued through the ICSDs Euroclear Bank (Belgium) and Clearstream Banking Luxembourg must, in order to be eligible, be issued in the form of New Global Notes (NGNs) and must be deposited with a Common Safekeeper (CSK) which is an ICSD or, if applicable, a CSD that fulfils the minimum standards established by the ECB.';

14. Section 6.2.2, under the heading 'Credit claims' is amended as follows:

(a) in the first paragraph of the first indent of the first paragraph the final sentence is replaced by the following:

'Credit claims may not afford rights to the principal and/or the interest that are subordinated to the rights of holders of other credit claims (or other tranches or sub-tranches in the same syndicated loan) or debt instruments of the same issuer.';

(b) in the second paragraph of the first indent of the first paragraph the following sentence is inserted after the second sentence:

'Furthermore, credit claims with interest rate linked to the inflation rate are also eligible.';

(c) In the fifth indent of the first paragraph footnote 20 is deleted;

15. Section 6.2.3, under the heading 'Rules for the use of eligible assets' is amended as follows:

(a) points (i) to (iii) of the third paragraph are replaced by the following:

'(i) the counterparty owns directly, or indirectly, through one or more other undertakings, 20 % or more of the capital of the issuer/debtor/guarantor; or

(ii) the issuer/debtor/guarantor owns directly, or indirectly through one or more other undertakings, 20 % or more of the capital of the counterparty; or

(iii) a third party owns more than 20 % of the capital of the counterparty and more than 20 % of the capital of the issuer/debtor/guarantor, either directly or indirectly, through one or more undertakings.';

(b) the fourth and fifth paragraphs are replaced by the following:

'The above provision on close links does not apply to: (a) close links between the counterparty and the public authorities of EEA countries or in the case where a debt instrument is guaranteed by a public sector entity which has the right to levy taxes; (b) covered bank bonds issued in accordance with the criteria set out in Article 22(4) of the UCITS Directive; or (c) cases in which debt instruments are protected by specific legal safeguards comparable to those instruments given under (b) such as in the case of non-marketable retail mortgage-backed debt instruments (RMBDs) which are not securities.

Moreover, a counterparty may not submit as collateral any asset-backed security if the counterparty (or any third party with which it has close links) provides a currency hedge to the asset-backed security by entering into a currency hedge transaction with the issuer as a hedge counterparty or provides liquidity support for 20 % or more of the outstanding amount of the asset-backed security.';

(c) Table 4 entitled 'Eligible assets for Eurosystem monetary policy operations' is updated as follows:

— footnote 4 is deleted,

— in the column on eligibility criteria the words 'Governing laws related to credit claims' are replaced by 'Governing laws',

— in the 10th row of the column on marketable assets the words 'Not applicable' are replaced by 'For asset-backed securities the acquisition of the underlying assets must be governed by the law of an EU Member State.';

16. Section 6.3.1 is amended as follows:

(a) the following is inserted as the fourth paragraph:

'With regard to the ECAI source, the assessment must be based on a public rating. The Eurosystem reserves the right to request any clarification that it considers necessary. For asset-backed securities, ratings must be explained in a publicly available credit rating report, being a detailed pre-sale or new issue report, including, *inter alia*, a comprehensive analysis of structural and legal aspects, a detailed collateral pool assessment, an analysis of the transaction participants as well as an analysis of any other relevant particularities of a transaction. Moreover ECAIs must publish regular surveillance reports for asset-backed securities at least on a quarterly basis (*). These reports should at least contain an update of the key transaction data (e.g. composition of the collateral pool, transaction participants, capital structure), as well as performance data.

(*) For asset backed securities whose underlying assets pay principal or interest at semi-annual or annual frequency, surveillance reports can follow a semi-annual or annual frequency respectively.';

(b) in the fifth paragraph footnote 26 is replaced by the following:

' "Single A" means a minimum long-term rating of "A-" by Fitch or Standard & Poor's, or "A3" by Moody's, or "AL" by DBRS.';

(c) the sixth and seventh paragraphs are replaced by the following:

'The Eurosystem reserves the right to determine whether an issue, issuer, debtor or guarantor fulfils its requirements for high credit standards on the basis of any information it may consider relevant and may reject, limit the use of assets or apply supplementary haircuts on such grounds if required to ensure adequate risk protection of the Eurosystem in line with Article 18.1 of the Statute of the ESCB. Such measures can also be applied to specific counterparties, in particular if the credit quality of the counterparty appears to exhibit a high correlation with the credit quality of the collateral assets submitted by the counterparty. In case such a rejection is based on prudential information, the use of any such information transmitted either by counterparties or by supervisors shall be strictly commensurate with, and necessary for, the performance of the Eurosystem's tasks of conducting monetary policy.

Assets issued or guaranteed by entities subject to the freezing of funds and/or other measures imposed by the European Community or by a Member State under Article 60(2) of the Treaty restricting the use of their funds or in respect of which the ECB's Governing Council issued a decision suspending or excluding their access to open market operations or the Eurosystem's standing facilities may be excluded from the list of eligible assets.';

17. in Section 6.3.4, under the heading 'External credit assessment institution source' the first sentence of the second indent of the first paragraph is replaced by the following:

'ECAIs must fulfil operational criteria and provide relevant coverage so as to ensure the efficient implementation of the ECAF.';

18. Section 6.4.1 is amended as follows:

(a) the final sentence of the second paragraph is replaced by the following:

'The risk control measures are broadly harmonised across the euro area (*) and ought to ensure consistent, transparent and non-discriminatory conditions for any type of eligible asset across the euro area.

(*) Owing to operational differences across Member States, some differences in terms of risk control measures may prevail. For instance, in respect of the procedures for counterparties' delivery of underlying assets to the NCBs (in the form of a pool of collateral pledged with the NCB or as repurchase agreements based on individual assets specified for each transaction), minor differences may occur with regard to the timing of the valuation and other operational features of the risk control framework. Furthermore, in the case of non-marketable assets, the precision of valuation techniques may differ, which is reflected in the overall level of haircuts (see Section 6.4.3).';

(b) the following paragraph is added:

'The Eurosystem reserves the right to apply additional risk control measures if required to ensure adequate risk protection of the Eurosystem in line with Article 18.1 of the Statute of the ESCB. Such risk control measures, which shall be applied in a consistent, transparent and non-discriminatory manner, can also be applied at the level of individual counterparties if required to ensure such protection.';

(c) box 7 entitled 'Risk control measures' is replaced by the following:

'BOX 7

Risk control measures

The Eurosystem applies the following risk control measures:

— *Valuation haircuts*

The Eurosystem applies "valuation haircuts" in the valuation of underlying assets. This implies that the value of the underlying asset is calculated as the market value of the asset less a certain percentage (haircut).

— *Variation margins (marking to market)*

The Eurosystem requires the haircut-adjusted market value of the underlying assets used in its liquidity-providing reverse transactions to be maintained over time. This implies that if the value, measured on a regular basis, of the underlying assets falls below a certain level, the NCB will require the counterparty to supply additional assets or cash (i.e. it will make a margin call). Similarly, if the value of the underlying assets, following their revaluation, exceeds a certain level, the counterparty may retrieve the excess assets or cash. (The calculations relevant for the execution of margin calls are presented in box 8).

The following risk control measures may also be applied by the Eurosystem at any time if required to ensure adequate risk protection of the Eurosystem in line with Article 18.1 of the Statute of the ESCB:

— *Initial margins*

The Eurosystem may apply initial margins in its liquidity-providing reverse transactions. This would imply that counterparties would need to provide underlying assets with a value at least equal to the liquidity provided by the Eurosystem plus the value of the initial margin.

— *Limits in relation to issuers/debtors or guarantors*

The Eurosystem may apply limits to the exposure vis-à-vis issuers/debtors or guarantors. Such limits can also be applied to specific counterparties, in particular if the credit quality of the counterparty appears to exhibit a high correlation with the credit quality of the collateral submitted by the counterparty.

— *Additional guarantees*

The Eurosystem may require additional guarantees from financially sound entities in order to accept certain assets.

— *Exclusion*

The Eurosystem may exclude certain assets from use in its monetary policy operations. Such exclusion can also be applied to specific counterparties, in particular if the credit quality of the counterparty appears to exhibit a high correlation with the credit quality of the collateral submitted by the counterparty.

Assets issued or guaranteed by entities subject to the freezing of funds and/or other measures imposed by the European Community or by a Member State under Article 60(2) of the Treaty restricting the use of their funds or in respect of which the ECB's Governing Council issued a decision suspending or excluding their access to open market operations or the Eurosystem's standing facilities may be excluded from the list of eligible assets.';

19. Section 6.4.2 is amended as follows:

(a) the first sentence of the first indent of the first paragraph is replaced by the following:

'Eligible marketable assets are allocated to one of five liquidity categories, based on issuer classification and asset type.';

(b) the third sentence of the second indent of the first paragraph is replaced by the following:

'The haircuts applied to debt instruments included in categories I to IV differ according to the residual maturity and coupon structure of the debt instruments as described in Table 7 for eligible marketable fixed coupon and zero coupon debt instruments (*).

(*) The valuation haircut levels applied to fixed coupon debt instruments are also applicable to debt instruments, the coupon of which is linked to a change in the rating of the issuer itself or to inflation-indexed bonds.';

(c) in the first paragraph the following third and fourth indents are inserted:

'— Individual debt instruments included in category V are subject to a unique haircut of 12 % regardless of maturity or coupon structure.

— Individual debt instruments included in category V that are theoretically valued according to Section 6.5 are subject to an additional valuation haircut. This haircut is directly applied at the level of theoretical valuation of the individual debt instrument in the form of a valuation markdown of 5 %.';

(d) Table 6 is replaced by the following:

'TABLE 6

Liquidity categories for marketable assets (*)

Category I	Category II	Category III	Category IV	Category V
Central government debt instruments	Local and regional government debt instruments	Traditional covered bank bonds	Credit institution debt instruments (unsecured)	Asset-backed securities
Debt instruments issued by central banks (1)	Jumbo covered bank bonds (2) Agency debt instruments (3) Supranational debt instruments	Debt instruments issued by corporate and other issuers (3)		

(1) Debt certificates issued by the ECB and debt instruments issued by the NCBs prior to the adoption of the euro in their respective Member State are included in liquidity category I.
(2) Only instruments with an issuing volume of at least EUR 1 billion, for which at least three market-makers provide regular bid and ask quotes, fall into the asset class of jumbo covered bank bonds.
(3) Only marketable assets issued by issuers that have been classified as agencies by the ECB are included in liquidity category II. Marketable assets issued by other agencies are included in liquidity category III.

(*) In general, the issuer classification determines the liquidity category. However, all asset-backed securities are included in category V, regardless of the classification of the issuer, and jumbo covered bank bonds are included in category II, while traditional covered bank bonds and other debt instruments issued by credit institutions are included in categories III and IV.'

(e) the third, fourth and fifth indents are replaced by the following:

'— The valuation haircuts applied to all marketable inverse floating rate debt instruments included in categories I to IV are the same and are described in Table 8.

— The haircut applied to marketable debt instruments included in categories I to IV with variable rate coupons (*) is that applied to the zero-to-one-year maturity bucket of fixed coupon instruments in the liquidity category to which the instrument is assigned.

— The risk control measures applied to a marketable debt instrument included in categories I to IV with more than one type of coupon payment solely depend on the coupon payments during the remaining life of the instrument. The valuation haircut applied to such an instrument is set equal to the highest of the haircuts applicable to debt instruments with the same residual maturity, and coupon payments of any one of the types occurring in the remaining life of the instrument are considered.

(*) A coupon payment is considered a variable rate payment if the coupon is linked to a reference interest rate and if the resetting period corresponding to this coupon is no longer than one year. Coupon payments for which the resetting period is longer than one year are treated as fixed rate payments, with the relevant maturity for the haircut being the residual maturity of the debt instrument.';

(f) Table 7 is replaced by the following:

'TABLE 7

Levels of valuation haircuts applied to eligible marketable assets

(percentages)

	Liquidity categories								
Residual	Category I		Category II		Category III		Category IV		Category V
maturity (years)	fixed coupon	zero coupon	fixed coupon	zero coupon	fixed coupon	zero coupon	fixed coupon	zero coupon	
0-1	0,5	0,5	1	1	1,5	1,5	6,5	6,5	12 (1)
1-3	1,5	1,5	2,5	2,5	3	3	8	8	
3-5	2,5	3	3,5	4	4,5	5	9,5	10	
5-7	3	3,5	4,5	5	5,5	6	10,5	11	
7-10	4	4,5	5,5	6,5	6,5	8	11,5	13	
> 10	5,5	8,5	7,5	12	9	15	14	20	

(1) Individual debt instruments included in category V that are theoretically valued according to Section 6.5 are subject to an additional valuation haircut. This haircut is directly applied at the level of theoretical valuation of the individual debt instrument in the form of a valuation markdown of 5 %.';

(g) the heading of Table 8 is replaced by the following:

'Levels of valuation haircuts applied to eligible marketable inverse floating rate debt instruments included in categories I to IV';

20. in Section 6.4.3, under the heading 'Credit claims' the following footnote is inserted at the end of the first indent:

'(*) The valuation haircuts applied to credit claims with fixed rate interest payments are also applicable to credit claims the interest payments of which are linked to the inflation rate.';

21. the following Section 6.7 is inserted:

'6.7. **Acceptance of non-euro-denominated collateral in contingencies**

In certain situations the Governing Council may decide to accept as eligible collateral certain marketable debt instruments issued by one or more non-euro area G10 central governments in their domestic currency. Upon such decision the applicable criteria shall be clarified and the procedures to be applied for the selection and mobilisation of foreign collateral, including the sources and principles of valuation, the risk control measures and the settlement procedures shall also be communicated to counterparties.

Notwithstanding the provisions of section 6.2.1, such assets may be deposited/registered (issued), held and settled outside the EEA and, as stated above, may be denominated in currencies other than the euro. Any such assets used by a counterparty must be owned by the counterparty.

Counterparties that are branches of credit institutions located outside the EEA or Switzerland cannot use such assets as collateral.';

22. Section 7.2 is amended as follows:

(a) The second paragraph is replaced by the following:

'Institutions will be automatically exempt from reserve requirements from the start of the maintenance period within which their authorisation is withdrawn or surrendered, or within which a decision to submit the institution to winding-up proceedings is taken by a judicial authority or any other competent authority of a participating Member State. According to Regulation (EC) No 2531/98 and Regulation (EC) No 1745/2003 (ECB/2003/9), the ECB may also exempt institutions from their obligations under the Eurosystem's minimum reserve system on a non-discriminatory basis if they are subject to reorganisation measures or the freezing of funds and/or other measures imposed by the European Community or by a Member State under Article 60(2) of the Treaty restricting the use of their funds or in respect of which the ECB's Governing Council issued a decision suspending or excluding their access to open market operations or the Eurosystem's standing facilities, or if the purposes of the Eurosystem's minimum reserve system would not be met by imposing these obligations on those particular institutions. If its decision on any such exemption is based on the purposes of the Eurosystem's minimum reserve system, the ECB takes into account one or more of the following criteria:

— the institution is authorised to pursue special purpose functions only,

— the institution is prohibited from exercising active banking functions in competition with other credit institutions and/or,

— the institution is under a legal obligation to have all its deposits earmarked for purposes related to regional and/or international development assistance.';

(b) the second sentence of the third paragraph is replaced by the following:

'The ECB also makes public a list of any institutions exempt from their obligations under this system for reasons other than their being subject to reorganisation measures or the freezing of funds and/or other measures imposed by the European Community or by a Member State under Article 60(2) of the Treaty restricting the use of their funds or in respect of which the ECB's Governing Council issued a decision suspending or excluding their access to open market operations or the Eurosystem's standing facilities (*).

(*) The lists are available to the public on the ECB's website (www.ecb.europa.eu).';

23. Section 7.3 is amended as follows:

(a) under the heading 'Reserve base and reserve ratios' the first sentence of the fourth paragraph is replaced by the following:

'Liabilities vis-à-vis other institutions included in the list of institutions subject to the Eurosystem's minimum reserve system and liabilities vis-à-vis the ECB and the participating NCBs are not included in the reserve base.'

(b) Under the heading 'Reserve base and reserve ratios' the third and fourth sentences of the fifth paragraph are replaced by the following:

'This reserve ratio is specified in Regulation (EC) No 1745/2003 (ECB/2003/9). The ECB sets a zero reserve ratio on the following liability categories: 'deposits with an agreed maturity of over two years', 'deposits redeemable at notice of over two years', 'repos' and 'debt securities with an original maturity of over two years' (see Box 9).';

(c) box 9 entitled 'Reserve base and reserve ratios' is replaced by the following:

'BOX 9

Reserve base and reserve ratios

A. *Liabilities included in the reserve base and to which the positive reserve ratio is applied*

Deposits ([1])

— Overnight deposits

— Deposits with an agreed maturity of up to and including two years

— Deposits redeemable at notice of up to and including two years

Debt securities issued

— Debt securities with an original maturity of up to and including two years

B. *Liabilities included in the reserve base and to which a zero reserve ratio is applied*

Deposits ([1])

— Deposits with an agreed maturity of over two years

— Deposits redeemable at notice of over two years

— Repos

Debt securities issued

— Debt securities with an original maturity of over two years

C. *Liabilities excluded from the reserve base*

— Liabilities vis-à-vis other institutions subject to the Eurosystem's minimum reserve system

— Liabilities vis-à-vis the ECB and the participating NCBs

([1]) Regulation (EC) No 2181/2004 of the European Central Bank of 16 December 2004 amending Regulation (EC) No 2423/2001 (ECB/2001/13) concerning the consolidated balance sheet of the monetary financial institutions sector and Regulation (EC) No 63/2002 (ECB/2001/18) concerning statistics on interest rates applied by monetary financial institutions to deposits and loans vis-à-vis households and non financial corporations (ECB/2004/21) (OJ L 371, 18.12.2004, p. 42), explicitly requires the reporting of deposit liabilities at nominal value. Nominal value means the amount of principal that a debtor is contractually obliged to repay to a creditor. This amendment had become necessary because Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and the consolidated accounts of banks and other financial institutions (OJ L 372, 31.12.1986, p. 1) had been amended to the effect that certain financial instruments could be priced at fair value.';

24. Appendix 1 to Annex I is amended as follows:

(a) in Example 6, the first row of Table I is replaced by the following:

'Asset A	Jumbo covered bank bond	30.8.2008	Fixed rate	6 months	4 years	3,50 %'

(b) in Example 6, under the heading 'Earmarking system' the second and third sentences of point 1 of the first paragraph are replaced by the following:

'Asset A is a jumbo covered bank bond with a fixed coupon maturing on 30 August 2008. It thus has a residual maturity of four years, therefore requiring a valuation haircut of 3,5 %.'

25. Appendix 2 to Annex I is amended as follows:

(a) the following definition of 'Asset-backed securities' is inserted:

'Asset-backed securities (ABS): debt instruments that are backed by a pool of ringfenced financial assets (fixed or revolving), that convert into cash within a finite time period. In addition, rights or other assets may exist that ensure the servicing or timely distribution of proceeds to the holders of the security. Generally, asset-backed securities are issued by a specially created investment vehicle which has acquired the pool of financial assets from the originator/seller. In this regard, payments on the asset-backed securities depend primarily on the cash flows generated by the assets in the underlying pool and other rights designed to assure timely payment, such as liquidity facilities, guarantees or other features generally known as credit enhancements.';

(b) the definition of 'Correspondent central banking model' is replaced by the following:

'Correspondent central banking model (CCBM): a mechanism established by the *Eurosystem* with the aim of enabling *counterparties* to use underlying assets in a cross-border context. In the CCBM, *NCBs* act as custodians for one another. This means that each NCB has a securities account in its securities administration for each of the other NCBs and for the ECB. The CCBM is also available to counterparties of certain non-Eurosystem NCBs.';

(c) the following definition of 'Currency hedge transaction' is inserted:

'Currency hedge transaction: an agreement entered into between the issuer and a hedge counterparty, pursuant to which a portion of the currency risk arising from the receipt of cash flows in non-euro currency is mitigated by swapping the cash flows for euro currency payments to be made by the hedge counterparty, including any guarantee by the hedge counterparty of those payments.';

(d) the definition of 'End-of-day' is replaced by the following:

'End-of-day: the time of the business day following closure of *TARGET2* at which the payments processed in TARGET2 are finalised for the day.';

(e) the definition of 'Quick tender' is replaced by the following:

'Quick tender: the *tender procedure* used by the *Eurosystem* for *fine-tuning operations* when it is deemed desirable to have a rapid impact on the liquidity situation in the market. Quick tenders are normally executed within a time frame of 90 minutes and are normally restricted to a limited set of *counterparties*.';

(f) the definition of 'RTGS ((real-time gross settlement) system)' is replaced by the following:

'RTGS (real-time gross settlement) system: a settlement system in which processing and settlement take place on an order-by-order basis without netting continuously in real time. See also *TARGET2*.'

(g) the definition of 'TARGET' is replaced by the following:

'TARGET: the predecessor of the *TARGET2* system, operating in a decentralised structure linking together national RTGS systems and the ECB payment mechanism. The TARGET system has been replaced by the TARGET2 system in accordance with the migration schedule specified in Article 13 of Guideline ECB/2007/2.'

(h) the following definition of 'Valuation markdown' is inserted:

'Valuation markdown: a risk control measure applied to underlying assets used in *reverse transactions*, meaning that the central bank applies a reduction of the theoretical market value of the assets by a certain percentage before applying any *valuation haircut* (*).

(*) So, for example, for asset-backed securities in liquidity category V that are valued using a theoretical price, a valuation markdown of 5 % is applied to the theoretical price before the application of the valuation haircut of 12 %. This is equivalent to a total haircut of 16,4 %.';

26. the table in Appendix 5 is replaced by the following:

'THE EUROSYSTEM WEBSITES

Central bank	Website
European Central Bank	www.ecb.europa.eu
Nationale Bank van België/Banque Nationale de Belgique	www.nbb.be or www.bnb.be
Deutsche Bundesbank	www.bundesbank.de
Central Bank and Financial Services Authority of Ireland	www.centralbank.ie
Bank of Greece	www.bankofgreece.gr
Banco de España	www.bde.es
Banque de France	www.banque-france.fr
Banca d'Italia	www.bancaditalia.it
Central Bank of Cyprus	www.centralbank.gov.cy
Banque centrale du Luxembourg	www.bcl.lu
Central Bank of Malta	www.centralbankmalta.org
De Nederlandsche Bank	www.dnb.nl
Oesterreichische Nationalbank	www.oenb.at
Banco de Portugal	www.bportugal.pt
Banka Slovenije	www.bsi.si
Suomen Pankki	www.bof.fi'

ANNEX II

Annex II to Guideline ECB/2000/7 is amended as follows:

1. in Section I, the first paragraph of point 6(f) is replaced by the following:

'— the Counterparty's authorisation to conduct activities under either Directive 2006/48/EC or Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (*), as implemented in the relevant Member State of the Eurosystem respectively, is suspended or revoked; or

(*) OJ L 145, 30.4.2004, p. 1.';

2. in Section I, in the first paragraph of point 6 point (h) is replaced by the following:

'measures such as are referred to in Articles 30, 31, 33 and 34 of Directive 2006/48/EC are taken against the Counterparty; or';

3. in Section I, in the first paragraph of point 6 the following points (p) to (t) are inserted:

'(p) the Counterparty becomes subject to the freezing of funds and/or other measures imposed by the Community restricting the Counterparty's ability to use its funds; or

(q) the Counterparty becomes subject to the freezing of funds and/or other measures imposed by a Member State under Article 60(2) of the Treaty restricting the Counterparty's ability to use its funds; or

(r) all or a substantial part of the Counterparty's assets are subject to a freezing order, attachment, seizure or any other procedure that is intended to protect the public interest or the rights of the Counterparty's creditors; or

(s) all or a substantial part of the Counterparty's assets are assigned to another entity; or

(t) any other impending or existing event the occurrence of which may threaten the performance by the Counterparty of its obligations under the arrangement it entered into for the purpose of effecting monetary policy operations or any other rules applying to the relationship between the Counterparty and any of the central banks of the Eurosystem.';

4. in Section I, the second paragraph of point 6 is replaced by the following:

'Events (a) and (p) must be automatic; events (b), (c) and (q) may be automatic; events (d) to (o) and (r) to (t) cannot be automatic and must be discretionary (that is, perfected only upon service of a notice of default). Such notice of default may provide a "grace period" of up to a maximum of three business days to rectify the event in question. For events of default that are discretionary, the provisions as to the exercise of such discretion should provide certainty as to the effect of such exercise.';

5. in Section I, point 7 is replaced by the following:

'The relevant contractual or regulatory arrangements applied by the NCB should ensure that if an event of default occurs, the NCB is entitled to exercise the following remedies: suspension or exclusion of the Counterparty from access to open market operations; suspension or exclusion of the Counterparty from access to the Eurosystem's standing facilities; terminating all outstanding agreements and transactions; or demanding accelerated performance of claims that have not yet matured or are contingent. In addition, the NCB may be entitled to exercise the following remedies: using deposits of the Counterparty placed with the NCB to set off claims against that Counterparty; suspending the performance of obligations against the Counterparty until the claim on the Counterparty has been satisfied; claiming default interest; or claiming an indemnity for any losses sustained as a consequence of a default by the Counterparty. In addition, the relevant contractual or regulatory arrangements applied by the NCB should ensure that if an event of default occurs, such NCB shall be in a legal position to realise all assets provided as collateral without undue delay and in such a way as to entitle the NCB to realise value for the credit provided, if the Counterparty does not settle its negative balance promptly. In order to ensure the uniform implementation of the measures imposed, the ECB's Governing Council may, decide on the remedies, including suspension or exclusion from access to open market operations or the Eurosystem's standing facilities.';

6. in Section II, under the heading 'Features common to all reverse transactions' footnote 2 in point 15 is deleted.

GUIDELINE OF THE EUROPEAN CENTRAL BANK

of 11 December 2008

amending Guideline ECB/2006/16 on the legal framework for accounting and financial reporting in the European System of Central Banks

(ECB/2008/21)

(2009/100/EC)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the ESCB Statute), and in particular Articles 12.1, 14.3 and 26.4 thereof,

Having regard to the contribution of the General Council of the European Central Bank (ECB) pursuant to the second and third indents of Article 47.2 of the ESCB Statute,

Whereas:

(1) Guideline ECB/2006/16 of 10 November 2006 on the legal framework for accounting and financial reporting in the European System of Central Banks [1] needs to be amended in order to reflect policy decisions and market developments.

(2) The Eurosystem has revised its disclosure policy for securities transactions with a view to enhance further the transparency of the financial statements. As part of the revised policy, securities that previously qualified as financial fixed assets should be reclassified from the balance sheet item 'Other financial assets' to the appropriate item under the heading 'asset' depending on the origin of the issuer, the currency denomination and on whether the securities are held-to-maturity. Moreover, all financial instruments that are part of an earmarked portfolio should be included under the item 'Other financial assets'.

(3) Guideline ECB/2006/16 does not contain specific rules on the accounting of forward interest rate swaps, foreign exchange futures and equity futures. Such instruments are increasingly used in the financial markets and may be relevant to the management of the ECB's foreign reserves. While forward interest rate swaps should be accounted for in the same manner as 'plain vanilla' interest rate swaps, foreign exchange futures and equity futures should be accounted for in the same manner as interest rate futures.

(4) The current rules on equity instruments need to be amended in order to reflect the possibility to deal with marketable equities as part of the management of the ECB's foreign reserves,

HAS ADOPTED THIS GUIDELINE:

Article 1

Amendments

Guideline ECB/2006/16 is amended as follows:

1. Article 5(2) is replaced by the following:

'2. Securities transactions including equity instruments denominated in foreign currency may continue to be recorded according to the cash/settlement approach. The related accrued interest including premiums or discounts shall be recorded on a daily basis from the spot settlement date.';

2. Article 7 is amended as follows:

(a) Paragraph 2 is replaced by the following:

'2. The revaluation of gold, foreign currency instruments, securities other than securities classified as held-to-maturity and non-marketable securities as well as financial instruments, both on-balance sheet and off-balance sheet, shall be performed as at the quarterly revaluation date at mid-market rates and prices. This shall not preclude reporting entities from revaluing their portfolios on a more frequent basis for internal purposes, provided that they report items in their balance sheets only at transaction value during the quarter.';

(b) The following paragraph 5 is added:

'5. Securities classified as held-to maturity and non-marketable securities shall be valued at amortised costs and shall be subject to impairment.';

[1] OJ L 348, 11.12.2006, p. 1.

3. Article 8(5) is replaced by the following:

'5. Reverse transactions, including security lending transactions, conducted under an automated security lending programme shall only be recorded with effect on the balance sheet where collateral is provided in the form of cash placed on an account of the relevant NCB or the ECB.';

4. Article 9 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. This Article applies to marketable equity instruments, that is to say equity shares or equity funds, whether the transactions are conducted directly by a reporting entity or by its agent, with the exception of activities conducted for pension funds, participating interests, investments in subsidiaries or significant interests.';

(b) paragraph 2 is replaced by the following:

'2. Equity instruments denominated in foreign currencies and disclosed under "other assets" shall not form part of the overall currency position but shall be part of a separate currency holding. The calculation of the related foreign exchange gains and losses may be performed either on a net average cost method or an average cost method.'

(c) paragraph 3 is replaced by the following:

'3. The revaluation of equity portfolios shall be performed in accordance with Article 7(2). Revaluation shall take place on an item-by-item basis. For equity funds, the price revaluation shall be performed on a net basis, and not on an individual share-by-share basis. There shall be no netting between different equity shares or between different equity funds.';

(d) the following paragraphs 4 to 8 are added:

'4. Transactions shall be recorded in the balance sheet at transaction price.

5. Brokerage commission may be recorded either as a transaction cost to be included in the cost of the asset, or as an expense in the profit and loss account.

6. The amount of the dividend purchased shall be included in the cost of the equity instrument. At ex-dividend date, the amount of the dividend purchased may be treated as a separate item until the payment of the dividend has been received.

7. Accruals on dividends shall not be booked at end-of-period as they are already reflected in the market price of the equity instruments with the exception of equities quoted ex-dividend.

8. Rights issues shall be treated as a separate asset when issued. The acquisition cost shall be calculated based on the equity's existing average cost, on the new acquisition's strike price, and on the proportion between existing and new equities. Alternatively, the price of the right may be based on the right's value in the market, the equity's existing average cost and the equity's market price before the rights issue.';

5. Article 16 is amended as follows:

(a) The heading is replaced by the following:

'*Article 16*

Future contracts'

(b) Paragraph 1 is replaced by the following:

'1. Future contracts shall be recorded on the trade date in off-balance-sheet accounts.'

6. Article 17(3) is replaced by the following:

'3. Interest rate swaps shall be individually revalued and, if necessary, translated into euro at the currency spot rate. It is recommended that unrealised losses taken to the profit and loss account at the year-end should be amortised in subsequent years, that in the case of forward interest rate swaps the amortisation should begin from value date of the transaction and that the amortisation should be linear. Unrealised revaluation gains shall be credited to a revaluation account.'

7. Annexes II, IV and IX to Guideline ECB/2006/16 are amended in accordance with the Annex to this Guideline.

Article 2

Entry into force

This Guideline shall enter into force on 31 December 2008.

Article 3

Addressees

This Guideline applies to all Eurosystem central banks.

Done at Frankfurt am Main, 11 December 2008.

For the Governing Council of the ECB
The President of the ECB
Jean-Claude TRICHET

ANNEX

Annexes II, IV and IX to Guideline ECB/2006/16 are amended as follows:

1. Annex II is amended as follows:

   (a) the following definition is inserted:

   'Earmarked portfolio: earmarked investment held on the assets side of the balance sheet as a counterpart fund, consisting of securities, equity instruments, fixed-term deposits and current accounts, participating interests and/or investments in subsidiaries. It matches an identifiable item on the liabilities side of the balance sheet, irrespective of any legal or other constraints.';

   (b) the definition of '*financial fixed assets*' is deleted;

   (c) the following definition is inserted:

   'Held-to-maturity securities: securities with fixed or determinable payments and a fixed maturity, which the NCB intends to hold until maturity.';

2. the table entitled 'Assets' in Annex IV is replaced by the following:

'ASSETS

Balance sheet item [1]			Categorisation of contents of balance sheet items	Valuation principle	Scope of application [2]
Assets					
1	1	**Gold and gold receivables**	Physical gold, i.e. bars, coins, plates, nuggets in storage or "under way". Non-physical gold, such as balances in gold sight accounts (unallocated accounts), term deposits and claims to receive gold arising from the following transactions: (i) upgrading or downgrading transactions; and (ii) gold location or purity swaps where there is a difference of more than one business day between release and receipt	Market value	Mandatory
2	2	**Claims on non-euro area residents denominated in foreign currency**	Claims on counterparties resident outside the euro area including international and supranational institutions and central banks outside the euro area denominated in foreign currency		
2.1	2.1	**Receivables from the International Monetary Fund (IMF)**	(a) *Drawing rights within the reserve tranche (net)* National quota minus balances in euro at the disposal of the IMF. The No 2 account of the IMF (euro account for administrative expenses) may be included in this item or under the item "Liabilities to non-euro area residents denominated in euro"	(a) *Drawing rights within the reserve tranche (net)* Nominal value, translation at the foreign exchange market rate	Mandatory

Balance sheet item [1]			Categorisation of contents of balance sheet items	Valuation principle	Scope of application [2]
			(b) *Special drawing rights* Holdings of special drawing rights (gross)	(b) *Special drawing rights* Nominal value, translation at the foreign exchange market rate	Mandatory
			(c) *Other claims* General arrangements to borrow, loans under special borrowing arrangements, deposits within the framework of the Poverty Reduction and Growth Facility	(c) *Other claims* Nominal value, translation at the foreign exchange market rate	Mandatory
2.2	2.2	**Balances with banks and security investments, external loans and other external assets**	(a) *Balances with banks outside the euro area other than those under asset item "Other financial assets"* Current accounts, fixed-term deposits, day-to-day money, reverse repo transactions	(a) *Balances with banks outside the euro area* Nominal value, translation at the foreign exchange market rate	Mandatory
			(b) *Security investments outside the euro area other than those under asset item "Other financial assets"* Notes and bonds, bills, zero bonds, money market paper, equity instruments held as part of the foreign reserves, all issued by non-euro area residents	(b)(i) *Marketable securities other than held-to-maturity* Market price and foreign exchange market rate Any premiums or discounts are amortised	Mandatory
				(b)(ii) *Marketable securities classified as held-to-maturity* Cost subject to impairment and foreign exchange market rate Any premiums or discounts are amortised	Mandatory
				(b)(iii) *Non-marketable securities* Cost subject to impairment and foreign exchange market rate Any premiums or discounts are amortised	Mandatory
				(b)(iv) *Marketable equity instruments* Market price and foreign exchange market rate	Mandatory

Balance sheet item (1)			Categorisation of contents of balance sheet items	Valuation principle	Scope of application (2)
			(c) *External loans (deposits) outside the euro area other than those under asset item "Other financial assets"*	(c) *External loans* Deposits at nominal value translated at the foreign exchange market rate	Mandatory
			(d) *Other external assets* Non-euro area banknotes and coins	(d) *Other external assets* Nominal value, translation at the foreign exchange market rate	Mandatory
3	3	**Claims on euro area residents denominated in foreign currency**	(a) *Security investments inside the euro area other than those under asset item "Other financial assets"* Notes and bonds, bills, zero bonds, money market paper, equity instruments held as part of the foreign reserves, all issued by euro area residents	(a)(i) *Marketable securities other than held-to-maturity* Market price and foreign exchange market rate Any premiums or discounts are amortised	Mandatory
				(a)(ii) *Marketable securities classified as held-to-maturity* Cost subject to impairment and foreign exchange market rate Any premiums or discounts are amortised	Mandatory
				(a)(iii) *Non-marketable securities* Cost subject to impairment and foreign exchange market rate Any premiums or discounts are amortised	Mandatory
				(a)(iv) *Marketable equity instruments* Market price and foreign exchange market rate	Mandatory
			(b) *Other claims on euro area residents other than those under asset item "Other financial assets"* Loans, deposits, reverse repo transactions, sundry lending	(b) *Other claims* Deposits and other lending at nominal value, translated at the foreign exchange market rate	Mandatory
4	4	**Claims on non-euro area residents denominated in euro**			

Balance sheet item [1]			Categorisation of contents of balance sheet items	Valuation principle	Scope of application [2]
4.1	4.1	**Balances with banks, security investments and loans**	(a) *Balances with banks outside the euro area other than those under asset item "Other financial assets"* Current accounts, fixed-term deposits, day-to-day money. Reverse repo transactions in connection with the management of securities denominated in euro	(a) *Balances with banks outside the euro area* Nominal value	Mandatory
			(b) *Security investments outside the euro area other than those under asset item "Other financial assets"* Equity instruments, notes and bonds, bills, zero bonds, money market paper, all issued by non-euro area residents	(b)(i) *Marketable securities other than held-to-maturity* Market price Any premiums or discounts are amortised	Mandatory
				(b)(ii) *Marketable securities classified as held-to-maturity* Cost subject to impairment Any premiums or discounts are amortised	Mandatory
				(b)(iii) *Non-marketable securities* Cost subject to impairment Any premiums or discounts are amortised	Mandatory
				(b)(iv) *Marketable equity instruments* Market price	Mandatory
			(c) *Loans outside the euro area other than those under asset item "Other financial assets"*	(c) *Loans outside the euro area* Deposits at nominal value	Mandatory
			(d) *Securities other than those under asset item "Other financial assets", issued by entities outside the euro area* Securities issued by supra-national or international organisations e.g. the European Investment Bank, irrespective of their geographical location	(d)(i) *Marketable securities other than held-to-maturity* Market price Any premiums or discounts are amortised	Mandatory

Balance sheet item [1]			Categorisation of contents of balance sheet items	Valuation principle	Scope of application [2]
				(d)(ii) *Marketable securities classified as held-to-maturity* Cost subject to impairment Any premiums or discounts are amortised	Mandatory
				(d)(iii) *Non-marketable securities* Cost subject to impairment Any premiums or discounts are amortised	Mandatory
4.2	4.2	**Claims arising from the credit facility under ERM II**	Lending according to the ERM II conditions	Nominal value	Mandatory
5	5	**Lending to euro area credit institutions related to monetary policy operations denominated in euro**	Items 5.1 to 5.5: transactions according to the respective monetary policy instruments described in Annex I to Guideline ECB/2000/7 of 31 August 2000 on monetary policy instruments and procedures of the Eurosystem [3]		
5.1	5.1	**Main refinancing operations**	Regular liquidity-providing reverse transactions with a weekly frequency and normally a maturity of one week	Nominal value or repo cost	Mandatory
5.2	5.2	**Longer-term refinancing operations**	Regular liquidity-providing reverse transactions with a monthly frequency and normally a maturity of three months	Nominal value or repo cost	Mandatory
5.3	5.3	**Fine-tuning reverse operations**	Reverse transactions, executed as ad hoc transactions for fine-tuning purposes	Nominal value or repo cost	Mandatory
5.4	5.4	**Structural reverse operations**	Reverse transactions adjusting the structural position of the Eurosystem vis-à-vis the financial sector	Nominal value or repo cost	Mandatory
5.5	5.5	**Marginal lending facility**	Overnight liquidity facility at a pre-specified interest rate against eligible assets (standing facility)	Nominal value or repo cost	Mandatory

Balance sheet item [1]			Categorisation of contents of balance sheet items	Valuation principle	Scope of application [2]
5.6	5.6	**Credits related to margin calls**	Additional credit to credit institutions, arising from value increases of underlying assets regarding other credit to these credit institutions	Nominal value or cost	Mandatory
6	6	**Other claims on euro area credit institutions denominated in euro**	Current accounts, fixed-term deposits, day-to-day money, reverse repo transactions in connection with the management of security portfolios under the asset item "Securities of euro area residents denominated in euro", including transactions resulting from the transformation of former foreign currency reserves of the euro area and other claims. Correspondent accounts with non-domestic euro area credit institutions. Other claims and operations unrelated to monetary policy operations of the Eurosystem. Any claims stemming from monetary policy operations initiated by an NCB prior to joining the Eurosystem	Nominal value or cost	Mandatory
7	7	**Securities of euro area residents denominated in euro**	Securities other than those under asset item "Other financial assets": Equity instruments, notes and bonds, bills, zero bonds, money market paper held outright, including government securities stemming from before EMU, denominated in euro; ECB debt certificates purchased for fine-tuning purposes	(i) *Marketable securities other than held-to-maturity* Market price Any premiums or discounts are amortised	Mandatory
				(ii) *Marketable securities classified as held-to-maturity* Cost subject to impairment Any premiums or discounts are amortised	Mandatory
				(iii) *Non-marketable securities* Cost subject to impairment Any premium/ discounts are amortised	Mandatory
				(iv) *Marketable equity instruments* Market price	Mandatory

Balance sheet item [1]			Categorisation of contents of balance sheet items	Valuation principle	Scope of application [2]
8	8	**General government debt denominated in euro**	Claims on government stemming from before EMU (non-marketable securities, loans)	Deposits/loans at nominal value, non-marketable securities at cost	Mandatory
—	9	**Intra-Eurosystem claims** +)			
—	9.1	**Participating interest in ECB** +)	Only an NCB balance sheet item The ECB capital share of each NCB according to the Treaty and the respective capital key and contributions according to Article 49.2 of the Statute	Cost	Mandatory
—	9.2	**Claims equivalent to the transfer of foreign reserves** +)	Only an NCB balance sheet item Euro-denominated claims on the ECB in respect of initial and additional transfers of foreign reserves under the Treaty provisions	Nominal value	Mandatory
—	9.3	**Claims related to promissory notes backing the issuance of ECB debt certificates** +)	Only an ECB balance sheet item. Promissory notes issued by NCBs, due to the back-to-back agreement in connection with ECB debt certificates	Nominal value	Mandatory
—	9.4	**Net claims related to the allocation of euro banknotes within the Eurosystem** +) (*)	For the NCBs: net claim related to the application of the banknote allocation key i.e. including the ECB's banknote issue related intra-Eurosystem balances, the compensatory amount and its balancing accounting entry as defined by Decision ECB/2001/16 on the allocation of monetary income of the national central banks of participating Member States from the financial year 2002 For the ECB: claims related to the ECB's banknote issue, according to Decision ECB/2001/15	Nominal value	Mandatory

Balance sheet item [1]			Categorisation of contents of balance sheet items	Valuation principle	Scope of application [2]
—	9.5	**Other claims within the Eurosystem (net)** [+]	Net position of the following sub-items:		
			(a) net claims arising from balances of TARGET2 accounts and correspondent accounts of NCBs i.e. the net figure of claims and liabilities — see also liability item "Other liabilities within the Eurosystem (net)"	(a) Nominal value	Mandatory
			(b) claim due to the difference between monetary income to be pooled and redistributed. Only relevant for the period between booking of monetary income as part of the year-end procedures, and its settlement on the last working day in January each year	(b) Nominal value	Mandatory
			(c) other intra-Eurosystem claims that may arise, including the interim distribution of ECB income on euro banknotes to NCBs (*)	(c) Nominal value	Mandatory
9	10	**Items in the course of settlement**	Settlement account balances (claims), including the float of cheques in collection	Nominal value	Mandatory
9	11	**Other assets**			
9	11.1	**Coins of euro area**	Euro coins if an NCB is not the legal issuer	Nominal value	Mandatory
9	11.2	**Tangible and intangible fixed assets**	Land and buildings, furniture and equipment including computer equipment, software	Cost less depreciation Depreciation rates: — computers and related hardware/software and motor vehicles: 4 years — equipment, furniture and plant in building: 10 years — building and capitalised major refurbishment expenditure: 25 years Capitalisation of expenditure: limit based (below EUR 10 000 excluding VAT: no capitalisation)	Recommended

Balance sheet item (1)			Categorisation of contents of balance sheet items	Valuation principle	Scope of application (2)
9	11.3	**Other financial assets**	— Participating interests and investments in subsidiaries; equities held for strategic/policy reasons, — Securities, including equities, and other financial instruments and balances (e.g. fixed term deposits and current accounts), held as an earmarked portfolio, — Reverse repo transactions with credit institutions in connection with the management of securities portfolios under this item,	(a) *Marketable equity instruments* Market price	Recommended
				(b) *Participating interests and illiquid equity shares, and any other equity instruments held as permanent investments* Cost subject to impairment	Recommended
				(c) *Investment in subsidiaries or significant interests* Net asset value	Recommended
				(d) *Marketable securities other than held to maturity* Market price Any premiums or discounts are amortised	Recommended
				(e) *Marketable securities classified as held-to maturity or held as a permanent investment* Cost subject to impairment Any premiums or discounts are amortised	Recommended
				(f) *Non-marketable securities* Cost subject to impairment Any premiums or discounts are amortised	Recommended
				(g) *Balances with banks and loans* Nominal value, translated at the foreign exchange market rate if the balances or deposits are denominated in foreign currencies	Recommended

Balance sheet item (1)			Categorisation of contents of balance sheet items	Valuation principle	Scope of application (2)
9	11.4	**Off-balance sheet instruments revaluation differences**	Valuation results of foreign exchange forwards, foreign exchange swaps, interest rate swaps, forward rate agreements, forward transactions in securities, foreign exchange spot transactions from trade date to settlement date	Net position between forward and spot, at the foreign exchange market rate	Mandatory
9	11.5	**Accruals and prepaid expenditure**	Income not due in, but assignable to the reported period. Prepaid expenditure and accrued interest paid (i.e. accrued interest purchased with a security)	Nominal value, foreign exchange translated at market rate	Mandatory
9	11.6	**Sundry**	Advances, loans and other minor items. Revaluation suspense accounts (only balance sheet item during the year: unrealised losses at revaluation dates during the year, which are not covered by the respective revaluation accounts under the liability item "Revaluation accounts"). Loans on a trust basis. Investments related to customer gold deposits. Coins denominated in national euro area currency units. Current expense (net accumulated loss), loss of the previous year before coverage. Net pension assets	Nominal value or cost *Revaluation suspense accounts* Revaluation difference between average cost and market value, foreign exchange translated at market rate *Investments related to customer gold deposits* Market value	Recommended *Revaluation* suspense accounts: mandatory *Investments related to customer gold deposits:* mandatory
—	12	**Loss for the year**		Nominal value	Mandatory

(1) The numbering in the first column relates to the balance sheet formats given in Annexes V, VI and VII (weekly financial statements and consolidated annual balance sheet of the Eurosystem). The numbering in the second column relates to the balance sheet format given in Annex VIII (annual balance sheet of a central bank). The items marked with a "+)" are consolidated in the Eurosystem's weekly financial statements.

(2) The composition and valuation rules listed in this Annex are considered mandatory for the ECB's accounts and for all material assets and liabilities in NCBs accounts for Eurosystem purposes, i.e. material to the Eurosystem's operation.

(3) OJ L 310, 11.12.2000, p. 1.'

3. in Annex IX, the words 'Transfer to/from provisions for foreign exchange rate and price risks' in the first column of the table under subheading 2,3 are replaced by the words 'Transfer to/from provisions for foreign exchange rate, interest rate and gold price risks'.

GUIDELINE OF THE EUROPEAN CENTRAL BANK

of 20 January 2009

amending Guideline ECB/2000/7 on monetary policy instruments and procedures of the Eurosystem

(ECB/2009/1)

(2009/101/EC)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Treaty establishing the European Community and in particular to the first indent of Article 105(2),

Having regard to the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the ESCB Statute) and in particular Article 12.1 and Article 14.3 in conjunction with the first indent of Article 3.1, Article 18.2 and the first paragraph of Article 20,

Whereas:

(1) Achieving a single monetary policy entails defining the instruments and procedures to be used by the Eurosystem, consisting of the national central banks (NCBs) of Member States that have adopted the euro (hereinafter the participating Member States) and the European Central Bank (ECB), in order to implement such a policy in a uniform manner throughout the participating Member States.

(2) Taking into account recent developments in the markets for asset-backed securities, certain changes are necessary to the definition and implementation of the Eurosystem's single monetary policy. In particular, it is necessary to change the rating requirements relating to asset-backed securities and to exclude a certain category of asset-backed securities from use in the Eurosystem's credit operations in order to comply with the requirement of Article 18.1 of the ESCB Statute that credit operations with credit institutions and other market participants must be based on adequate collateral.

(3) One of the risk control measures that may be applied by the Eurosystem in order to ensure adequate risk protection of the Eurosystem in line with Article 18.1 of the ESCB Statute is the introduction of restrictions regarding issuers or assets used as collateral. In order to safeguard the Eurosystem against credit exposure, it is necessary to limit issuer concentration in the use of uncovered bank bonds as collateral,

HAS ADOPTED THIS GUIDELINE:

Article 1

Amendments to Annex I

Annex I to Guideline ECB/2000/7 of 31 August 2000 on monetary policy instruments and procedures of the Eurosystem [1] is amended in accordance with the Annex to this Guideline.

Article 2

Verification

The NCBs shall forward details of the texts and means by which they intend to comply with this Guideline to the ECB by 30 January 2009 at the latest.

Article 3

Entry into force

This Guideline shall enter into force on 20 January 2009. Article 1 shall apply from 1 March 2009.

Article 4

Addressees

This Guideline is addressed to the NCBs of participating Member States.

Done at Frankfurt am Main, 20 January 2009.

For the Governing Council of the ECB
The President of the ECB
Jean-Claude TRICHET

[1] OJ L 310, 11.12.2000, p. 1.

ANNEX

Annex I to Guideline ECB/2000/7 is amended as follows:

1. in Section 6.2.1 under the heading 'Type of Asset' point (c) in the fourth paragraph is replaced by the following:

'(c) they must not consist, in whole or in part, actually or potentially, of credit-linked notes or similar claims resulting from the transfer of credit risk by means of credit derivatives or tranches of other asset-backed securities (*). Asset-backed securities issued before 1 March 2009 will be exempted from the requirement of not consisting of tranches of other asset-backed securities until 1 March 2010.

(*) This requirement does not exclude asset-backed securities where the issuance structure includes two special purpose vehicles and the "true sale" requirement is met in respect of those special-purpose vehicles so that the debt instruments issued by the second special-purpose vehicle are directly or indirectly backed by the original pool of assets without tranching. Moreover, the concept of tranches of other asset-backed securities does not include covered bonds which comply with Article 22(4) of Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 375, 31.12.1985, p. 3).';

2. in the fifth paragraph of Section 6.3.1 the following sentence is inserted after the second sentence:

'For asset-backed securities issued from 1 March 2009 onwards, the Eurosystem's requirement for high credit standards is defined in terms of a "AAA" credit assessment at issuance with a minimum credit quality threshold over the life of the security set at the "single A" credit assessment level (*).

(*) "AAA" means a long-term rating of "AAA" by Fitch, Standard & Poor's or DBRS or "Aaa" by Moody's.';

3. in the first paragraph of Section 6.4.2 the following third indent is inserted:

'— The Eurosystem limits the use of uncovered bank bonds issued by an issuer or any entity with which the issuer has close links in accordance with the legal requirements set out in Section 6.2.3. Uncovered bank bonds issued by a single issuer or an entity with which the issuer has close links may only be used as collateral by a counterparty to the extent that the value assigned to such collateral by the Eurosystem after the application of haircuts does not exceed 10 % of the total value of the collateral submitted by that counterparty after the haircuts. This limitation does not apply to uncovered bank bonds that are guaranteed by a public sector entity which has the right to levy taxes, or if the value after haircuts of the uncovered bank bonds referred to above does not exceed EUR 50 million. Uncovered bank bonds submitted as collateral to the Eurosystem until 20 January 2009 are not subject to this limitation until 1 March 2010. In case of a merger between two or more issuers of uncovered bank bonds or the establishment of a close link between such issuers, these issuers are treated as one issuer group, in the context of this limitation, only one year after the date of the merger or the establishment of a close link.';

4. Box 7 in Section 6.4.1 is replaced by the following:

'BOX 7

Risk control measures

The Eurosystem applies the following risk control measures:

— *Valuation haircuts*

The Eurosystem applies "valuation haircuts" in the valuation of underlying assets. This implies that the value of the underlying asset is calculated as the market value of the asset less a certain percentage (haircut).

— *Variation margins (marking to market)*

The Eurosystem requires the haircut-adjusted market value of the underlying assets used in its liquidity-providing reverse transactions to be maintained over time. This implies that if the value, measured on a regular basis, of the underlying assets falls below a certain level, the national central bank will require the counterparty to supply additional assets or cash (i.e. it will make a margin call). Similarly, if the value of the underlying assets, following their revaluation, exceeds a certain level, the counterparty may retrieve the excess assets or cash. (The calculations relevant for the execution of margin calls are presented in Box 8.)

— *Limits in relation to the use of uncovered bank bonds*

The Eurosystem applies limits to the use of uncovered bank bonds which are described in Section 6.4.2.

The following risk control measures may also be applied by the Eurosystem at any time if required to ensure adequate protection of the Eurosystem in line with Article 18.1 of the Statute of the ESCB:

— *Initial margins*

The Eurosystem may apply initial margins in its liquidity-providing reverse transactions. This would imply that counterparties would need to provide underlying assets with a value at least equal to the liquidity provided by the Eurosystem plus the value of the initial margin.

— *Limits in relation to issuers/debtors or guarantors*

The Eurosystem may apply additional limits, other than those applied to uncovered bank bonds, to the exposure vis-à-vis issuers/debtors or guarantors. Such limits can also be applied to specific counterparties, in particular if the credit quality of the counterparty appears to exhibit a high correlation with the credit quality of the collateral submitted by the counterparty.

— *Additional guarantees*

The Eurosystem may require additional guarantees from financially sound entities in order to accept certain assets.

— *Exclusion*

The Eurosystem may exclude certain assets from use in its monetary policy operations. Such limits may also be applied to specific counterparties, in particular if the credit quality of the counterparty appears to exhibit a high correlation with the credit quality of the collateral submitted by the counterparty.'

5. The table in Appendix 5 is replaced by the following:

'THE EUROSYSTEM WEBSITES

Central bank	Website
European Central Bank	www.ecb.europa.eu
Nationale Bank van België/Banque Nationale de Belgique	www.nbb.be or www.bnb.be
Deutsche Bundesbank	www.bundesbank.de
Central Bank and Financial Services Authority of Ireland	www.centralbank.ie
Bank of Greece	www.bankofgreece.gr
Banco de España	www.bde.es
Banque de France	www.banque-france.fr
Banca d'Italia	www.bancaditalia.it
Central Bank of Cyprus	www.centralbank.gov.cy
Banque centrale du Luxembourg	www.bcl.lu
Central Bank of Malta	www.centralbankmalta.org
De Nederlandsche Bank	www.dnb.nl
Österreichische Nationalbank	www.oenb.at
Banco de Portugal	www.bportugal.pt
Národná banka Slovenska	www.nbs.sk
Banka Slovenije	www.bsi.si
Suomen Pankki	www.bof.fi'

IV

(Other acts)

EUROPEAN ECONOMIC AREA

EFTA SURVEILLANCE AUTHORITY

EFTA SURVEILLANCE AUTHORITY DECISION

No 94/06/COL

of 19 April 2006

amending for the fifty-seventh time the procedural and substantive rules in the field of State aid

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 Articles 24 and 5(2)(b) thereof and Article 1 in Part I of Protocol 3 thereof,

WHEREAS under Article 24 of the Surveillance and Court Agreement, the Authority shall give effect to the provisions of the EEA Agreement concerning State aid,

WHEREAS under Article 5(2)(b) of the Surveillance and Court Agreement, the Authority shall issue notices or guidelines on matters dealt with in the EEA Agreement, if that Agreement or the Surveillance and Court Agreement expressly so provides or if the Authority considers it necessary,

RECALLING the Procedural and Substantive Rules in the Field of State Aid [4] adopted on 19 January 1994 by the Authority [5],

WHEREAS, according to point II under the heading 'GENERAL' at the end of Annex XV to the EEA Agreement, the Authority is to adopt, after consultation with the European Commission, acts corresponding to those adopted by the European Commission,

WHEREAS the European Commission has issued a Commission Recommendation 2003/361/EC [6] on the definition of micro, small and medium-sized enterprises which replaces the previous Commission Recommendation 96/280/EC [7] on the definition of small and medium-sized enterprises,

WHEREAS the former Chapter 10 of the State Aid Guidelines which incorporated Commission Recommendation 96/280/EC was deleted by the EFTA Surveillance Authority by Decision No 198/03/COL of 5 November 2003 [8] due to the fact that the new definition of SMEs, set out in the new Commission Recommendation 2003/361/EC, had also been incorporated into the Annex of a new block exemption Regulation on aid to SMEs [9],

[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] The compilation of the notices, guidelines etc. adopted by the Authority in this respect is hereinafter referred to as the State Aid Guidelines.
[5] Initially published in OJ L 231, 3.9.1994, p. 1, and in the EEA Supplement thereto No 32 on the same date. An updated version of the State Aid Guidelines is available on the Authority's website: www.eftasurv.int
[6] OJ L 124, 20.5.2003, p. 36.
[7] OJ L 107, 30.4.1996, p. 4.
[8] OJ L 120, 12.5.2005, p. 39.
[9] Commission Regulation (EC) No 70/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises (OJ L 10, 13.1.2001, p. 33), as amended by Commission Regulation (EC) No 364/2004 (OJ L 63, 28.2.2004, p. 22). Both Regulations have been incorporated into Section 1f in Annex XV to the EEA Agreement by Joint Committee Decision No 88/2002 (OJ L 266, 3.10.2002, p. 56 and EEA Suppl. No 49, 3.10.2002, p. 42) and Joint Committee Decision No 131/2004 (OJ L 64, 10.3.2005, p. 67 and EEA Supplement No 12, 10.3.2005, p. 49).

WHEREAS the definition of SMEs serves as a general reference tool within the State Aid Guidelines, which contain several references to the definition of SMEs, the Authority considers it useful to incorporate the new definition of SMEs, set forth in the new Commission Recommendation 2003/361/EC, into the State Aid Guidelines,

WHEREAS the definition of micro, small and medium-sized enterprises in the new Commission Recommendation 2003/361/EC should therefore be taken into the State Aid Guidelines as a new Chapter 10,

WHEREAS other Chapters in the State Aid Guidelines refer to the previous definition of small and medium-sized enterprises given in the former Chapter 10 and should therefore be amended to refer to the new definition of micro, small and medium-sized enterprises,

RECALLING that the Authority has consulted the European Commission on the incorporation of Commission Recommendation 2003/361/EC into the State Aid Guidelines,

RECALLING that the Authority has consulted the EFTA States in letters to Iceland, Liechtenstein and Norway dated 7 February 2006 on the subject,

HAS ADOPTED THIS DECISION:

Article 1

The Authority's State Aid Guidelines are amended by introducing a new Chapter 10 on the definition of micro, small and medium-sized enterprises. The new Chapter 10 is enclosed and forms an integral part of this Decision. Other Chapters in the State Aid Guidelines which refer to the previous definition of small and medium-sized enterprises, set out in the former Chapter 10, are amended to refer to the new definition of micro, small and medium-sized enterprises, set out in Commission Recommendation 2003/361/EC.

The new Chapter 10 will apply as of its adoption by the Authority.

Article 2

The EFTA States shall be informed by means of a letter, including a copy of this Decision and the enclosed new Chapter 10 of the Authority's State Aid Guidelines.

Article 3

The European Commission shall be informed, in accordance with point (d) of Protocol 27 of the EEA Agreement, by means of a copy of this Decision and the enclosed new Chapter 10 of the Authority's State Aid Guidelines.

Article 4

The Decision, including its Annex, shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Union*.

Done at Brussels, 19 April 2006.

For the EFTA Surveillance Authority

Bjørn T. GRYDELAND	Kurt JAEGER
President	*College Member*

ANNEX

'10 **AID TO MICRO, SMALL AND MEDIUM-SIZED ENTERPRISES (SMEs)**

10.1 **Introduction**

(1) The previous Chapter 10 contained the incorporation of the Commission's Recommendation 96/280/EC [1] concerning the definition of small and medium-sized enterprises. Based on a number of interpretation difficulties which had emerged in the application of Commission Recommendation 96/280/EC, and following observations received from enterprises, it was required to make a number of amendments to Commission Recommendation 96/280/EC. However, for the sake of clarity, the Commission decided rather to replace Commission Recommendation 96/280/EC with a new Commission Recommendation 2003/361/EC containing a new definition of micro, small and medium-sized enterprises (hereinafter referred to as SME).

(2) The EFTA Surveillance Authority deleted the previous Chapter 10 (incorporating Commission Recommendation 96/280/EC) by Decision No 198/03/COL of 5 November 2003 [2] due to the fact that the new definition of SMEs, set out in the new Commission Recommendation 2003/361/EC, had also been incorporated into the Annex of a new block exemption Regulation on aid to SMEs [3].

(3) Nonetheless, in view of the fact that the definition of SMEs serves as a general reference tool within the State Aid Guidelines, which contains several references to the definition of SMEs, the Authority considers it useful to incorporate the new definition of SMEs, set forth in the new Commission Recommendation 2003/361/EC, into the State Aid Guidelines. The present new Chapter 10 therefore incorporates the new definition of SMEs set out in Commission Recommendation 2003/361/EC [4].

(4) It should be made clear that, in accordance with:

(i) Articles 48, 81 and 82 of the EC Treaty as interpreted by the Court of Justice of the European Communities; and

(ii) Articles 34, 53 and 54 of the EEA Agreement as interpreted by the EFTA Court and the Court of Justice of the European Communities;

an enterprise should be considered to be any entity, regardless of its legal form, engaged in economic activities, including in particular entities engaged in a craft activity and other activities on an individual or family basis, partnerships or associations regularly engaged in economic activities.

(5) The criterion of staff numbers (the staff headcount criterion) remains undoubtedly one of the most important, and must be observed as the main criterion; introducing a financial criterion is nonetheless a necessary adjunct in order to grasp the real scale and performance of an enterprise and its position compared to its competitors. However, it would not be desirable to use turnover as the sole financial criterion, in particular because enterprises in the trade and distribution sector have by their nature higher turnover figures than those in the manufacturing sector. Thus the turnover criterion should be combined with that of the balance sheet total, a criterion which reflects the overall wealth of a business, with the possibility of either of these two criteria being exceeded.

(6) The turnover ceiling refers to enterprises engaged in very different types of economic activity. In order not to restrict unduly the usefulness of applying the definition, it should be updated to take account of changes in both prices and productivity.

(7) As regards the ceiling for the balance sheet total, in the absence of any new element, it is justified to maintain the approach whereby the turnover ceilings are subjected to a coefficient based on the statistical ratio between the two variables. The statistical trend requires a greater increase to be made to the turnover ceiling. Since the trend differs according to the size-category of the enterprise, it is also appropriate to adjust the coefficient in order to reflect the economic trend as closely as possible and not to penalise microenterprises and small enterprises as opposed to medium-sized enterprises. This coefficient is very close to 1 in the case of microenterprises and small enterprises. To simplify matters, therefore, a single value must be chosen for those categories for the turnover ceiling and balance sheet total ceiling.

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[1] Commission's Recommendation 96/280/EC (OJ L 107, 30.4.1996, p. 4).
[2] College Decision No 198/03/COL of 5 November 2003 (OJ L 120, 12.5.2005, p. 39).
[3] Commission Regulation (EC) No 70/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises (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). Both Regulations have been incorporated into Section 1f in Annex XV to the EEA Agreement by Joint Committee Decision No 88/2002 (OJ L 266, 3.10.2002, p. 56 and EEA Suppl. No 49, 3.10.2002, p. 42) and Joint Committee Decision No 131/2004 (OJ L 64, 10.3.2005, p. 67 and EEA Supplement No 12, 10.3.2005, p. 49).
[4] Commission Recommendation 2003/361/EC concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).

(8) Microenterprises — a category of small enterprises particularly important for the development of entrepreneurship and job creation — should also be better defined.

(9) To gain a better understanding of the real economic position of SMEs and to remove from that category groups of enterprises whose economic power may exceed that of genuine SMEs, a distinction should be made between various types of enterprises, depending on whether they are autonomous, whether they have holdings which do not entail a controlling position (partner enterprises), or whether they are linked to other enterprises. The limit set out in the previous Commission Recommendation 96/280/EC of a 25 % holding below which an enterprise is considered autonomous, is maintained.

(10) In order to encourage the creation of enterprises, equity financing of SMEs and rural and local development, enterprises can be considered autonomous despite a holding of 25 % or more by certain categories of investors who have a positive role in business financing and creation. However, conditions for these investors have not previously been specified. The case of "business angels" (individuals or groups of individuals pursuing a regular business of investing venture capital) deserves special mention because — compared to other venture capital investors — their ability to give relevant advice to new entrepreneurs is extremely valuable. Their investment in equity capital also complements the activity of venture capital companies, as they provide smaller amounts at an earlier stage of the enterprise's life.

(11) To simplify matters, in particular for EFTA States and enterprises, use should be made when defining linked enterprises of the conditions laid down in Article 1 of Council Directive 83/349/EEC of 13 June 1983 on consolidated accounts [1], as last amended by Directive 2001/65/EC of the European Parliament and of the Council [2], in so far as these conditions are suitable for the purposes of this Chapter. To strengthen the incentives for investing in the equity funding of an SME, the presumption of absence of dominant influence on the enterprise in question was introduced, in pursuance of the criteria of Article 5(3), of Council Directive 78/660/EEC of 25 July 1978 on the annual accounts of certain types of companies [3], as last amended by Directive 2001/65/EC.

(12) Account should also be taken, in suitable cases, of relations between enterprises which pass through natural persons, with a view to ensuring that only those enterprises which really need the advantages accruing to SMEs from the different rules or measures in their favour actually benefit from them. In order to limit the examination of these situations to the strict minimum, the account taken of such relationships has been restricted to the relevant market or to adjacent markets — reference being had, where necessary, to the Authority's definition of "relevant markets" in Annex I to its Decision on the definition of the relevant market for the purpose of competition law within the EEA [4].

(13) In order to avoid arbitrary distinctions between different public bodies of an EFTA State, and given the need for legal certainty, it is considered necessary to confirm that an enterprise with 25 % or more of its capital or voting rights controlled by a public body is not an SME.

(14) In order to ease the administrative burden for enterprises, and to simplify and speed up the administrative handling of cases for which SME status is required, it is appropriate to allow enterprises to use solemn declarations to certify certain of their characteristics.

(15) It is necessary to establish in detail the composition of the staff headcount for SME definition purposes. In order to promote the development of vocational training and sandwich courses, it is desirable, when calculating staff numbers, to disregard apprentices and students with a vocational training contract. Similarly, maternity or parental leave periods should not be counted.

(16) The various types of enterprise defined according to their relationship with other enterprises correspond to objectively differing degrees of integration. It is therefore appropriate to apply distinct procedures to each of those types of enterprise when calculating the quantities representing their activities and economic power.

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[1] Council Directive 83/349/EEC of 13 June 1983 (OJ L 193, 18.7.1983, p. 1), incorporated into Section 4 of Annex XXII to the EEA Agreement.

[2] Directive 2001/65/EC of the European Parliament and of the Council (OJ L 283, 27.10.2001, p. 28), incorporated into Section 4 of Annex XXII to the EEA Agreement by Joint Committe Decision No 176/2003 of 5 December 2003 (OJ L 88, 25.3.2004, p. 53, and EEA Supplement No 15, 25.3.2004, p. 14).

[3] Council Directive 78/660/EEC of 25 July 1978 (OJ L 222, 14.8.1978, p. 11), incorporated into Section 4 of Annex XXII to the EEA Agreement.

[4] College Decision No 46/98/COL of 4 March 1998 (OJ L 200, 16.7.1998, p. 46, and EEA Supplement No 52, 18.12.1997, p. 10). This Decision corresponds to the Commission notice on the definition of the relevant market for the purpose of Community competition law (OJ C 372, 9.12.1997, p. 5).

10.2 **Definition of micro, small and medium-sized enterprises**

10.2.1 *Enterprise*

(17) An enterprise is considered to be any entity engaged in an economic activity, irrespective of its legal form. This includes, in particular, self-employed persons and family businesses engaged in craft or other activities, and partnerships or associations regularly engaged in an economic activity.

10.2.2 *Staff headcount and financial ceilings determining enterprise categories*

(18) The category of micro, small and medium-sized enterprises is made up of enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million.

(19) Within the SME category, a small enterprise is defined as an enterprise which employs fewer than 50 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 10 million.

(20) Within the SME category, a microenterprise is defined as an enterprise which employs fewer than 10 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 2 million.

10.2.3 *Types of enterprise taken into consideration in calculating staff numbers and financial amounts*

(21) An "autonomous enterprise" is any enterprise which is not classified as a partner enterprise within the meaning of paragraphs 22-23 or as a linked enterprise within the meaning of paragraphs 24-28.

(22) "Partner enterprises" are all enterprises which are not classified as linked enterprises within the meaning of paragraphs 24-28 and between which there is the following relationship: an enterprise (upstream enterprise) holds, either solely or jointly with one or more linked enterprises within the meaning of paragraphs 24-28, 25 % or more of the capital or voting rights of another enterprise (downstream enterprise).

(23) However, an enterprise may be ranked as autonomous, and thus as not having any partner enterprises, even if this 25 % threshold is reached or exceeded by the following investors, provided that those investors are not linked, within the meaning of paragraphs 24-28, either individually or jointly to the enterprise in question:

(a) public investment corporations, venture capital companies, individuals or groups of individuals with a regular venture capital investment activity who invest equity capital in unquoted businesses (business angels), provided the total investment of those business angels in the same enterprise is less than EUR 1 250 000;

(b) universities or non-profit research centres;

(c) institutional investors, including regional development funds;

(d) autonomous local authorities with an annual budget of less than EUR 10 million and fewer than 5 000 inhabitants.

(24) "Linked enterprises" are enterprises which have any of the following relationships with each other:

(a) an enterprise has a majority of the shareholders' or members' voting rights in another enterprise;

(b) an enterprise has the right to appoint or remove a majority of the members of the administrative, management or supervisory body of another enterprise;

(c) an enterprise has the right to exercise a dominant influence over another enterprise pursuant to a contract entered into with that enterprise or to a provision in its memorandum or articles of association;

(d) an enterprise, which is a shareholder in or member of another enterprise, controls alone, pursuant to an agreement with other shareholders in or members of that enterprise, a majority of shareholders' or members' voting rights in that enterprise.

(25) There is a presumption that no dominant influence exists if the investors listed in paragraph 23 are not involving themselves directly or indirectly in the management of the enterprise in question, without prejudice to their rights as stakeholders.

(26) Enterprises having any of the relationships described in paragraph 24 through one or more other enterprises, or any one of the investors mentioned in paragraph 23, are also considered to be linked.

(27) Enterprises which have one or other of such relationships through a natural person or group of natural persons acting jointly are also considered linked enterprises if they engage in their activity or in part of their activity in the same relevant market or in adjacent markets.

(28) An "adjacent market" is considered to be the market for a product or service situated directly upstream or downstream of the relevant market.

(29) Except in the cases set out in paragraph 23, an enterprise cannot be considered an SME if 25 % or more of the capital or voting rights are directly or indirectly controlled, jointly or individually, by one or more public bodies.

(30) Enterprises may make a declaration of status as an autonomous enterprise, partner enterprise or linked enterprise, including the data regarding the ceilings set out in Section 10.2.2. The declaration may be made even if the capital is spread in such a way that it is not possible to determine exactly by whom it is held, in which case the enterprise may declare in good faith that it can legitimately presume that it is not owned as to 25 % or more by one enterprise or jointly by enterprises linked to one another. Such declarations are made without prejudice to the checks and investigations provided for by national or EEA rules.

10.2.4 *Data used for the staff headcount and the financial amounts and reference period*

(31) The data to apply to the headcount of staff and the financial amounts are those relating to the latest approved accounting period and calculated on an annual basis. They are taken into account from the date of closure of the accounts. The amount selected for the turnover is calculated excluding value added tax (VAT) and other indirect taxes.

(32) Where, at the date of closure of the accounts, an enterprise finds that, on an annual basis, it has exceeded or fallen below the headcount or financial ceilings stated in Section 10.2.2, this will not result in the loss or acquisition of the status of medium-sized, small or microenterprise unless those ceilings are exceeded over two consecutive accounting periods.

(33) In the case of newly established enterprises whose accounts have not yet been approved, the data to apply is to be derived from a bona fide estimate made in the course of the financial year.

10.2.5 *Staff headcount*

(34) The headcount corresponds to the number of annual work units (AWU), i.e. the number of persons who worked full-time within the enterprise in question or on its behalf during the entire reference year under consideration. The work of persons who have not worked the full year, the work of those who have worked part-time, regardless of duration, and the work of seasonal workers are counted as fractions of AWU. The staff consists of:

(a) employees;

(b) persons working for the enterprise being subordinated to it and deemed to be employees under national law;

(c) owner-managers;

(d) partners engaging in a regular activity in the enterprise and benefiting from financial advantages from the enterprise.

(35) Apprentices or students engaged in vocational training with an apprenticeship or vocational training contract are not included as staff. The duration of maternity or parental leaves is not counted.

10.2.6 *Establishing the data of an enterprise*

(36) In the case of an autonomous enterprise, the data, including the number of staff, are determined exclusively on the basis of the accounts of that enterprise.

(37) The data, including the headcount, of an enterprise having partner enterprises or linked enterprises are determined on the basis of the accounts and other data of the enterprise or, where they exist, the consolidated accounts of the enterprise, or the consolidated accounts in which the enterprise is included through consolidation.

(38) To the data referred to in paragraph 37 are added the data of any partner enterprise of the enterprise in question situated immediately upstream or downstream from it. Aggregation is proportional to the percentage interest in the capital or voting rights (whichever is greater). In the case of cross-holdings, the greater percentage applies.

(39) To the data referred to in paragraphs 37 and 38 is added 100 % of the data of any enterprise, which is linked directly or indirectly to the enterprise in question, where the data were not already included through consolidation in the accounts.

(40) For the application of paragraphs 37-39, the data of the partner enterprises of the enterprise in question are derived from their accounts and their other data, consolidated if they exist. To these is added 100 % of the data of enterprises which are linked to these partner enterprises, unless their accounts data are already included through consolidation.

(41) For the application of the same paragraphs 37-39, the data of the enterprises which are linked to the enterprise in question are to be derived from their accounts and their other data, consolidated if they exist. To these is added, pro rata, the data of any possible partner enterprise of that linked enterprise, situated immediately upstream or downstream from it, unless it has already been included in the consolidated accounts with a percentage at least proportional to the percentage identified under paragraph 38.

(42) Where in the consolidated accounts no staff data appear for a given enterprise, staff figures are calculated by aggregating proportionally the data from its partner enterprises and by adding the data from the enterprises to which the enterprise in question is linked.

10.2.7 *Revision*

(43) On the basis of a review of the application of the definition contained in this Chapter, to be drawn up following the issuance of a draft by the European Commission in this respect, and taking account of any amendments to Article 1 of Directive 83/349/EEC on the definition of linked enterprises within the meaning of that Directive, the Authority will, if necessary, adapt the definition contained in this Chapter, and in particular the ceilings for turnover and the balance-sheet total in order to take account of experience and economic developments in the EEA.

10.3 **Adoption**

(44) The new Chapter 10 will apply as of the date of its adoption by the EFTA Surveillance Authority.'

EFTA SURVEILLANCE AUTHORITY DECISION

No 227/06/COL

of 19 July 2006

with regard to State aid in favour of Farice hf. (Iceland)

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) in Part I and Articles 4(4), 6, 7(3) and 10 in 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 17 on State guarantees and Chapter 19 on public authorities' holdings,

HAVING REGARD to the Authority's Decision No 125/05/COL to initiate the formal investigation procedure with regard to State aid in favour of Farice hf. calling on interested parties to submit their comments thereon [5],

Whereas:

I. FACTS

1. *PROCEDURE*

By letter dated 27 February 2004 of the Icelandic Mission to the European Union, forwarding a letter from the Ministry of Finance dated 26 February 2004, the Icelandic authorities notified the Authority of a state guarantee in favour of a submarine cable project in Iceland, i.e. the Farice project. The letter was received and registered on 1 March 2004 (Event No 257593).

Supplementary information was submitted by letter from the Icelandic Mission dated 14 May 2004, forwarding a letter by the Icelandic Ministry of Finance dated 13 May 2004. The letter was received and registered by the Authority on 14 May 2004 (Event No 281472).

After various exchanges of correspondence [6], the Authority informed the Icelandic authorities by letter dated 26 May 2006 that it had decided to initiate the formal investigation procedure laid down in Article 1(2) in Part I of Protocol 3 to the Surveillance and Court Agreement with regard to State aid in favour of Farice hf. (Event No 319257).

The Authority's Decision No 125/05/COL to initiate the formal investigation procedure was published in the *Official Journal of the European Union* and the EEA Supplement thereto [7]. The Authority called on interested parties to submit their comments thereon. The Authority received no comments from interested parties.

The Icelandic authorities submitted their comments to Decision No 125/05/COL by letter dated 28 June 2005 (Event No 324236).

As mentioned in the decision to open the formal investigation procedure, under separate competition proceedings, the Authority had expressed certain competition concerns by letter to Farice hf. dated 31 January 2003. The Authority had also requested information concerning the Farice project which was relevant for the assessment of the project's competitive

[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 (OJ L 231, 3.9.1994, p. 1, and EEA Supplement No 32 of 3 September 1994). The Guidelines were last amended on 29 March 2006. Hereinafter referred to as the State Aid Guidelines.
[5] Published in OJ C 277, 10.11.2005, and the EEA Supplement No 56 of 10 November 2005.
[6] For more detailed information on the various correspondence between the Authority and the Authority, reference is made to the Authority's Decision to open the formal investigation procedure, Decision No 125/05/COL, published in OJ C 277, 10.11.2005, p. 14.
[7] OJ C 277, 10.11.2005, p. 14, and EEA Supplement No 56 of 10.11.2005, p. 14.

impact. By letter dated 6 May 2004 the Authority addressed a formal request for information to Farice hf. [1]. Farice hf.'s reply was received by the Authority on 21 October 2004. The separate competition proceedings have been closed by letter of the Authority dated 2 June 2006 (Event No 1072261).

2. *DESCRIPTION OF THE MEASURES*

2.1. DESCRIPTION OF THE FARICE PROJECT

The Farice project concerns the construction and management of an undersea telecommunications cable connecting Iceland and the Faeroe Islands with Scotland.

Since 1994, Iceland and the Faeroe Islands have been internationally connected with the undersea telecommunication cable CANTAT-3. CANTAT-3 was set up as a consortium cable. Access to CANTAT-3 was secured via membership of the consortium [2], by indefeasible rights of use and by leasing capacity from the consortium member Teleglobe. CANTAT-3 has connection points in Canada, Iceland, the Faeroe Islands, Denmark, the United Kingdom and Germany. With the build-up of trans-Atlantic cable systems competing with CANTAT-3, the founders of CANTAT-3 had access to other, more economical connections. The Icelandic and the Faeroe parties, however, still had to rely on the CANTAT-3 connection. This was one consideration for these parties to take into account during the development of a new connectivity. In addition, the CANTAT-3 cable had certain technical limitations, as it is an older generation cable which has limited capacity and is not always reliable. The Icelandic authorities submitted an overview of several failures of the CANTAT-3 connection during 1995-2003. No other single international fibre network project has reached these two countries since 1994, despite a general capacity growth of international and inter-regional telecommunications routes. According to information by the Icelandic authorities, the geographically isolated location of the two countries and the limited market size prevented this.

Costs of satellite connections, which serve as a second connectivity, are expected to rise and are, in any event, not considered appropriate for transmitting delay-sensitive Internet traffic. In order to handle the increased telecommunication traffic, an alternative had to be developed.

The Farice project came about from an initiative by the (at the time) almost 100 % state owned Icelandic telecom operator Landssími Íslands hf. (hereinafter Síminn [3]) and the incumbent telecom operator in the Faeroe Islands, Føroya Tele, which were considering the development of a submarine cable linking Reykjavík, Tórshavn and Edinburgh. However, in 2002 it became clear that the Farice project seemed unable to gain momentum as a purely commercial business case [4]. A feasibility study conducted in March 2002 concluded that it would not be possible to fund the project through conventional project financing. A broad alliance behind the project was sought in order to secure its realisation. This resulted in two decisions:

Firstly, the communication authorities of Iceland and the Faeroe Islands became involved in the preparation of the project. In particular, the largest sponsors, Síminn and Føroya Tele, made it clear that they were not interested in providing the necessary loan guarantees on behalf of the whole telecom market [5]. The Icelandic State would therefore have to participate and contribute actively in the project.

Secondly, it was considered important that Og Vodafone, a major player in the Icelandic telecom market, should participate actively in the project. It was decided that besides the establishment of Farice hf., for the purpose of constructing and operating the new transmission system, a holding company *Eignarhaldsfélagið Farice* ehf. (hereinafter 'E-Farice') [6] should be established. This company, while holding all the Icelandic shares in Farice, should buy Og Vodafone's capacity in CANTAT-3. A similar offer was made to Síminn which, according to the IBM report [7] submitted by the Icelandic authorities, resulted in E-Farice handling all international connectivity for Iceland. As stated in the notification, CANTAT-3 capacity was consequently supposed to be operated and sold by E-Farice [8].

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[1] In accordance with the provisions of Protocol 21 to the EEA Agreement and Article 11 of Chapter II, Protocol 4 to the Surveillance and Court Agreement.

[2] The consortium included *inter alia* the Icelandic telecom operator Landssími Íslands hf., Teleglobe and Deutsche Telekom.

[3] The Icelandic State's stake in Síminn was sold to Skipti ehf. effective August 2005.

[4] See Summary Report, provided as annex 1 to the notification.

[5] See also the following comment by the Icelandic authorities: 'Although the designated universal service provider, and as such required to provide secure long-distance communication, Síminn felt that increasing the capacity to meet demand, as well as providing an alternative route for emergencies, was a financially risky undertaking, providing little return on investment. In order to facilitate the necessary upgrade in capacity, particularly in view of the short time frame available until capacity would be outstripped by demand, the government stepped in.'

[6] In 2003, E-Farice ehf. held 80 % of the shares in Farice hf., with the 20 % remaining shares held by Føroya Tele (19,93 %) and other Faeroe parties (together 0,6 %).

[7] The IBM report is a report submitted by the Icelandic authorities, which gives a summary on the background and current status of the Farice project. It describes the project idea, the business plan and the network structure as well as the need for a new cable.

[8] The IBM report stresses the business possibility that E-Farice's purchase of CANTAT-3 connectivity provides the possibility to ring-connect the two cable systems in such a way that Farice hf. can offer its customers secured connectivity. The report further describes negotiations of E-Farice with Teleglobe to lease additional CANTAT-3 capacity. It has been discussed whether Farice hf. or E-Farice should lease *all* available capacity to Iceland and the Faeroe Islands.

In 2002 the new limited company, Farice hf., was established with the purpose of preparing, constructing and operating a submarine communication cable system to transfer telecommunications and Internet traffic between Iceland, the Faeroe Islands and the United Kingdom. According to the information provided by the Icelandic authorities, the shareholders of this company were Síminn (47,33 %), Og Vodafone (1,33 %), the Government of Iceland (27,33 %), three other Icelandic operators which held together 3,99 %, Føroya Tele (17,33 %), and two other Faeroe telecom operators, which each held 1,33 % [1]. The new Farice cable includes an Iceland backhaul [2] (Seyðisfjörður to Reykjavík), a submarine section (Seyðisfjörður to Dunnet Bay), a Faeroese backhaul (from Funningsfjörður to Tórshavn) and a United Kingdom backhaul (Dunnet Bay to Edinburgh). No public tender was carried out to decide on the management of the cable, which was granted to Farice hf. According to the business plan, the estimated total investment costs of the Farice project were EUR 48,9 million.

A shareholders' agreement dated 12 September 2002 provided that the pricing policy of Farice should be based on the principles of cost orientation, transparency and non-discrimination.

The Icelandic authorities have further pointed out that the use of the Farice cable is open to foreign and domestic operators alike, on equal terms and prices. The shareholders' agreement is also open to new shareholders. It stipulates, however, that the existing shareholders will always be offered the possibility of maintaining their equity position in the company if the share capital is increased (Section 7 of the Shareholders Agreement).

The formal opening of the Farice submarine transmission cable was in February 2004.

2.2. DESCRIPTION OF THE ICELANDIC STATE SUPPORT

(a) ***The loan guarantee***

The object of the notification concerns the grant by the State of a guarantee for a loan of EUR 9,4 million in favour of Farice (hereinafter: the A Term Loan). This loan forms part of a broader long-term loan package for a maximum amount of EUR 34,5 million.

According to the information provided by the Icelandic authorities, in particular as can be seen from the Agreement of 27 February 2004 (hereinafter: the loan agreement) between Farice hf., Íslandsbanki hf., other financial institutions and other guarantors, the signed loans for a maximum amount of EUR 34,5 million, break down as follows:

[1] Initial capital contributions, which were later changed. The holding company E-Farice holds all the shares of the Icelandic parties in Farice hf.

[2] The term backhaul often refers to transmitting from a remote site or network to a central or main site. The original definition of backhaul was to transmit a telephone call or data beyond its normal destination point and then back again in order to utilise available personnel (operators, agents, etc.) or network equipment that is not located at the destination location. The term has evolved into a more generic meaning. It typically implies a high-capacity line.

Loan	Million EUR	Lender	Interest rate [1]	Interest periods	Repayment		Guarantor
					Number of instalments	Start of repayment	
A	9,4	The Nordic Investment Bank	Euribor + 0,18 % p.a.	6 months	8 semi-annual payments	September 2011	Government of Iceland
B	4,7	The Nordic Investment Bank	Euribor + 0,80 % p.a.	6 months	5 semi-annual payments	September 2009	Landssími Íslands hf. (Síminn)
	4,7	Íslandsbanki hf.					
C	4,7	Føroya banki	Euribor + 1,00 % p.a.	3 months	10 quarterly payments	September 2009	Telefonverkið P/F
D	11,0	Íslandsbanki hf.	Euribor + 1,50 % p.a.	1 month	48 monthly payments	September 2005	None

[1] Although in the letter accompanying the notification reference is made to Libor as the basis for establishing the rate of interest to the loan for each tranche, clause 7.1 of the loan agreement refers to Euribor. For this reason, the Authority considers the Euribor rate to be the valid reference for the determination of the rate of interest applicable to the loan for each interest period.

The State guarantee for the A Term Loan is a guarantee of collection, i.e. Farice hf. will be fully liable for payment of the loan and the creditor will need to exhaust the recourses for collection from the company before the State guarantee can take effect. Farice hf. was charged with an annual premium of 0,5 % (established by the Icelandic National Debt Management) which was paid upfront when the loan agreement and the State guarantee were issued. The upfront payment amounted to EUR 438 839, i.e. 4,7 % of the loan amount. In addition, a guarantee fee of ISK 120 000 was charged.

An earlier guarantee of collection was signed in July 2003 in relation to a bridge loan of EUR 16 million. The guarantee of collection covered EUR 6,4 million, i.e. 40 % of that loan. The bridge loan was paid up upon the release of the long-term loans of EUR 34,5 million and the guarantee of collection for the bridge loan ceased to exist the same day. Farice hf. paid a 0,50 % guarantee fee and a guarantee charge of ISK 120 000 for that guarantee.

(b) ***The Icelandic Government's increase in share capital***

At the beginning of January 2003, the state participation in Farice hf. increased from an initial share of 27,33 % to 46,5 %. Following the explanation given by the Icelandic authorities in their reply of June 2004,

'[a]s the business plan evolved, the funding needs of the company became clearer and it was decided to increase the company's share capital. All operators in Iceland and Faeroe Islands were invited to buy shares in the share capital increase. As Síminn made it clear that the company would not want to provide more than 33,33 % of the share capital, Telefonverkið would provide necessary share capital from the Faroese site (19,93 %), the Icelandic government had to provide 46,53 % of the necessary share capital as other operators in Iceland did not have the financial capacity to buy more than 1,2 % of the share capital.'

As stated by the Icelandic authorities, the total share capital of Farice hf. was increased from EUR 327 000 to more than EUR 14 million. Details on the share capital contribution of the different shareholders can be seen in the table below [1]:

[1] See letter of the Icelandic authorities dated 8 June 2004, page 7.

Share capital of Farice hf. (amounts in thousands)

	Preparation phase			Jan-03			Jun-03		
	ISK	EUR [1]	Share	ISK	EUR	Share	ISK	EUR	Share
Eignarhaldsfélagið Farice ehf.				947 944	11 242	79,90 %	947 944	11 242	79,90 %
Government of Iceland	8 200	90	27,33 %	552 067	6 547	46,53 %	491 737	5 831	41,45 %
Síminn	14 200	155	47,33 %	395 477	4 690	33,33 %	352 259	4 177	29,69 %
Og Vodafone	400	4	1,33 %	400	5	0,03 %	103 949	1 232	8,76 %
Lína.Net	400	4	1,33 %	400	5	0,03 %	400	5	0,03 %
Fjarski ehf.	400	4	1,33 %	400	5	0,03 %	400	5	0,03 %
RH-net	400	4	1,33 %	400	5	0,03 %	400	5	0,03 %
Telefonverkið	5 200	57	17,33 %	236 486	2 804	19,93 %	236 486	2 804	19,93 %
Kall	400	4	1,33 %	400	5	0,03 %	400	5	0,03 %
SPF spf.	400	4	1,33 %	400	5	0,03 %	400	5	0,03 %
Total	30 000	327	100,00 %	1 186 430	14 070	100,00 %	1 186 430	14 070	100,00 %

[1] As the Icelandic authorities did not use the same conversion rate throughout the table, the Authority has modified the table submitted by the Icelandic authorities, as far as the euro figures are concerned. It calculated the euro figures in the table according to its conversion rates published on its webpage http://www.eftasurv.int/fieldsofwork/fieldstateaid/dbaFile791.html. For the preparation phase it used the 2002 conversion rate of 91,58. For the 2003 figures, it used the 2003 conversion rate of 84,32.

3. *OPENING OF THE FORMAL INVESTIGATION PROCEDURE*

In its Decision No 125/05/COL to open the formal investigation procedure, the Authority came to the preliminary conclusion that the State guarantee and the share capital increase by the Icelandic State in Farice hf. constituted State aid within the meaning of Article 61(1) of the EEA Agreement.

The Authority had doubts whether the Icelandic State's support measures could be declared compatible with the functioning of the EEA Agreement. In its Decision to open the formal investigation procedure the Authority raised doubts as to whether the aid measures — in order to be compatible with the rules of the EEA Agreement — were proportionate to their objectives and did not distort competition to an extent contrary to the common interest. These doubts concerned in particular the question whether there would be non-discriminatory access to the network. Further, as the original idea was to channel also CANTAT-3 capacity via the E-Farice hf., there were concerns that the competition in connectivity to Iceland would be eliminated, as only one supplier would remain in the market.

4. *COMMENTS BY THE ICELANDIC AUTHORITIES*

In their comments to Decision No 125/05/COL dated 28 June 2005, the Icelandic authorities restate their opinion that there is no State aid involved in the Farice project. According to the Icelandic authorities, the loan guarantee and the increase of the Government's share capital are in line with the State aid provisions. Furthermore, the Farice project constitutes infrastructure within the meaning of the State aid rules. However, as stated in a previous letter dated 21 January 2005, the Icelandic authorities are of the opinion that any State aid would be compatible with Article 61(3)(b) and (c) of the EEA Agreement.

The Icelandic authorities justify the necessity of the measures in question based on the consideration that telecom connectivity and broadband access are a necessary step for the modernisation of the EU society and economy and are a crucial aspect of the Lisbon agenda as well as a prerequisite for the development of the e-Europe Action Plan.

Given its geographic location, Iceland is particularly dependent on having access to economic and reliable telecom connectivity. The connectivity currently in place is neither satisfactory nor reliable or acceptable for the telecom-dependent Icelandic and Faroese economies due to the technical limitations of CANTAT-3.

Under these circumstances, the participation of the State resulted from the need to make the project viable. Without the state participation the project would either have been delayed or not undertaken at all.

The Icelandic authorities are of the opinion that the advantages in terms of guaranteeing a reliable provision of telecom services in Iceland outweighs the disadvantages of a certain distortion of competition for other competitors.

Prior to the establishment of Farice, introductory meetings were held with Icelandic operators whereby only three of the 'smaller' operators agreed to buy shares in the company. In the opinion of the Icelandic authorities, considerable effort was put into the search for founding parties, setting no lower limit on share capital contributions. Therefore, the Icelandic authorities argue that there was widespread participation given the specific circumstances of the project.

The Icelandic authorities underline that Section 7 of the Shareholders Agreement contains a pre-emptive right of the founding companies of Farice hf. This right is equivalent to Article 34 of the Icelandic Act No 2/1995 on Public Limited Companies, according to which shareholders are entitled to subscribe to new shares in direct proportion to their holdings. This right is transferable and, furthermore, each shareholder can always decide not to use this pre-emptive right. Furthermore, Section 7(2) of the Shareholders Agreement, provides that the shareholders will endeavour to ensure that new parties can participate in the increase of capital, notwithstanding the pre-emptive rights.

The Shareholders Agreement provides for a non-discriminatory, transparent pricing on market terms. The pricing policy of the company shall be based on the principles of cost orientation, transparency and non-discrimination. The Icelandic authorities compare the Farice project with the situation addressed in Commission Decision N 307/2004, concerning a broadband infrastructure project in the United Kingdom to provide mass market broadband services to businesses and citizens in remote and rural Scotland. According to their information, the prices for capacity on the Farice system are probably the highest ones for similar services across the North Atlantic. This is one of the reasons why the volume sold in 2005 corresponds to less than 5 % of the currently installed capacity on Farice.

Concerning the question of open access, the Icelandic authorities stress that access to the infrastructure is open, transparent and non-discriminatory.

Finally, the Icelandic authorities consider that if it were to be established that State aid was involved, the total amount of aid is limited. In particular regarding the loan guarantee, such a limited amount cannot be considered contrary to the common interest with regard to Article 61(3)(c) of the EEA Agreement. As to the Icelandic State's share increase, the Icelandic authorities argued that 'the initial purpose for the establishment of Farice hf. in September 2002 was solely the preparation for the construction and operation of the submarine communication cable system. At this point, the financial need of the whole project had not been finally decided nor had the final shareholding […]. No company would be in the position to undertake the actual construction and operation of the cable […]. The first share increase in January 2003 was therefore not a normal "share increase" of a company but in fact similar to the establishment of a new company with a new purpose.' The fact that private operators have been holding the majority of the shares at all stages and contributing substantially to the company at the same time as the Icelandic State, shows that any eventual State aid would be very limited.

Regarding the competition concerns (see Section II.3.2 of Decision No 125/05/COL), the Icelandic authorities state that presently neither Farice hf. nor E-Farice ehf. have any plans to purchase or lease more CANTAT-3 capacity and that the discussions with Teleglobe at the time never led to any agreements. It has also been shown that due to the high prices of Farice, customers have increasingly used CANTAT-3 capacity, which is able to compete with Farice hf.

II. **APPRECIATION**

1. *THE PRESENCE OF 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. THE LOAN GUARANTEE BY THE ICELANDIC STATE

In general, a State guarantee enables its beneficiary to obtain better financial terms for a loan than those normally available on the financial markets. Therefore, guarantees given by the State may fall within the scope of Article 61(1) of the EEA Agreement.

However, in the provisions of Chapter 17.4(2) of the Authority's State Aid Guidelines on State Guarantees (hereinafter: the Guidelines), the Authority has laid down a situation in which an individual State guarantee does not constitute State aid under Article 61(1) of the EEA Agreement. To this end, the State guarantee must fulfil all the following conditions:

(a) the borrower is not in financial difficulty;

(b) the borrower would, in principle, be able to obtain a loan on market conditions from the financial markets without any intervention by the State;

(c) the guarantee is linked to a specific financial transaction, is for a fixed maximum amount, does not cover more than 80 % of the outstanding loan and is not open-ended;

(d) the market price for the guarantee is paid (which reflects, amongst other things, the amount and duration of the guarantee, the security given by the borrower, the borrower's financial position, the sector of activity and the prospects, the rates of default, and other economic conditions).

The Authority will, therefore, firstly assess whether the State guarantee in favour of Farice hf. for the A Term Loan fulfils the four conditions set out in the Guidelines which would exclude that State aid is involved. Only in the case of a negative finding in that regard will the Authority assess the individual conditions of Article 61(1) EEA Agreement.

1.1.1. ***Conditions, excluding the existence of aid — Chapter 17.4(2) of the State Aid Guidelines***

According to the information provided by the Icelandic authorities, the project could not gain momentum as a purely commercial business case and required the involvement of the State. Although Farice hf. was not technically in financial difficulty (first condition), it could only secure a EUR 11 million loan on market conditions (D loan). The fact that the banks did not only require a guarantee from the State for the A Term Loan but also from the two former state telecommunication monopolists (Síminn for the B Term Loan and Telefonverkið P/F for the C Term Loan), which were still owned by the respective States, shows that Farice was not in the position to obtain a loan on market conditions without any intervention by the State. The second condition is therefore not fulfilled.

As to the third condition, the Authority took the preliminary view in the decision to open the formal investigation that the State guarantee covers 100 % of the guaranteed A Term Loan. The overall loan package is made up of four (or five [1]) different loan amounts with different borrowing conditions, different lenders and different guarantees. The Icelandic authorities argue that there is only one loan at stake, at EUR 34,5 million and that for that reason the State guarantee relating to the A Term loan does not cover more than 80 % of the loan. However, as can be seen from the loan agreement, while granted for the same collateral, the four loans are granted by different banks which assume the responsibility for *their* loan amount only. None of the banks would give up its share of the security [2] — in case of a failure of Farice hf. — in order to cover any of the other loans. The different loans do not only carry different interest rates but they also have different repayment periods, different number of instalments and different guarantors.

It should further be noted that the 80 % rule should ensure that the creditor still has an incentive to reflect on the risk which he is willing to assume. Against this background, it does not seem correct to take into account — in relation to the business decision made by the Nordic Investment Bank and in order to establish the loan basis to which the 80 % rule applies — that other loans are granted by Íslandsbanki and Føroya Banki. The Nordic Investment Bank has not assumed any responsibility for these loans.

For these reasons, the Authority considers that each part of the overall loan amount constitutes an independent loan as such. The combination of the loans in one joint document does not appear to be of significant relevance. For this reason, the Authority considers that the guarantee of the State covers 100 % of the guaranteed A Term Loan for a maximum amount of EUR 9,4 million. Therefore, the third condition is not fulfilled.

Regarding the fourth condition, the Authority notes that the Icelandic State Guarantee Fund charged a guarantee premium of 0,5 % p.a. in relation to the A Term Loan. The premium was paid upfront at an amount of EUR 438 839. In addition a guarantee of ISK 120 000 was charged.

Only assuming that the State Guarantee Fund took into account, in the assessment of the premium, the concrete characteristics of the guaranteed loan, in particular the conditions for repayment [3] and that it followed for its assessment the so-called market investor principle, would the fourth condition laid down in Chapter 17.4(2) of the Guidelines be fulfilled. However, despite being invited to prove that the guarantee premium reflects the market rate, the Icelandic authorities have not substantiated this point, but mainly limited themselves to repeat the relevant provisions of the State Guarantee Fund

[1] As the B Term Loan is provided by two different lenders.

[2] According to the Security Document of the loan agreement a first ranking security into land and assets is registered for the amount of EUR 34,5 million.

[3] The provisions of the loan agreement foresee the possibility of prepaying the whole or part of the loan, except for the A term Loan, without any prepayment fee.

Act. The Authority notes that while taking into account that the guarantee in question is a guarantee of collection with a lesser risk, the premium charged to Farice is at the very low end of the spectrum of such charges to be fixed by the National Debt Management Agency (from 0,5 to 4 % ([1])), which has not been reasoned by the Icelandic authorities despite the comment of the Authority in the Decision to open the formal investigation procedure ([2]).

Further indication of the appropriate market rate can be derived from Chapter 17.3(2) of the Guidelines which identifies the amount of aid, i.e. the cash grant equivalent, for an individual guarantee, as the difference between the market rate and the rate obtained thanks to the State guarantee after any premiums have been deducted. This is based on the understanding that if the borrower profits from a favourable interest rate, which he would not have received without state intervention, the aid element is the amount which remains in comparison to the market rate and after the premium has been deducted. If the premium does not fully remove this advantage, the State guarantee would still benefit the recipient and thus distort the market. In such circumstances the advantage resulting from the guarantee has not been removed by the premium and would have to be classified as aid ([3]).

On the basis of the information available to it (the Authority has no information on credit ratings for Farice hf.), the Authority will try to establish an approximation of the value of the guarantee and the respective aid intensity by a comparison of the A Term Loan with the D Term Loan.

In its Decision to open the formal investigation procedure, the Authority expressed doubts as to whether the interest rate of the A Term Loan should be compared with the B or D Term Loans. The Authority considers that the interest rate of the A Term Loan could be compared with the D Term Loan ([4]), which is the only one not backed up by the State or a state-owned company. The difference between the interest rate for these two loans is 1,32 percentage points. Deducting a guarantee premium of 0,50 %, the difference amounts to 0,82 percentage points ([5]). That would result in an aid amount of some EUR 720 000 ([6]). However, it should be taken into account that the D Term Loan has a shorter repayment period (maturity) than the A Term Loan. Whereas the A Term Loan will only be paid back in 2015, i.e. 11 years after the conclusion of the loan agreement, the D Term Loan will be paid back in 2009 (see table in I.2.2(a) of this Decision). If the D Term Loan had the same long maturity as the A Term Loan (i.e. until 2015), there is reason to believe that Íslandsbanki hf. would have requested an interest rate, higher than Euribor + 1,50 %. Using Eurobond yield rate curves for 2004 ([7]) the difference between a bond maturity of five years and of 11 years shows a difference in the yield rate of some 0,8 percentage points. In order not to understate the advantage of the guarantee and the respective aid intensity, this difference must be taken into account, which would for the D Term Loan lead to an interest rate of Euribor + 2,3 % (1,5 % as the original rate plus the additional 0,8 %), thereby increasing the aid intensity to 1,62 % ([8]) or around EUR 1,4 million ([9]). This figure should be taken rather as an illustration than as an exact calculation of what the aid amounts to. It cannot be taken for granted that a commercial lender for a non-guaranteed loan would have charged 2,12 percentage points ([10]) more than the rate for the A Term Loan, even if the maturity were the same. A required rate would depend on the lender's risk assessment, which not necessarily leads to the mark-up as calculated above.

Thus, three out of the four cumulative conditions laid down in the Guidelines for assessing whether or not an individual State guarantee constitutes State aid under Article 61(1) of the EEA Agreement are not fulfilled. Although the borrower, Farice hf., was technically not in financial difficulty, it was not able to obtain a loan from the financial markets on market conditions without any intervention by the State but needed the State guarantee for 100 % of the outstanding A Term Loan. Furthermore, Farice hf. did not pay a market price for the guarantee, which would reflect the amount and duration of the guarantee and the security given by the borrower, as well as, in particular, the sector of activity and the prospects.

For these reasons, the Authority cannot conclude that the State guarantee in favour of Farice hf. for the A Term Loan excludes the involvement of State aid.

([1]) See the letter of the Icelandic authorities dated 21 January 2005, page 9.
([2]) See page 11 of the Authority's Decision No 125/05/COL.
([3]) The Icelandic authorities do not consider this aspect, but look at the adequacy of the market price as such. The result is that the fact that the State guarantee has led to better loan conditions than market conditions, is neither considered under the second condition (see above) nor under the fourth condition.
([4]) According to Clause 7.4 of the loan agreement, only the margin for the A Term Loan can be modified after signature of the agreement. Such an amendment may take place on 18 March 2011 and will be effective until the loan maturity. As this is depending on the future negotiations, the Authority is not in a position to assess whether such a modified margin would constitute State aid within the meaning of Article 61(1) of the EEA Agreement or whether any possible aid could be authorised. However, the Icelandic authorities would be able to identify the existence of an aid element for any future modification by applying the calculation parameters laid down in the previous paragraph and, in case of the existence of an aid element, would have to notify the aid measure to the Authority.
([5]) Euribor + 1,50 % p.a.–(Euribor+0,18 % p.a.)–0,50 % = 0,82 %.
([6]) Based on the following calculation: EUR 438 839/0,5 × 0,82 = EUR 719 695.
([7]) http://epp.eurostat.ec.europa.eu/cache/ITY_PUBLIC/EYC/EN/eyc-EN.htm#historical
([8]) Euribor + 2,30 % p.a.–(Euribor+0,18 % p.a.)–0,50 % = 1,62 %.
([9]) EUR 438 839/0,5 × 1,62= EUR 1 421 838.
([10]) 2,30 – 0,18 (the interest rate of the A Term Loan).

1.1.2. ***The conditions of Article 61(1) of the EEA Agreement***

In order for a measure to be considered State aid within the meaning of Article 61(1) of the EEA Agreement, it must fulfil the following cumulative conditions: the aid constitutes a selective advantage in favour of certain undertakings, is granted through state resources, distorts or threatens to distort competition and affects trade between the Contracting Parties to the EEA Agreement.

The measure constitutes a selective advantage in favour of an undertaking

A measure which grants an advantage to certain specific beneficiaries and which is not a general measure constitutes aid.

The Icelandic authorities have argued that the support to the Farice project does not comprise any State aid, given that the submarine cable qualifies as infrastructure and support in its favour therefore constitutes a 'general' and not a selective measure. As stated in the European Commission Communication COM(2001) 35 final, 'Reinforcing quality service in sea ports: a key for European transport' ([1]), the criterion of selectivity is an important benchmark for deciding whether a concrete financing measure constitutes State aid.

In Commission practice, state funding for the construction or management of infrastructure is not to be regarded as aid if the infrastructure is directly managed by the State (which is not the case in the present project) or if there is a public tender for the selection of the manager and if access to the infrastructure is open to all potential users on a non-discriminatory basis ([2]).

As it pointed out in the decision to open the formal investigation procedure, while wide participation might have been sought within the project, neither the construction nor the management of the company was organised by a public tender. The government participation rather responded to a private initiative, started by the two incumbent telecommunication operators ([3]). Moreover, regarding non-discriminatory access, while the participation in the company according to the shareholders' agreement is not restricted, the founding shareholders keep certain pre-emptive rights, which seems to place them in a better position than new shareholders.

Regardless of this, in line with Commission practice, a measure does not constitute a general measure, if the body managing the infrastructure is pursuing an economic activity, as this may provide a potential advantage to the beneficiary ([4]) in relation to competing operators. In this respect it suffices to note that the state support benefits Farice hf. which manages the cable and sells users' rights to interested parties against remuneration. According to the case law of the European Court of First Instance, the management of infrastructure constitutes an economic activity within the meaning of Article 61(1) of the EEA Agreement ([5]). Farice hf. is able to profit from an infrastructure construction secured with a State guarantee and with government participation in a situation in which private parties were not willing to ensure the full financing of the project, whereas other operators might have to finance 100 % of it on their own.

In addition, the participation in the company is mainly geared towards telecommunication operators. Connectivity via the Farice cable is currently only sold in large units to business operators who resell the service on the downstream market to end-users. It was these business operators who took the initiative to which the State responded. The type of service is therefore targeted at commercial operators and not at the general public. The Authority therefore considers that the project should be looked at as being a dedicated facility for undertakings, which is within the scope of State aid control, and not as a general infrastructure ([6]).

In order to determine whether a state measure constitutes aid, it is necessary to establish whether the recipient undertaking receives an economic advantage which it would not have obtained under normal market conditions.

([1]) Communication of 13.2.2001, COM(2001) 35 final.

([2]) Commission Decision N 527/02 — Greece Financial support of a private company for the design, construction, testing and commissioning of the aviation fuel pipelines for supply of the new Athens International Airport.

([3]) See Commission Decision C 67-69/2003 concerning aid for the construction of a propylene pipeline between Rotterdam, Antwerp and the Ruhr-area, paragraph 48. The argument by the Icelandic authorities that Directive 2002/20/EC only requires a general authorisation (and not a tender) is valid, but not relevant for State aid purposes. Under the State aid provisions, the carrying out of a tender is one of the elements to assess whether a measure can be classified as infrastructure.

([4]) See Commission Decision N 527/02 — Greece — Financial support of a private company for the design, construction, testing and commissioning of the aviation fuel pipelines for supply of the new Athens International Airport. Also Commission Decision N 860/01 — Austria on the ski resort Mutterer Alm where the running of ski lifts was considered to be an economic activity benefiting the operator of the ski lift and therefore not constituting an infrastructure measure. See Commission Decision C 67-69/2003, paragraph 48.

([5]) See Case T-128/98 *Aéroports de Paris* v *European Commission* [2000] ECR II-3929.

([6]) See Commission Decision N 213/2003 — Project Atlas, broadband infrastructure for business parks.

As stated in Chapter 17.2.1, paragraph 1, of the Guidelines, a State guarantee enables the borrower to obtain better financial terms for a loan than those normally available on the financial markets. Typically, with the benefit of the State guarantee, the borrower would not, without a State guarantee, find a financial institution prepared to lend on any terms.

As stated above (in Section II.1.1.1 of this Decision), the fact that the banks did not only require a guarantee from the State for the A Term Loan but also from the two former state telecommunication monopolists (Síminn for the B Term Loan and Telefonverkið P/F for the C Term Loan), which were still owned by the respective States, shows that Farice was not in the position to obtain a loan on market conditions without any intervention by the State.

Furthermore, the carrying of a risk by the State should normally be remunerated by an appropriate premium. As it has been shown above (in Section II.1.1.1 of this Decision), the premium charged to Farice hf. is on the very low end of the spectrum and might not represent an adequate remuneration. The Icelandic authorities have not provided any information in their comments to the concerns on that point raised in the Decision to open the formal investigation procedure, on which basis the Authority could assess that the premium paid was adequate. This has to be seen in particular with regard to the fact that the premium did not fully removed the advantage which Farice hf. obtained from gaining a lower interest rate for the A Term Loan from the banks. As can be seen from Chapter 17.2.1, paragraph 2 of the Guidelines, where the State foregoes an adequate premium, there is a benefit for the undertaking.

Thus, the Authority considers that Farice hf. has received an economic advantage which it would not have obtained under normal market conditions.

State resources

In order to be considered State aid within the meaning of Article 61(1) of the EEA Agreement, the economic advantage must be granted by the State or through state resources. The Icelandic State provided a guarantee for a loan of EUR 9,4 million in favour of Farice, i.e. the State guarantee involves state resources.

Furthermore, as stated in Chapter 17.2.1, paragraph 2, of the Guidelines, where the State foregoes an adequate premium, this constitutes a drain on state resources. As it has been shown above, the premium charged to Farice hf. is on the very low end of the spectrum and might not represent an adequate remuneration, in particular with regard to the lower interest rate obtained. Since the Icelandic State could have required a higher premium to be paid, and consequently has forgone higher revenues, state resources are involved.

The State also did not act as a private market investor, which would exclude the application of Article 61(1) of the EEA Agreement. The discussion of the above two criteria shows that the project did not gain any momentum on commercial grounds. The State's participation in the project, *inter alia* by guaranteeing the A Term Loan, became necessary in a situation where private market investors would have — if they had granted the guarantee — asked for a higher premium. This shows that the Icelandic State, when assuming the guarantee, did not act according to the private market investor principle.

Distortion of competition and effect on trade between the Contracting Parties

In order for Article 61(1) of the EEA Agreement to be applicable, the measure must distort competition and affect trade between the Contracting Parties. Undertakings benefiting from an economic advantage granted by the State which reduces their normal burden of costs, are placed in a better competitive position than those who cannot enjoy this advantage.

The intervention of the State strengthens the position of Farice hf. in securing the project financing versus competitors who do not profit from such a guarantee and would have to make the investment solely on market terms, as for example other providers of cables for Internet connectivity (such as the CANTAT-3 network). The consortium which operates the CANTAT-3 network includes, *inter alia*, the Icelandic telecom operator Landssími Íslands hf., Teleglobe and Deutsche Telekom. CANTAT-3 has connection points in Canada, Iceland, the Faeroe Islands, Denmark, the United Kingdom and Germany.

Furthermore, the guarantee is given for a project which is carried out by multinational business operators and constitutes an activity which is subject to trade between the Contracting Parties.

Hence, the measure distorts competition and affects trade between the Contracting Parties.

Conclusion

For the abovementioned reasons, the Authority concludes that the State guarantee granted in favour of Farice hf. for the A Term Loan constitutes State aid within the meaning of Article 61(1) of the EEA Agreement.

1.2. THE INCREASE IN THE PARTICIPATION OF THE STATE AS SHAREHOLDER OF FARICE HF.

Between the time of the establishment of the company in September 2002 and the time of the notification at the beginning of 2004, the state participation in Farice hf. increased from an initial share of 27,33 % up to 46,5 %. Following the explanation given by the Icelandic authorities in their reply of June 2004, Síminn made it clear that it did not intend to provide more than 33,33 % of the share capital [1].

For State aid purposes, it has to be established whether the capital increase at Farice hf. undertaken by the State is in conformity with the market economy investor principle. Chapter 19 of the Guidelines establishes the general approach of the Authority with regard to the acquisition of share holdings by public authorities.

According to Chapter 19.6(b) of the Guidelines, no State aid is involved where fresh capital is contributed to an undertaking in circumstances that would be acceptable to a private investor operating under normal market economy conditions. This can apply when public holdings in a company are to be increased, provided that the capital injected is proportionate to the number of shares held by the authorities and goes together with the injection of capital by a private shareholder. The private investor's holding must have real economic significance.

On the other hand, there is State aid where fresh capital is contributed in circumstances that would not be acceptable to a private investor operating under normal market economy conditions. Following Chapter 19.6(c) of the Guidelines, this is, amongst others, the case where the injection of capital into companies whose capital is divided between private and public shareholders makes the public holding reach a significantly higher level than it was originally and the relative disengagement of private shareholders is largely due to the companies' poor profit outlook.

The Icelandic authorities argue that the Icelandic State's share capital increase should not be looked at as an injection of fresh capital, but rather as the initial setting up of the company. The Icelandic authorities state that Farice hf., with the share capital of ISK 30 million was not, in September 2002, in the position to take on the project of construction or operation of a submarine communication cable system. Instead of creating — as discussed — a new company, the first share increase in January 2003 took place, which was in the view of the Icelandic authorities, therefore not a normal 'share increase' of a company, but in fact similar to the establishment of a new company with a new purpose. The Authority points out that the State Aid Guidelines consider the share capital increase, regardless of at what point in time it takes place, as a subcategory of the injection of fresh capital. As the Guidelines reflect the general principle of private market investor behaviour, the share capital increase must be analysed on its merits. Even if the Government had assumed the higher share already during the preparation phase, this still would have made the capital participation of the Icelandic State subject to an analysis under the State aid provisions. For that assessment it is therefore only relevant whether the share capital increase reflects the rationale of a private market investor.

The Authority does not deny that in real terms the private operators' increased holdings occurred at the same time as the capital increase by the State. However, in the Authority's opinion, the share increase of the private operators was not proportionate to the share capital increase by the State.

As can be seen from the table above (see Section I.2.2(b) of this Decision) Farice hf.'s capital rose from EUR 327 000 to EUR 14 070 000 in January 2003. The share of the Icelandic State grew from 27,33 % (EUR 90 000) to 46,53 % (EUR 6 547 000), i.e. by almost 20 percentage points. While it is correctly stated by the Icelandic authorities that the share of Síminn grew from EUR 155 000 to EUR 4 690 000, in relative terms the share of Síminn fell from 47,33 % to 33,33 % (14 percentage points). Except for Telefonverkið, the shares of all other participants also fell (from 1,33 % to 0,33 %), which shows that in relative terms the commercial operators disengaged from the project.

This is likely to result from the poor outlook of the company's profit. In their letter of September 2004, the Icelandic authorities have submitted that:

'Síminn felt that increasing the capacity to meet foreseeable demand, as well as providing an alternate route for emergencies, was a financially risky undertaking, providing little return on investment (especially for a limited company in line for privatisation). In order to facilitate the necessary upgrade in capacity, particularly in view of the short time frame available until capacity would be outstripped by the demand, the Government stepped in.'

The Icelandic authorities further state that the market's reluctance towards the project was indicated in the preparatory phase when Síminn and Telefonverkið engaged IBM Consulting to advise them on the economic viability of the project and its financing possibilities. The findings strongly suggested that the funding could not be done via traditional means [2].

[1] See Section I.2.2(b) of this Decision.

[2] See letter by the Icelandic authorities dated 25 June 2004, page 3.

It seems from this that the initial lack of engagement from private investors was the reason for the subscription of the necessary capital increase by the Government in early 2003 ([1]), which raised the state participation in Farice hf.

The increase in the Icelandic State's share of Farice was further accompanied by the grant of a State guarantee to cover the A Term Loan of EUR 9,4 million, assessed above in this Decision. According to Chapter 19.6(d) of the Guidelines, there is a presumption that there is State aid where the authorities' intervention takes the form of acquisition of a holding combined with other types of interventions which need to be notified pursuant to Article 1(3) in Part I of Protocol 3 to the Surveillance and Court Agreement.

The increase in the share capital in a situation in which no private investor was increasing its share capital in the same proportion, thus presented an advantage to an individual company, Farice hf. and a drain on state resources.

The intervention of the State strengthens the position of Farice hf. in securing the project financing versus competitors who do not profit from such a state participation (e.g. the CANTAT 3 network) in a situation in which private operators are not willing to raise additional funds. The consortium which operates the CANTAT-3 network includes, *inter alia*, the Icelandic telecom operator Landssími Íslands hf., Teleglobe and Deutsche Telekom. CANTAT-3 has connection points in Canada, Iceland, the Faeroe Islands, Denmark, the United Kingdom and Germany.

Furthermore, the share increase concerns a project which is carried out by multinational business operators and constitutes an activity which is subject to trade between the Contracting Parties.

Hence, the measure distorts competition and affects trade between the Contracting Parties.

1.3. CONCLUSION

For the abovementioned reasons, the Authority concludes that the State guarantee for the A Term Loan and the capital share increase by the Icelandic State constitute State aid within the meaning of Article 61(1) of the EEA Agreement.

2. *PROCEDURAL REQUIREMENTS*

Pursuant to Article 1(3) in Part I of Protocol 3 to the Surveillance and Court Agreement, 'the EFTA Surveillance Authority shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid.' According to Article 2(1) read together with Article 3 in Part II of Protocol 3 to the Surveillance and Court Agreement, 'any plans to grant new aid shall be notified to the Authority in sufficient time by the EFTA State concerned and shall not be put into effect before the Authority has taken, or is deemed to have taken, a decision authorising such aid.'

Farice hf. was established in 2002 and the construction work started already in June 2003. The cable was officially opened in February 2004 ([2]). The share capital increase took place in January 2003 and the guarantee of collection by the Icelandic authorities dates to 27 February 2004, i.e. before the Authority had a chance to express a view on the notification of the measures on 27 February 2004. Thus, the Icelandic authorities put the measures into effect before the Authority had taken a final decision on it.

The Authority therefore notes that the Icelandic authorities did not respect the stand-still obligation laid down in Article 3 in Part II of Protocol 3 to the Surveillance and Court Agreement.

3. *COMPATIBILITY*

In the Authority's view, the aid measures do not comply with any of the exemptions provided for under Article 59(2) ([3]) and Article 61(2) or (3)(a) and (d) of the EEA Agreement.

As stated in the decision to open the formal investigation procedure, in the Authority's view, the state support cannot be justified under Article 61(3)(b) of the EEA Agreement. Admittedly, the existence of reliable international connectivity could be considered of general interest under certain circumstances. While the project is trans-national, that does not suffice for accepting the project to fall under the exemption of Article 61(3)(b) of the EEA Agreement. The aid in question presents itself in the form of sector aid, benefiting an individual company (Farice hf.) and brought about as a result of a private initiative of a group of business operators rather than achieving wider positive results for the European economy or creating

([1]) The Authority is aware of the reference of the Icelandic authorities to the speech of the chairman of Farice hf. board on 24 January 2004. However, this speech only states that there is a 'modestly profitable business case' and that the private operators also provided securities. The latter point has never been denied by the Authority; the question whether the share increase by the State is proportionate is, however, not answered.

([2]) Press release of 3 February 2004.

([3]) The Icelandic authorities have not provided information which enables the Authority to make an assessment under that provision.

important spill-overs for the general society. The project does not profit the European Economic Area as a whole ([1]) and is also outside any framework of any Community action in this field ([2]).

It needs to be assessed 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 considers that the compatibility assessment is to be based directly on Article 61(3)(c) of the EEA Agreement. To be considered compatible under this provision, the State aid measure must be necessary and proportionate to the objective it pursues.

3.1. THE NECESSITY OF THE AID MEASURES

The Authority notes that the project intends to secure Internet connectivity to Iceland by having a reliable transmission method to which the former CANTAT-3 connection will serve as a back-up. Because of its geographic location, Iceland is particularly dependent on having access to economic and reliable telecom connectivity. As can be seen from Section I.2 of this Decision, alternatives in the form of the existing CANTAT-3 cable or satellites were no durable options, either because of their technical limitations or dependencies on other consortium shareholders (CANTAT-3 ([3])) or their rising costs (satellites). The new submarine cable, which is to become the primary transmission connection to Iceland, has greater capacities, is more reliable and — together with the backup by CANTAT-3 — is able to secure the provision of telecommunication services to Iceland. The availability of broadband ([4]) has been acknowledged in Commission policy and State aid decisions ([5]) as a legitimate objective and type of service which is by its nature capable of positively affecting the productivity and growth of a large number of sectors and activities.

As can be seen from its history (in particular the feasibility study of March 2002), the Farice project was not able to emerge as a purely private initiative. Both, the grant of a State guarantee and the share capital increase resulted from the need of a greater state participation to make the project economically viable. Without state participation, the project would either have been delayed or not undertaken at all. For these reasons, the Authority considers that the state support was necessary within the meaning of 61(3)(c) of the EEA Agreement.

3.2. THE PROPORTIONALITY OF THE AID MEASURES

In order for the aid measures to be compatible with Article 61(3)(c) of the EEA Agreement, it must also be proportionate to the objective and not distort competition to an extent contrary to the common interest. The trade-off between the advantages in terms of guaranteeing a reliable provision of telecommunication services to Iceland must be weighed against the disadvantages of the distortion of competition in comparison to competitors, which do not have access to public funding when realising similar projects.

Neither the construction nor the management of the cable were given to Farice hf. after an open tender. In the opinion of the Authority, the widespread information on this project as claimed by the Icelandic authorities cannot replace a formal tender procedure, in particular as this participation was limited to Icelandic and Faeroe parties ([6]). The open tender has been considered a positive, although not necessarily mandatory, element for the approval of broadband projects in Commission practice ([7]). In these decisions it has been, in particular, stressed that the tendering out of the management of the cable to an independent asset manager secured the neutrality of the infrastructure manager better than in a situation in which the service provider has control over the infrastructure, as is the case here.

The Authority notes positively that the Shareholders Agreement provides for a non-discriminatory, transparent pricing on market terms. The pricing policy seems transparent, the schedule is published on Farice hf.'s website and includes the formula used to calculate prices.

Furthermore, the Shareholders Agreement is in principle open to new entrants. In the Decision to open the formal investigation procedure the Authority raised some doubts on the position of new entrants in relation to the founding parties. This doubts were mainly founded in Section 7 of the Shareholders Agreement which protects the founders' position by

([1]) See e.g. State aid N 576/98 United Kingdom concerning the Channel Tunnel Rail Link, where the high speed rail link was a link of EU wide importance, rather than being relevant for one or a few Member States.

([2]) For this criterion, see e.g. Commission Decision 96/369/EC concerning fiscal aid given to German airlines in the form of a depreciation facility (OJ L 146, 20.6.1996, p. 42).

([3]) As stated in the summary report submitted by the Icelandic authorities in the notification dated 27 February 2004, the consortium member Teleglobe, in particular, was faced with business difficulties.

([4]) Data transmission in which a single medium can carry several channels at once. The term is also used to compare frequency bandwidth greater than 3 MHz narrowband frequencies. Broadband can transmit more data at a higher speed.

([5]) See e-Europe 2004 Action Plan, Communication from the Commission, An information society for all, COM(2002) 263 final of 28 May 2002, see Commission Decision N 213/2003 Project Atlas — broadband infrastructure for business parks and N 307/2004 Broadband in Scotland — remote and rural areas.

([6]) The Icelandic authorities state: 'Widespread participation was sought in Iceland and the Faeroe Islands for shareholders in the Farice project and all telecoms operators were invited to participate in the foundation of the company.'

([7]) Commission Decisions N 307/2004, N 199/2004 and N 213/2003.

giving them the possibility to maintain their equity position. In their comments to the Authority's Decision [1], however, the Icelandic authorities have dispelled the doubts of the Authority and stressed the distinction between access to ownership of the company and access to the telecommunication cable. As stated in the previous paragraph, the Shareholders Agreement provides for a non-discriminatory and transparent pricing on market terms and therefore grants adequate access to the telecommunication cable.

The tentatively calculated aid with regard to the State guarantee (1,62 % [2] or some EUR 1,4 million) is rather limited, when compared to the total investment costs of EUR 48,9 million, as it amounts to 2,9 %. As to the Icelandic State's share increase, in June 2003 the State's share capital has already decreased to 41 %, whereas the equity share of other private operators such as Og Vodafone had increased. The Icelandic authorities have pointed out that despite the openness of the current shareholders to newcomers no company has showed interest in the project [3]. A calculation of the amount of State aid involved as a result of the increase in the Icelandic State's share capital is not straightforward. However, even if in the extreme one considered the whole capital increase as State aid and even if one considered the whole A Term Loan as State aid [4], the overall amount of the involvement of the Icelandic State would be some EUR 15,5 million. This is about 32 % of the investment costs for the Farice project [5].

The European Court of Justice has established that a compatibility assessment under the State aid provisions should not produce a result which is contrary to other treaty provisions. Consequently, for the assessment under the State aid provisions, it is also relevant whether state support is given to a project which might raise competition concerns under the application of Article 53 and/or 54 of the EEA Agreement [6]. In this regard, the Authority *inter alia* noted in the decision to open the formal investigation procedure that although the existing infrastructure CANTAT-3 still remains in place [7], there was — among other issues — a concern that in the future, all CANTAT-3 connectivity to Iceland will be channelled through E-Farice hf., which holds the majority of shares in Farice hf. [8]. Hence, the Authority was concerned that competition in connectivity to Iceland would be eliminated, as only one supplier would remain on the market. These concerns have now been dispelled.

The Farice project is pro-competitive in creating a new channel for international connectivity where previously there has only been the CANTAT-3 offer.

Moreover, as a result of Farice hf.'s prices, which are high in comparison to international prices, buyers of wholesale capacity in Iceland, other than Farice's founders, have tended to use CANTAT-3 capacity, which Teleglobe offers at lower prices. This shows that Farice does not appear to be able to control prices or supply in the market for international connectivity from/to Iceland under the present market conditions. The Icelandic authorities estimate that currently Teleglobe is selling capacity to Icelandic customers that amounts to about 50 % of the volume channelled through Farice. It does not appear that Farice hf.'s pricing policy undercuts CANTAT-3 prices and is able to drive that competitor out of the market. Wholesale customers that are not affiliated with Farice hf.'s founders are able to bypass the Farice cable and have in fact done so.

The Icelandic authorities also reacted to the concerns voiced in the decision to open the formal investigation procedure that Farice hf. originally had plans for joint purchase/lease of increased bandwidth in CANTAT-3 in order to ring-connect the two systems. Such comprehensive purchases of available capacity would effectively have removed Teleglobe as a competitor to Farice. The Icelandic authorities stated that Farice hf. or E-Farice ehf. do not currently have any plans to purchase or lease more CANTAT-3 capacity and that discussions held with Teleglobe [9] years ago never led to any agreement. The situation of today is that both Farice and CANTAT-3 capacity is available to and from Iceland. In addition, there are other operators, such as TDC and T-Systems which provide capacity on CANTAT-3 to Iceland, although on a smaller scale.

Therefore, in the current situation, there are no grounds for the Authority to be concerned about the competition aspects and the corresponding competition proceedings have been closed.

[1] See letter of the Icelandic authorities dated 28 June 2006, page 5.
[2] Euribor + 2,30 % p.a.–(Euribor+0,18 % p.a.)–0,50 % = 1,62 %.
[3] See letter of the Icelandic authorities dated 28 June 2006, page 5.
[4] See point 17.3 of Chapter 17 of the Authority's State Aid Guidelines, which states that in certain situations the value of the guarantee might be as high as the amount effectively covered by that guarantee.
[5] Aid intensities of 35 % of total investment costs have e.g. been authorised by the European Commission in State aid N 188/2006 — Latvia, for a broadband project in rural areas.
[6] Cf. Case C-225/91 *Matra SA* v *Commission* [1993] ECR-3203, paragraph 41, EFTA Court judgment in Case E-09/04 The Bankers' and Securities' Dealers Association of Iceland v EFTA Surveillance Authority, not yet published, paragraph 82.
[7] On the co-existence of existing infrastructure, see Commission Decision N 307/2004, paragraph 45, where it is positively outlined that this minimises the risk of unnecessary duplication and limits the economic impact for operators that already have infrastructure in place. See also Commission Decision N 199/2004, paragraph 41, N 213/2003, paragraph 47.
[8] In 2003, E-Farice ehf. held 80 % of the shares in Farice hf., with the 20 % remaining shares held by Føroya Tele (19,93 %) and other Faeroe parties (together 0,6 %).
[9] Teleglobe has survived the earlier Chapter 11 proceedings and is currently a Nasdaq trading company.

4. *CONCLUSION*

On the basis of the foregoing assessment, the Authority considers that the support in favour of Farice hf. is compatible with the EEA Agreement. Notwithstanding this, the Authority regrets that the measures were implemented before Iceland had notified the Authority of the State guarantee and before the Authority had reached a final decision on the State aid assessment of the measures,

HAS ADOPTED THIS DECISION:

Article 1

The support in favour of Farice hf. in form of a State guarantee for a loan and a capital increase constitute State aid which is compatible with the functioning of the EEA Agreement within the meaning of Article 61(3)(c) of the EEA Agreement.

Article 2

This Decision is addressed to the Republic of Iceland.

Article 3

Only the English version is authentic.

Done at Brussels, 19 July 2006.

For the EFTA Surveillance Authority

Bjørn T. GRYDELAND
President

Kristján A. STEFÁNSSON
College Member

CORRIGENDA

Corrigendum to Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC

(Official Journal of the European Union L 396 of 30 December 2006, p. 1; corrected by OJ L 136, 29.5.2007, p. 3)

The following reference is to the publication in OJ L 136, 29.5.2007, as amended by Regulation (EC) No 1354/2007 (OJ L 304, 22.11.2007, p. 1) and as corrected by the May 2008 corrigendum to Article 3(20)(c) (OJ L 141, 31.5.2008, p. 22).

This corrigendum cancels and replaces the corrigendum published in OJ L 141, 31.5.2008, p. 22, as follows:

On page 21, Article 3(20)(c):

for: '(c) it was placed on the market in the Community, or in the countries acceding to the European Union on 1 January 1995, on 1 May 2004 or on 1 January 2007, by the manufacturer or importer at any time between 18 September 1981 and 31 October 1993 inclusive, and before the entry into force of this Regulation it was considered as having been notified in accordance with the first indent of Article 8(1) of Directive 67/548/EEC in the version of Article 8(1) resulting from the amendment effected by Directive 79/831/EEC, but it does not meet the definition of a polymer as set out in this Regulation, provided the manufacturer or importer has documentary evidence of this;',

read: '(c) it was placed on the market in the Community, or in the countries acceding to the European Union on 1 January 1995, on 1 May 2004 or on 1 January 2007, by the manufacturer or importer before the entry into force of this Regulation and it was considered as having been notified in accordance with the first indent of Article 8(1) of Directive 67/548/EEC in the version of Article 8(1) resulting from the amendment effected by Directive 79/831/EEC, but it does not meet the definition of a polymer as set out in this Regulation, provided the manufacturer or importer has documentary evidence of this, including proof that the substance was placed on the market by any manufacturer or importer between 18 September 1981 and 31 October 1993 inclusive;'.

Corrigendum to Commission Regulation (EC) No 1221/2008 of 5 December 2008 amending Regulation (EC) No 1580/2007 laying down implementing rules of Council Regulations (EC) No 2200/96, (EC) No 2201/96 and (EC) No 1182/2007 in the fruit and vegetable sector as regards marketing standards

(Official Journal of the European Union L 336 of 13 December 2008)

On page 58, in Annex I, Part 8, point II. Provisions concerning quality, A. Minimum requirements, 10th indent:

for: '— (ii)],'

read: '— free of sunburn [except for the specifications in Chapter B: Classification, point (ii)],'.
